

**AGREEMENT ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
HONG KONG SPECIAL ADMINISTRATIVE REGION/PHILIPPINES**

ARTICLE BY ARTICLE COMPARISON WITH MODEL AGREEMENT

The following are the main differences between the draft text and the model agreement -

ARTICLE 1 - SCOPE OF ASSISTANCE (MODEL EQUIVALENT - ARTICLE 1)

Paragraph (3) is included because the Philippines thought it desirable to provide a clear description of what is comprehended by “criminal matter”. In particular they required a specific reference to public corruption [see paragraph (3)(b)] because of the Marcos experience. The paragraph does not extend the scope of assistance and is consistent with the assistance we can grant pursuant to our agreements and legislation.

ARTICLE IV - LIMITATIONS ON COMPLIANCE (MODEL EQUIVALENT - ARTICLE IV)

Paragraph (2) which has no equivalent in the model agreement provides for discretionary refusal. Paragraphs (a), (b) and (c) are the same as Article IV(2) of the agreement with Australia. Paragraph (d) is principally based on Article IV(2) of the model agreement which details the matters which the Requested Party may take into account in considering “essential interests”; the reference to resources complements Article XIX (3).

Paragraphs (4), (5) and (6) of Article IV of the model agreement have been moved to Article VI(5), (6) and (7).

There is no specific ground of refusal in relation to the death penalty. The "essential interests" ground of refusal (see Article IV(1)(f)) may however be used to refuse assistance for death penalty offences.

ARTICLE V - REQUESTS (MODEL EQUIVALENT - ARTICLE V)

Paragraph (3) has no equivalent in the model agreement. It follows the approach in Article 4(4) of the US agreement.

Article V(3) of the model agreement has been moved to Article VII(2).

ARTICLE XIII - SIGNING CERTIFICATION AND SEALING (MODEL EQUIVALENT - ARTICLE XIV)

This Article reflects the requirements of Philippines law. The second sentence of Article XIV of the model agreement is deleted because neither HKSAR nor Philippine law requires certification or authentication by consular or diplomatic officers.

ARTICLE XVIII - RESTRAINT, FORFEITURE AND CONFISCATION OF PROPERTY (MODEL EQUIVALENT - ARTICLE XIX)

The reference to pecuniary penalties is to reflect the fact that under the Philippines legal system the confiscation of criminal proceeds is achieved by the making of pecuniary penalties. This reference does not widen the scope of the Agreement as HK will only be obliged to enforce pecuniary penalties which are directed towards confiscating the proceeds of crime [see definition of "property" - Article XVIII(5)].

The model agreement provides that the Requested Party shall retain confiscated proceeds unless otherwise agreed. The Philippines were insistent, because of the Marcos experience, that this provision should be varied. Article XVIII(3) however will permit the sharing of proceeds, other than proceeds which have been used to acquire real property (see Article VIII(4)).

ARTICLE XXI - ENTRY INTO FORCE AND TERMINATION (MODEL EQUIVALENT ARTICLE XXI)

The third sentence of Article XXI(2) is not included. The Philippines would not accept such a provision as their view was that if a situation

ever developed that resulted in termination the circumstances would be so grave that assistance should not continue to be given.

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