

**HKSAR / Kingdom of Denmark
Agreement on Mutual Legal Assistance
in Criminal Matters**

**Article by Article comparison
with the Model Agreement**

PREAMBLE

The preamble is the same as in the model agreement.

ARTICLE 1 – SCOPE OF ASSISTANCE

Paragraph 1 : It is similar to the model agreement. It has been slightly modified following the wording in the HKSAR / France MLA agreement. The phrase “jurisdiction of the ordinary criminal law court” has been adopted to emphasize that this Agreement applies to offences under ordinary criminal law and not offences falling within the jurisdiction of special tribunals.

Paragraph 2 : The order of the sub-paragraphs has been altered, at the request of Denmark, to correspond to the sequence of the specific forms of assistance in the subsequent articles of the Agreement. All sub-paragraphs are in substance the same as the model agreement.

Paragraph (3) follows similar formulation as in Article 1(3) of HK / Australia MLA agreement.

Paragraph (4) is the same as Article 1(4) of the model agreement.

Paragraph (5) was transposed from Article 4(1)(c) of the Hong Kong model agreement.

ARTICLE 2 – CENTRAL AUTHORITY

It is substantially the same as Article 2 of the model agreement. Transmission of urgent requests through Interpol was added in paragraph 3 at the request of Denmark. Similar provision can be found in HKSAR / Italy MLA agreement. There is no objection to it as it will expedite transmission of requests and enhance co-operation between the Parties.

ARTICLE 3 – OTHER ASSISTANCE

This is identical to Article 3 of the model agreement.

ARTICLE 4 – GROUNDS FOR REFUSAL

The heading in Article 4 of the model agreement was changed at the suggestion of Denmark. This is acceptable as it reflects the content of this provision.

Article 4(1)

The chapeau of Article 4(1) was also modified, as requested by Denmark, to reflect their legal position that some of the grounds listed in this provision are not mandatory under their law. There is no objection in that Hong Kong's position under MLA Ordinance has been preserved.

All mandatory grounds for refusal in the model agreement are retained with the following modifications.

Paragraphs (a) and (f) of the model text have been combined to form *paragraph (a) of Article 4(1)* which applies to Denmark. The position for Hong Kong has been recast in *Article 4(1)(b)* (again combining Article 4(1)(a) and (f) of the model agreement) to reflect the special status of the SAR and its responsibilities. The same formulation was adopted in the HKSAR / Netherlands MLA agreement.

Article 4(1)(c) of the model agreement now appears in *Article 1(5)*.

Article 4(1)(e) is the same as the first part of Article 4(1)(e) of the model agreement. Denmark requested to expand it to cover the situation where the Requested Party has made a final decision not to prosecute. It is acceptable to Hong Kong side as it reflects what actually happens.

The second limb of Article 4(1)(e) of the model agreement concerning the time bar for prosecution has been modified at the request of Denmark and appears in a slightly different formulation in *Article 4(1)(f)* to cater for the special needs under Danish law. Similar provision can be found in Article 4(1)(g) of the HKSAR / Netherlands MLA agreement.

Article 4(1)(g) of the model agreement has become a

discretionary ground in *paragraph (4) of Article 4* of the Agreement. (See similar formulations in Hong Kong's agreements with Australia, Canada, Philippines and Switzerland.)

Article 4(2) of the model agreement has been omitted from the Agreement at the suggestion of Denmark. This provision was omitted in Hong Kong's agreements with the US, France and Italy for the same reason.

Article 4(2) clarifies the application of the double criminality principle to offences involving taxation. This is modelled on Article IV(3)(b) of the HK / United Kingdom MLA agreement.

Article 4(3) is the same as Article 4(3) of the model agreement. Articles 4(4) to (6) of the model agreement have been moved to become paragraphs (8) to (10) of Article 6 of the Agreement. It is acceptable to Hong Kong.

ARTICLE 5 – REQUEST

Paragraph (1) of this Article has been expanded to cover other means of transmission capable of producing a written record. Similar provision was adopted in the HKSAR / Netherlands MLA agreement.

Paragraph (3) was added to cover any other information that would facilitate the execution of the request. This was included in many MLA agreements entered into by Hong Kong.

Article 5(4) of the model agreement dealing with confidentiality of the request and its content has been transposed to Article 6(4) of the Agreement.

Paragraph (4) of this Article has been recast to state that the working language for mutual legal assistance requests in Denmark is English.

ARTICLE 6 – EXECUTION OF REQUESTS

This is a more detailed version of Article 6 of the model agreement with the following modifications :

- *Paragraph (4)* corresponds to Article 5(3) of the model agreement. Another ground for disclosure was added at the request of Denmark. (The Requested Party is required to do so under its law.) This is acceptable to Hong Kong. Analogous provisions can be found in Article 7(3) of the HKSAR / US MLA agreement.
- *Paragraph (5)* was added at the request of Denmark. This is acceptable to Hong Kong. The right to be present when evidence is taken is dealt with in Article 8(3) of the Agreement. Article 6(5) permits persons to be present at the execution of other requests e.g. search and seizure subject to the consent of the Requested Party. Similar provisions were adopted in agreements with Canada, Italy, Switzerland and Netherlands.

- *Paragraph (6)* was also added to facilitate execution of request. This is acceptable to Hong Kong. Similar provisions in agreements with Canada, Korea and New Zealand.
- *Paragraphs (8) to (10)* correspond to Articles 4(4) to (6) of the model agreement.

ARTICLE 7 – LIMITATIONS ON USE

This is the same as the model agreement (Article 8).

ARTICLE 8 – TAKING OF EVIDENCE AND STATEMENTS FROM PERSONS

This is equivalent to Articles 9 and 10 of the model agreement.

The production of documents, articles and records in Article 9(2) of the model agreement has been transposed to a separate article (Article 9).

Article 8(4) was added at the request of Denmark. This highlights the application of Article 6(5) in the taking of statement situation and is not objectionable.

Article 9(5)(b) of the model agreement has been slightly modified in *Article 8(5)(b)* to reflect the legal position in Denmark. Under

Danish law, a judge will determine any claim by a witness for declining to give evidence according to Danish law. Since it is difficult to generalize the cases, it was agreed by the delegations that the Agreement should be worded to enable the Requesting and Requested Parties to consult each other on how to establish a claim in a particular case. This is a reasonable solution and is acceptable to Hong Kong.

ARTICLE 9 – OBTAINING OF DOCUMENTS, ARTICLES AND RECORDS

This is basically derived from Article 9(2) of the model. Paragraph (2) was added to cater for possibilities of attaching conditions such as return of original documents or articles to the Requested Party after conclusion of a case in Requesting Party. This is acceptable to Hong Kong.

ARTICLE 10 – LOCATION AND IDENTITY OF PERSONS

This is the same as Article 11 of the model agreement.

ARTICLE 11 – TEMPORARY TRANSFER OF PERSONS IN CUSTODY TO THE REQUESTING PARTY

This is in substance the same as Article 15 of the model agreement. Provisions similar to Article 11(2) (derived from Article 15(2) of the model agreement) can be found in Article 13(2) of the HKSAR / Netherlands MLA agreement.

ARTICLE 12 – VOLUNTARY APPEARANCE OF OTHER PERSONS IN

THE REQUESTING PARTY

This Article is basically the same as Article 16 of the model agreement. *Paragraph (2)* was added at the suggestion of Denmark. Similar provisions were adopted in HKSAR's MLA agreements with France, Switzerland and Italy. There is no objection to it.

ARTICLE 13 – SAFE CONDUCT

This Article is basically the same as Article 17 of the model agreement except that the immunity concerning civil suits in Article 17(1) has been omitted because such immunity is not available under Danish law. This is not objectionable. Such provision was also omitted from Hong Kong's agreements with United Kingdom and Canada.

ARTICLE 14 – SEARCH AND SEIZURE

This is the same as Article 18 of the model agreement.

ARTICLE 15 – PROCEEDS OF CRIME

This is basically the same as Article 19 of the model agreements subject to the following modifications :

In *Article 19(1)*, the expression "against the law of the Requesting Party" in the model text has been omitted. The same was omitted in Hong Kong's agreements in Canada, Ireland, United Kingdom and New Zealand.

Paragraph (3) of this Article corresponds to paragraph (3) of Article 19 of the model agreement but the second sentence in the model text has been omitted at the request of the Danish side because of their legal requirements. The deletion does not affect the substance of this provision. The same has been omitted in HKSAR's agreements with United Kingdom and France.

Paragraph (4) was added at the request of Denmark to include additional information required in a request pursuant to this Article. Similar provisions can be found in Hong Kong's agreements with Canada, Philippines, United Kingdom, USA and Netherlands.

Paragraph (6) provides for the definition of "proceeds of crime". Similar definitions were also adopted in agreements with United Kingdom and Netherlands.

ARTICLE 16 – PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

This is the same as Article 13 of the model agreement.

ARTICLE 17 – SERVICE OF DOCUMENTS

This Article is basically the same as Article 12 of the model agreement subject to the following modifications :

Paragraph (2) was added at the request of Denmark. This is for the benefit of the Requested Party and reflects the usual practice. Hong Kong has no objection to this provision. The same provision

can be found in Article 17(1) of the HKSAR / Netherlands MLA agreement.

Paragraph (3) was also added at the request of Denmark to accommodate a special legal requirement in their country, namely where the person to be served with any legal document does not understand the language in which the document was drawn up, the document must be translated into Danish or some other language that the person understands if this fact is known to the Requesting Party. This is resolved by inserting a consultation clause in Article 17(3) to enable the Requesting and Requested Parties to discuss how to proceed in order to satisfy their respective legal requirements. Hong Kong has no objection to this.

Article 12(3) of the model agreement has been omitted at the request of Denmark. This clause was omitted in Hong Kong's agreements with France, USA, Korea, United Kingdom, Switzerland, Canada and Italy.

ARTICLE 18 – REPRESENTATION AND COSTS

This Article corresponds to Article 7 of the model agreement.

Article 7(2)(c) of the model text has been expanded in *Article 18(2)(d)* of the Agreement to cover expenses of a substantial nature. Under *paragraph (3)* of Article 18, payment of counsel's fees, expert fees and costs of a substantial nature as well as costs of an extraordinary

nature are subject to prior consultation and agreement between the Parties. This is acceptable to Hong Kong.

ARTICLE 19 – CERTIFICATION AND AUTHENTICATION

This is in substance the same as Article 14 of the model agreement with a minor modification in the second sentence. The same modification was adopted in the agreements with Switzerland and Netherlands.

ARTICLE 20 – SUBMITTING INFORMATION IN CONNECTION WITH PROCEEDINGS

This was added at the request of Denmark to enhance co-operation between the Parties in the prosecution of offences. There is no objection by Hong Kong. Similar provision can be found in Article 16 of the HK / Switzerland MLA agreement.

ARTICLE 21 – SETTLEMENT OF DISPUTES

This is the same as Article 20 of the model agreement.

ARTICLE 22 – ENTRY INTO FORCE AND TERMINATION

This is the same as Article 21 of the model agreement.