

(Courtesy Translation)

**Arrangement on Mutual Taking of Evidence in Civil and Commercial Matters
between the Courts of the Mainland and
the Hong Kong Special Administrative Region**

In accordance with the provision of Article 95 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and through consultation between the Supreme People's Court and the Hong Kong Special Administrative Region (HKSAR), the following Arrangement is hereby made for the mutual taking of evidence in civil and commercial matters:

Article 1

This Arrangement is applicable to the mutual taking of evidence in civil and commercial matters between the People's Courts of the Mainland and the Courts of the HKSAR.

Article 2

The parties must make requests for the taking of evidence through their respective designated liaison authorities, of which the Higher People's Courts are designated as the liaison authorities of the Mainland, while the Administration Wing of the Chief Secretary for Administration's Office of the HKSAR Government is designated as the liaison authority of the HKSAR.

The Supreme People's Court may request the taking of evidence directly through the designated liaison authority of the HKSAR.

Article 3

Upon receipt of a letter of request, the liaison authority of the requested party shall promptly transfer the letter of request and all relevant material attached to the relevant court or other authorities for processing, or carry out the processing itself.

In the event that the requested party considers that the material as contained in a request does not comply with the relevant legal provisions of its jurisdiction, and affects its completion of the requested matter, it shall promptly inform the requesting party and ask amendment of the request or for supplementary material. The requesting party should, at the request of the requested party, make amendment, provide supplementary material or re-issue a request.

If the requested party considers that the requested matter does not fall within the scope of assistance as provided in the Arrangement, it may return the letter of request and specify the reason(s) therefor.

Article 4

The letter of request and the relevant material attached should be in the Chinese language. In case the document is not in the Chinese language, a Chinese translation of it should be provided.

Article 5

Evidential material obtained by the requesting party may only be used in the relevant proceedings mentioned in the letter of request.

Article 6

The scope of assistance that may be requested by a People's Court of the Mainland in requesting the taking of evidence by the Courts of the HKSAR under the Arrangement includes:

- (1) examination of witnesses;

- (2) obtaining of documents;
- (3) inspection, photographing, preservation, custody or detention of any property;
- (4) taking of samples of any property or carrying out of any experiments on any property;
- (5) medical examination of any person.

The scope of assistance that may be requested by a court of the HKSAR in seeking the taking of evidence by the People's Courts of the Mainland under the Arrangement includes:

- (1) obtaining of statements from parties concerned and testimonies from witnesses;
- (2) provision of documentary evidence, real evidence, audio-visual information and electronic data;
- (3) conduct of site examination and authentication.

Article 7

The requested party shall arrange the taking of evidence in accordance with the provisions of the law of its jurisdiction.

The requested party may carry out the taking of evidence in a special manner as requested by the requesting party, provided that the requested party considers it is not in breach of the provisions of the law of its jurisdiction.

If the requesting party requests that their judicial officers, the party concerned and their agent ad litem (legal representative) be present during the taking of evidence by the requested party and be involved in the proceedings for taking testimony, the requested party may consider granting approval in accordance with the relevant provisions of the law of its jurisdiction.

Upon approval, the requested party shall inform the requesting party's liaison authority of the time and place for the taking of evidence.

Article 8

In requesting the Courts of the HKSAR to take evidence, the People's Courts of the Mainland shall provide a letter of request affixed with a seal of the Supreme People's Court or a Higher People's Court. In requesting the People's Courts of the Mainland to take evidence, the Courts of the HKSAR shall provide a letter of request affixed with a seal of the High Court of the HKSAR.

The letter of request or the relevant material attached shall specify:

- (1) the name of the court issuing the letter of request and the name of the court conducting hearing of the case relating to the letter of request;
- (2) the names or titles and addresses of the parties or witnesses in connection with the requested matter, and all other information that will facilitate the making of contact with and the identification of them;
- (3) the particulars of the requested assistance, including but not limited to, the basic circumstances of the case in relation to the requested matter (including a summary of facts, nature of the action involved and the stage of proceeding, etc.); the specific document or article to be obtained from the parties or witnesses as well as the matters or list of questions for the questioning (examination) of them; the reasons for the taking of the evidence; where necessary, a statement of the importance of the evidence to the action as well as its proof of the facts and arguments;
- (4) whether the evidence is to be taken in a special manner as well as the specific requirements for it;
- (5) the contact person of the requesting party and his contact information;
- (6) all other information which will assist in the execution of the requested matter.

Article 9

General expenses incurred in the execution of the requested matter by the requested party are to be borne by the requested party. Non-recurrent expenditure incurred in the execution of the requested matter by the requested party, including the costs of translation, expert witness and examination and additional cost arising from the taking of evidence in a special manner as requested by the requesting party, are to be borne by the requesting party.

If the requested party considers that the execution of the requested matter may lead to non-recurrent expenditure, it should have prior consultation with the requesting party to decide whether or not to proceed with execution of the requested matter.

Article 10

The requested party should as far as practicable complete the requested matter within six months from the date of receipt of the letter of request. Upon completion of the requested matter, the requested party should promptly give a written reply to the requesting party.

In the event that the requested matter cannot be completed as requested by the requesting party, or the requested matter is completed partially, the requested party should state the reasons in writing to the requesting party. All or part of the material attached to the letter of request should be returned promptly in accordance with the instruction of the requesting party.

In the event that a witness declines to give testimony under the law of the requested party, the requested party should notify the requesting party in writing. All the material attached to the letter of request should be returned in accordance with the instruction of the requesting party.

Article 11

Any problem arising from the implementation of this Arrangement or any amendment to be made to this Arrangement should be resolved through consultation between the Supreme People's Court and the HKSAR Government.

Article 12

Following the promulgation of a judicial interpretation by the Supreme People's Court of the Mainland and the completion of the relevant internal procedures in the HKSAR, both sides are to announce a date on which this Arrangement shall come into effect.

This Arrangement is applicable to requested matter received by the requested party after the day of commencement of this Arrangement, and it should not affect the consideration and execution of requested matter received before the day of commencement of this Arrangement by both sides in accordance with the existing laws.

This Arrangement is signed in duplicate on 29 December 2016 in Shenzhen.

Supreme People's Court

Government of the Hong Kong Special
Administrative Region

Executive Vice-President

Secretary for Justice