

**HONG KONG SPECIAL ADMINISTRATIVE REGION / BELGIUM
AGREEMENT ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
("THE AGREEMENT")**

**ARTICLE BY ARTICLE COMPARISON
WITH THE MODEL AGREEMENT**

TITLE AND PREAMBLE

Preamble is substantially the same as the model Agreement with a new paragraph (3) included at the request of Belgium. This paragraph is consistent with Hong Kong's system of justice as guaranteed by the Basic Law.

ARTICLE I: SCOPE OF ASSISTANCE

Paragraph (1) is substantially the same as the model Agreement (Article I(1)). Similar formulation can be found in the Agreement with France (Article I(1)).

Paragraph (2) is substantially the same as the model Agreement (Article I(2)), but slightly expanded. A new "catch-all" clause, paragraph (k) is added to make it more comprehensive. Similar clauses appear in other signed Agreements.

Paragraph (3) is a combination of Article I(3) of the HK/Australia Agreement (which also appears in other signed agreements) and section 5(2) of the Mutual Legal Assistance in Criminal Matters Ordinance [CAP. 525].

Paragraph (4) is similar to the formulation in the Agreement with Australia (Article I(4)).

ARTICLE II: CENTRAL AUTHORITY

The first two paragraphs of Article II are substantially the same as the first two paragraphs of the model Agreement (Article II). The remainder is consistent with Hong Kong practice. Similar provisions are found in the Agreement with France (Article II).

ARTICLE III: OTHER FORMS OF ASSISTANCE

An expanded version of Article III of the model Agreement.

ARTICLE IV: LIMITATIONS ON COMPLIANCE

Paragraph (1)(a) is slightly amended at the request of Belgium. It is substantially the same as Article IV(1)(a) of the model Agreement.

Paragraph (1)(b) is the same as the model Agreement (Article (1)(f)).

Paragraph (1)(c) is an expanded version of the model Agreement (Article IV(1)(b)). The amended version is more comprehensive.

Paragraph (1)(d) is substantially the same as the model Agreement (Article IV(1)(d)).

Paragraph (1)(e) is the same as the model agreement (Article IV(1)(g)).

Paragraph (1)(f) is substantially the same as the model Agreement (Article IV(1)(e)). As with a number of the other signed Agreements "lapse of time" is not covered.

Paragraph (1)(g) is substantially the same as the model Agreement (Article IV(1)(h)). Similar formulation can be found in the Agreement with France (Article IV(1)(g)).

Paragraph (1)(h) is substantially the same as the model Agreement (Article IV(1)(c)). Similar clause can be found in the Agreement with Italy (Article III(1)(d)).

Paragraph (1)(i) is consistent with Hong Kong law and practice.

Paragraph (1)(j) which is consistent with Hong Kong's legal system is included at Belgian request. A similar provision appears as Article 4(g) of the UN model extradition agreement.

Paragraph (2) is added at the request of Belgium. It is consistent with Hong Kong practice.

Paragraph (3) simply reflects the obligations in certain international conventions (e.g. the Terrorist Bombings Convention) to not regard offences covered by the convention as being political offences.

Paragraphs (4) to (7) are the same as the model Agreement (Article IV(3) to (6)).

ARTICLE V: REQUESTS

Paragraph (1) is substantially the same as the model Agreement (Article V(2)). Paragraph (1) of the model Agreement is omitted as a result of inclusion of Article II(3).

Paragraph (2) is substantially the same as the model Agreement (Article V(4)) with the additional provision concerning the cost of translation of the request or the response. It is consistent with Hong Kong practice. Paragraph (3) of the model Agreement is omitted, on the basis that confidentiality requirements can be met pursuant to Article VI(1). Similar omission can be found in the other signed Agreements.

ARTICLE VI: EXECUTION OF REQUESTS

Paragraphs (1) to (3) are substantially the same as the model Agreement (Article VI (2) to (4)). Paragraph (1) of the model Agreement is omitted, but it is implied. Such omission can be found in the Agreement with France (Article VI).

Paragraph (4) is added at the request of Belgium. It is consistent with Hong Kong law and practice.

ARTICLE VII: EXPENSES

Paragraph (1) is an expanded version of Article VII(2) of the model Agreement. Paragraph (1) of the model Agreement is omitted. Civil law countries tend to refer requests to their competent authorities (magistrates etc.) who then execute the requests themselves. Such omission can accordingly be found in the Agreement with France (Article VII).

Paragraph (2) is the same as the model Agreement (Article VII(3)).

ARTICLE VIII: LIMITATIONS OF USE

Article VIII is the same as the model Agreement (Article VIII).

ARTICLE IX: ATTENDANCE AT EXECUTION OF REQUESTS

It is consistent with Article IX(4) of the model Agreement and the Hong Kong law and practice. Similar formulation can be found in the Agreements with France (Article IX) and Switzerland (Article 9).

ARTICLE X: OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

Paragraphs (1) to (3) are substantially the same as the model Agreement (Article IX(1) to (3)). Similar formulation can be found in the Agreement with France (Article X(1) to (3)).

Paragraph (4) is added at the request of Belgium. Similar formulation can be found in the Agreement with France (Article X(4)).

Paragraph (5) is substantially the same as the model Agreement (Article IX(5)). Similar formulation can be found in the Agreement with France (Article X(5)).

Paragraph (6) was added in contemplation of the passing of new legislation in Hong Kong to permit evidence-taking by video conference. That legislation has now been enacted.

ARTICLE XI: SERVICE OF DOCUMENTS

Paragraph (1) is substantially the same as the model Agreement (Article XII(1)). It confines the documents for service to “legal process”. It is consistent with Hong Kong practice.

Paragraph (2) is substantially the same as the model Agreement (Article XII(2)) but is more specific. Similar formulation can be found in the Agreement with France (Article XI (3)).

Paragraph (3) sets out the logistics of service. It is consistent with Hong Kong practice. Similar clause can be found in the Agreement with France (Article XI(4)).

Paragraphs (4) and (5) are substantially the same as the model Agreement (Article XII(4) to (5)).

ARTICLE XII: PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

Article XII is substantially the same as Article XIII of the model Agreement.

ARTICLE XIII: CERTIFICATION AND AUTHENTICATION

Article XIII is substantially the same as the model Agreement (Article XIV). Similar formulation can be found in the Agreement with France (Article XIII).

ARTICLE XIV: TRANSFER OF PERSONS IN CUSTODY

Paragraph (1) is substantially the same as the model Agreement (Article XV(1)).

Paragraph (2) is the same as the model Agreement (Article XV(2)).

Paragraph (3) is added at the request of Belgium. It is consistent with Hong Kong law (see section 24 of Cap. 525).

ARTICLE XV: TRANSFER OF OTHER PERSONS

Paragraph (1) is substantially the same as the model Agreement (Article XVI(1)), but is more specific. It limits the “other persons” to “witness or expert”. Similar formulation can be found in the Agreement with France (Article XV(1)).

Paragraph (2) deals with the question of the person’s expenses. There is similar provision in other signed Agreements: France (Article XV(2)), Italy (Article XIV(2)) and Switzerland (Article 18(3)).

ARTICLE XVI: IMMUNITY

Paragraph (1) is substantially the same as Article XVII (1) of the model Agreement. Similar formulation can be found in the Agreement with France (Article XVI(1)).

Paragraphs (2) to (4) are the same as Article XVII (3) – (5) of the model Agreement.

Paragraph (5) deals with the immunity of persons responding to a summons. Similar formulation can be found in the Agreement with France (Article XVI(5)).

Paragraph (6) is substantially the same as the model Agreement (Article XVII(2)).

ARTICLE XVII: SEARCH AND SEIZURE

Paragraph (1) is substantially the same as the model Agreement (Article XVIII (1)). It additionally reflects the limitations imposed by the domestic laws of the Parties in relation to execution of requests of this nature (for Hong Kong’s part see section 12 of CAP. 525 and the definition of “external serious offence”).

Paragraphs (2) and (3) are the same as the model Agreement (Article XVIII(2) and (3)).

ARTICLE XVIII: PROCEEDS OF CRIME

Paragraphs (1), (2) and (4) are the same as the model Agreement (Article XIX(1), (2) and (4)).

Paragraph (3) restricts the execution of the request to what is available in the laws of the Requested Party. This is appropriate since the Hong Kong SAR can only provide assistance pursuant to CAP: 525, in cases where the offence carries a maximum penalty of 2 years or more. Similar formulation can be found in the Agreements with France (Article XVIII(3)) and Ukraine (Article 19(3)).

Paragraph (5) deals with the definition of "proceeds of crime". Same formulation can be found in the Agreement with France (Article XVIII(5)).

ARTICLE XIX: PROVISION OF OTHER INFORMATION IN CONNECTION WITH PROCEEDINGS

A new article dealing with the provision of information for prosecution by the other party. Similar formulation can be found in the Agreement with France (Article XIX). Paragraph (2) is added to enable affected persons in the requested Party to take action to protect their interests.

ARTICLE XX: SPONTANEOUS INFORMATION

A new article for the exchange of information both at the stage of investigation and judgment. Similar article for exchange of information can be found in the Agreement with Switzerland (Article 25). But the provision in the Swiss Agreement is restricted to information on proceeds of crime. The present article concerns the commission of criminal offences in general.

ARTICLE XXI: SETTLEMENT OF DISPUTES

Article XXI is identical to Article XX of the model Agreement.

ARTICLE XXII: ENTRY INTO FORCE AND TERMINATION

Paragraphs (1) and (3) are substantially the same as Article XXI(1) and (2) of the model Agreement.

Paragraph (2) corresponds to provisions in a number of other signed Agreements (e.g. Australia: Article XXI(2)).