

Hong Kong, China-Singapore MLA Treaty

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA
AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE
CONCERNING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("the Hong Kong Special Administrative Region"), having been duly authorised by the Central People's Government of the People's Republic of China, and the Government of the Republic of Singapore, hereinafter called the 'Parties',

Desiring to improve the effectiveness of the law enforcement authorities of the Parties in the investigation, prosecution and suppression of crime,

Have agreed as follows:

CHAPTER 1—GENERAL PROVISIONS

Article 1 Scope of assistance

- (1) The Parties shall provide in accordance with the provisions of this Agreement and subject to their respective domestic laws, mutual assistance in criminal matters.
- (2) Assistance shall include:
 - (a) the provision and obtaining of information, voluntary statements, evidence and documents, articles and records (including judicial and official records);
 - (b) arranging the attendance of persons to give evidence or assistance in relation to criminal matters;
 - (c) restraining and confiscating or forfeiting property used in or derived from the commission of offences;
 - (d) the execution of requests for search and seizure;
 - (e) the location and identification of persons;
 - (f) the service of documents; and
 - (g) other forms of assistance consistent with the objects of this Agreement, as may be mutually agreed in any particular case and as permitted by respective domestic laws.
- (3) Assistance shall not include:

- (a) the surrender of any fugitive offender; and
- (b) the execution or enforcement of final criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Agreement.

Article 2
Exclusion of third party rights

The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence or to impede the execution of a request.

Article 3
Refusal or postponement of execution of requests

- (1) The Requested Party shall refuse assistance if it is of the opinion that:
 - (a) the granting of the request for assistance would impair the sovereignty, security or public order of the Republic of Singapore or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;
 - (b) the request for assistance relates to an offence of a political character;
 - (c) the request for assistance relates to an offence only under military law;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, sex, ethnic origin, nationality or political opinions;
 - (e) the request for assistance relates to the investigation, prosecution or punishment of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requesting Party or Requested Party; or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requesting Party or Requested Party;
 - (f) the granting of the request would seriously impair the essential interests of the Hong Kong Special Administrative Region or be contrary to the public interest of Singapore as the case may be;
 - (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence; or
 - (h) the Requesting Party cannot comply with conditions relating to confidentiality or limitation as to the use of material to be provided.
- (2) If the Requested Party determines that the execution of the request, or any portion thereof, could prejudice a criminal matter, it may and shall, if required by its law, refuse the request or postpone execution or make the grant of the request subject to conditions determined necessary after consultations with the Requesting Party.
- (3) If the Requesting Party accepts assistance subject to the conditions stated in paragraph (2), it shall comply with those conditions.
- (4) The Requested Party may and shall, if required by its law, refuse assistance if it is of the opinion that:
 - (a) the offence to which the request relates is not an offence of sufficient gravity;
 - (b) the material requested is of insufficient importance to the investigation or could reasonably be obtained by other means;
 - (c) the provision of the assistance would, or would be likely to, prejudice the safety of any person;
or

- (d) the provision of the assistance would impose an excessive burden on resources.
- (5) The Requested Party shall promptly inform the Requesting Party of the outcome of the execution of the request. If the request cannot be executed in whole or in part, the Requested Party shall inform the Requesting Party of the reasons therefor.

CHAPTER 2—SPECIFIC FORMS OF ASSISTANCE

Article 4

Obtaining statements of persons

- (1) Where a request is made to obtain the statement of a person for the purpose of an investigation or proceedings in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour, with the consent of that person, to obtain that statement.
- (2) For the purposes of a request under this Article, the Requesting Party shall specify the subject matter about which the statement is to be taken, including any question it seeks to be put.

Article 5

Obtaining of evidence

- (1) Where a request is made that evidence be taken for the purpose of the prosecution of a criminal offence or proceedings in relation to a criminal matter in the Requesting Party, the Requested Party shall, subject to its law, arrange to have such evidence taken and transmitted to the Requesting Party.
- (2) For the purposes of requests under this Article, the Requesting Party shall specify the subject matter about which witnesses are to be examined, and may also specify any questions to be put to them as well as the manner and form in which evidence should be taken.
- (3) Where evidence is to be taken under this Article, the person to whom the prosecution or proceedings in the Requesting Party relates, the person who is to give evidence and representatives of the Requesting Party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the evidence.
- (4) A person who is required to give evidence in the Requested Party may decline to give evidence where either:
- (a) the law of the Requested Party would permit that person to decline to give evidence in similar circumstances in criminal proceedings which originated in the Requested Party; or
 - (b) the law of the Requesting Party would permit the person to decline to give evidence in such criminal proceedings in the Requesting Party.

- (5) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate of the Requesting Party.

Article 6

Production of material

Where a request is made for the production of documents, records or other material for the purposes of any criminal matter in the Requesting Party, the Requested Party shall, subject to its law, arrange for such production and transmission to the Requesting Party.

Article 7
Attendance of persons

The Requested Party may arrange for the attendance of a person (not being a person who is in custody) in the territory of the Requesting Party for the purposes of providing evidence or assistance in relation to a criminal matter.

Article 8
Consent of persons

Before making any arrangement under Article 7, the Requested Party shall seek the consent of the person and inform him prior to the seeking of the consent of any payment or allowances payable to him by the Requesting Party.

Article 9
Safe conduct

(1) Where a request for assistance under Article 7 is made, the Requesting Party shall provide an undertaking in writing to the Requested Party:

- (a) that the person whose attendance is sought in the territory of the Requesting Party—
 - (i) shall not be subject to detention, prosecution, punishment or civil suit (being a civil suit to which the person could not be subject if he were not in the territory of the Requesting Party) in respect of any act or omission which preceded the person's departure from the territory of the Requested Party;
 - (ii) shall not be required to assist in any criminal matter other than the criminal matter to which the request relates;
 - (iii) shall not be subject to any prosecution based on his testimony, other than for an offence of perjury or contempt of court; and
 - (iv) shall be returned to the territory of the Requested Party in accordance with arrangements agreed by both Parties, and
- (b) on such other matters as the Requested Party deems appropriate.

(2) Paragraph (1) shall not apply if the person, being free to leave the territory of the Requesting Party, has not left within 15 days after he is officially and personally notified in writing by the Requesting Party that his presence is no longer required, or having left the territory of the Requesting Party, has voluntarily returned.

(3) A person who does not consent to give evidence or provide assistance pursuant to Article 7 shall not by reason thereof be subject to any penalty or liability or otherwise prejudiced pursuant to the law of the Requesting Party or Requested Party.

Article 10
Confiscation and forfeiture

(1) The Parties shall, subject to their respective domestic laws, assist each other in relation to proceedings to confiscate or forfeit property used in or derived from the commission of offences. This may include restraining or seizing property pending further proceedings, registering or enforcing court orders and judgments, or otherwise initiating or assisting in proceedings to confiscate or forfeit the property.

(2) Assistance under this Article shall only be granted in respect of proceedings which are instituted after the coming into force of this Agreement.

- (3) In this Article, “property used in or derived from the commission of offences” includes—
- (a) payments or other rewards received in connection with an offence, or the value of such payments or rewards;
 - (b) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property; and
 - (c) property used in connection with an offence or the value of such property.

Article 11
Accrual of confiscated or forfeited property

Property confiscated or forfeited pursuant to Article 10 shall accrue to the Requested Party, unless otherwise agreed in a particular case between the Parties.

Article 12
Search and seizure

- (1) The Requested Party shall, subject to its law, execute a request for the search, seizure and delivery of any thing or material which relates to a criminal matter in the Requesting Party if there are reasonable grounds for believing that the thing or material is relevant to the criminal matter and is located in the Requested Party.
- (2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

Article 13
Return of material

- (1) Upon request, the Requesting Party shall undertake to immediately return to the Requested Party any particular thing or material obtained at the conclusion of the criminal matter in respect of which the request for assistance was made.
- (2) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any thing or material which is delivered to the Requesting Party.

Article 14
Locating or identifying persons

Upon request, the Requested Party shall use its best endeavours to ascertain the location or identity of a person who is believed to be in its territory.

Article 15
Service of process

- (1) Upon request, the Requested Party shall assist in the service of process on a person in its territory.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.

Article 16
Effect of service of process

- (1) A person on whom process is served pursuant to Article 15 shall not be subject to any penalty, liability or coercive measure pursuant to the law of the Requesting Party or the Requested Party by reason only of that person's refusal or failure to accept or comply with such process.
- (2) The Requesting Party shall provide at the time a request for service of process is made pursuant to Article 15:
- (a) details of the type or nature of the process to be served;
 - (b) a statement of any possible consequences in the Requesting Party of refusal or failure to accept or comply with service of the process; and
 - (c) where the request is for the service of a summons to appear as a witness, an undertaking that the person on whom the summons is to be served shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of the person's refusal or failure to accept or comply with the summons.
- (3) The Requested Party shall inform the person to be served of the matters referred to in paragraphs (1) and (2) and may inform the person that it takes no position with respect to the merits of the proceedings in the Requesting Party.

Article 17
Proof of process

The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party.

Article 18
Provision of public and official documents

- (1) The Requested Party shall provide the Requesting Party with copies of publicly available documents in the possession of government departments and agencies.
- (2) The Requested Party may, subject to its law, provide copies of any document, record or information in the possession of government departments and agencies.

CHAPTER 3—PROCEDURAL MATTERS

Article 19
Form and contents of requests

- (1) All requests shall be made in writing.
- (2) A request shall—
- (a) specify the purpose of the request and the nature of the assistance being sought;
 - (b) identify the person or authority that initiated the request; and
 - (c) be accompanied by—
 - (i) a certificate that the request is made in respect of a criminal matter;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

- (iii) where the request relates to—
 - (A) the location of a person who is suspected to be involved in or to have benefited from the commission of an offence; or
 - (B) the tracing of property that is suspected to be connected with an offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in sub-paragraph (A) or (B);
- (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
- (v) details of the procedure that the Requesting Party wishes to be followed in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied pursuant to the request;
- (vi) where the request is for assistance pursuant to Article 10 and judicial proceedings to obtain a confiscation order have not been instituted in the Requesting Party, a statement indicating when they are likely to be instituted;
- (vii) a statement setting out the wishes of the Requesting Party concerning the confidentiality of the request and the reason for those wishes;
- (viii) details of the period within which the Requesting Party wishes the request to be met;
- (ix) if the request involves a person travelling to the Requesting Party, details of allowances to which the person will be entitled, and of the arrangements for accommodation for the person while he is in the Requesting Party pursuant to the request; and
- (x) any other information that may assist in giving effect to the request.

Article 20 Central Authorities

- (1) The Central Authority for Singapore is the Attorney-General of Singapore or his duly authorised officer. The Central Authority of the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (2) The Central Authorities of the Parties shall transmit and receive all requests for the purposes of this Agreement.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.
- (4) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (5) A request shall be executed subject to the law of the Requested Party and if practicable, in accordance with the directions stated in the request.
- (6) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

Article 21 Confidentiality

- (1) The Requesting Party shall not disclose or use the information or evidence furnished, including documents, articles or records, pursuant to this Agreement for purposes other than those stated in the request without the prior written consent of the Central Authority of the Requested Party.
- (2) The Central Authority of the Requested Party may consent to the information or evidence furnished, including documents, articles or records, being used for purposes other than those stated in the request subject to such terms and conditions as it may specify.
- (3) The Requested Party shall use its best efforts to keep confidential a request, its contents and the fact that it has been granted, except when otherwise authorised by the Requesting Party. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.

Article 22 Authentication

Upon request, each Party shall authenticate any documents to be transmitted to the other Party under this Agreement. Documents are authenticated if:

- (a) they purport to be signed or certified by a judge, magistrate or official in or of the Party requested; and
- (b) they are either—
 - (i) verified by the oath or affirmation of a witness or official of the Party requested; or
 - (ii) purport to be sealed with an official seal of a competent authority of the Party requested.

Article 23 Language

The request and supporting documents shall be translated, if so required by the Requested Party, into an official language of the Requested Party.

Article 24 Representation and expenses

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall meet the ordinary costs of executing the request for assistance, except that the Requesting Party shall bear:
 - (a) the expenses and fees of experts;
 - (b) the expenses of translation, interpretation and transcription;
 - (c) the fees of counsel retained at the request of the Requesting Party; and
 - (d) travel expenses and allowances of persons.
- (3) If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

CHAPTER 4—FINAL PROVISIONS

Article 25 Other forms of assistance

The provisions of this Agreement shall not prevent the Parties from providing assistance in criminal matters pursuant to any other applicable international and bilateral agreements, arrangements and practices. In such a case, the provisions in such other agreements, arrangements or practices shall regulate the provision or refusal of assistance.

Article 26 Consultations

- (1) The Central Authorities of the Parties shall consult promptly at the request of either Party on any matter concerning the interpretation, application and implementation of this Agreement.
- (2) Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are unable to reach agreement.

Article 27 Entry into force and termination

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective legal requirements have been complied with.
- (2) This Agreement shall apply to requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
- (3) Either Party may terminate this Agreement by giving written notification to the other Party. In that event the Agreement shall cease to have effect three months after the date of the receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done at the Hong Kong Special Administrative Region, on the 23rd day of July 2003 in the Chinese and English languages each text being equally authentic. In case of divergence between the texts, the English text shall prevail.