

《刑事事宜相互法律協助(澳大利亞) 令》
(第 525 章，附屬法例 B)

Mutual Legal Assistance in Criminal Matters (Australia) Order
(Cap. 525 sub. leg. B)

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經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	7.11.2019
附表 1 Schedule 1	S1-1—S1-34	7.11.2019
附表 2 Schedule 2	S2-1—S2-4	7.11.2019

尚未實施的條文 / 修訂 —

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<https://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

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制定史

本為 1998 年第 372 號法律公告 —— 2003 年第 14 號，2019 年第 5 號
編輯修訂紀錄

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《刑事事宜相互法律協助(澳大利亞) 令》

(第 525 章 , 附屬法例 B)

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Mutual Legal Assistance in Criminal Matters
(Australia) Order

(Cap. 525 sub. leg. B)

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《刑事事宜相互法律協助 (澳大利亞) 令》

(第 525 章第 4 條)

(略去制定語式條文 — 2019 年第 5 號編輯修訂紀錄)

[1999 年 11 月 6 日] 1999 年第 272 號法律公告

(格式變更 — 2019 年第 5 號編輯修訂紀錄)

1. (已失時效而略去 — 2019 年第 5 號編輯修訂紀錄)

2. 條例在香港與澳大利亞之間適用

就 ——

(a) 適用於香港政府和澳大利亞政府，而

(b) 副本附錄於附表 1，

的相互法律協助的安排，現指示在撮錄於附表 2 的對本條例作出的變通的規限下，本條例在香港與澳大利亞之間適用。

Mutual Legal Assistance in Criminal Matters (Australia) Order

(Cap. 525, section 4)

(Enacting provision omitted—E.R. 5 of 2019)

[6 November 1999] L.N. 272 of 1999

(Format changes—E.R. 5 of 2019)

1. (Omitted as spent—E.R. 5 of 2019)

2. **Ordinance to apply between Hong Kong and Australia**

In relation to the arrangements for mutual legal assistance—

(a) which are applicable to the Government of Hong Kong and the Government of Australia; and

(b) a copy of which is annexed at Schedule 1,

it is hereby directed that the Ordinance shall, subject to the modifications to the Ordinance summarized in Schedule 2, apply as between Hong Kong and Australia.

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[第 2 條]

香港政府 與 澳大利亞政府 關於 刑事司法互相協助的協定

香港政府經負責管理與其有關的外交事務的主權國政府正式授權，與澳大利亞政府，為加強雙方在調查、檢控、防止罪案及沒收犯罪得益方面的執法效能，協議如下：

第一條

提供協助的範圍

- (1) 締約雙方須按照本協定，在調查和檢控刑事罪行及進行刑事訴訟方面互相提供協助。
- (2) 提供的協助，包括以下各項：
 - (a) 辨認和追尋有關的人；

Schedule 1

[s. 2]

Agreement between the Government of Hong Kong and the Government of Australia Concerning Mutual Legal Assistance in Criminal Matters

The Government of Hong Kong, having been duly authorised by the sovereign government responsible for the foreign affairs relating to Hong Kong, and the Government of Australia,

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of criminal proceeds,

Have agreed as follows:

Article I

Scope of assistance

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Assistance shall include:

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- (b) 送達文件；
 - (c) 取得證據、物品或文件，包括執行調查委託書；
 - (d) 執行搜查和檢取物品的要求；
 - (e) 安排證人親自出庭；
 - (f) 安排暫時移交被拘留的人出庭作證；
 - (g) 獲取司法或官方紀錄；
 - (h) 索究、禁制、沒收和充公在犯罪活動中使用過的或從犯罪活動中獲得的物品及犯罪活動得益；
 - (i) 提供資料、文件和紀錄；
 - (j) 交付物品，包括借出證物；及
 - (k) 任何與本協定宗旨一致而又與被要求方法律並無不一致的其他協助。
- (3) 根據本協定可就違反稅項、關稅，外匯管制或其他稅務法例有關的罪行提供協助，但這並不包括與該等罪行有關的非刑事訴訟。
- (4) 協助不包括：
- (a) 移交任何逃犯；
 - (b) 在被要求方管轄區執行在要求方管轄區所作出的刑事判決，但在被要求方法例及本協定所允許的範圍內的除外；及
 - (c) 將被拘留的人移交以便服刑。

- (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of evidence, articles or documents, including the execution of letters rogatory;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of witnesses;
 - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
 - (g) obtaining production of judicial or official records;
 - (h) tracing, restraining, forfeiting and confiscating property used in or derived from criminal activities and the proceeds of criminal activities;
 - (i) providing information, documents and records;
 - (j) delivery of property, including lending of exhibits; and
 - (k) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters but not in connection with non-criminal proceedings relating thereto.
- (4) Assistance shall not include:
- (a) the surrender of any fugitive offender;
 - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Agreement; and
 - (c) the transfer of persons in custody to serve sentences.

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第二條

中心機關

- (1) 締約雙方須各自設立一個中心機關。
- (2) 香港的中心機關為律政司或經其正式授權的官員。澳大利亞的中心機關為堪培拉律政部。
- (3) 根據本協定提出的要求必須由要求方的中心機關向被要求方的中心機關提出。

第三條

其他協助

締約雙方可按照其他協定、安排或慣例提供協助。

第四條

履行協定的限制

- (1) 如出現以下情況，被要求方應拒絕提供協助：
 - (a) 協助要求會損害澳大利亞或，就香港而言，負責管理與其有關的外交事務的國家的主權、安全或公共秩序；
 - (b) 協助要求關乎政治性質的罪行；
 - (c) 協助要求關乎只在軍法下才構成的罪行；

Article II

Central Authority

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority of Hong Kong shall be the Attorney General or his duly authorised officer. The Central Authority for Australia shall be the Attorney-General's Department, Canberra.
- (3) Requests under this Agreement shall be made only by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

Article III

Other assistance

The Parties may provide assistance pursuant to other agreements, arrangements or practices.

Article IV

Limitations on compliance

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of Australia or, in the case of Hong Kong, of the State which is responsible for the foreign affairs relating to Hong Kong;

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- (d) 有充分理由相信協助要求將會引致某人因其種族、性別、宗教、國籍或政治意見而受到不利的待遇；
- (e) 協助要求所涉及的被告人，已因同一罪行在要求方或被要求方管轄區被定罪、無罪釋放或被赦免，或在任何一方管轄區服刑完畢；
- (f) 被要求方認為應允要求將會嚴重損害其本身的基本利益；或
- (g) 被指稱構成罪行的作為或不作為，如在被要求方的管轄區發生，並不構成罪行。
- (2) 如出現以下情況，被要求方可拒絕提供協助：
- (a) 協助要求所涉及的被告人或受刑罰的人假使是在被要求方的管轄區犯該罪行，會因時效消失或任何其他理由而不能被檢控；
- (b) 要求方不能遵守任何有關保密或限制使用獲提供的資料的條件；及
- (c) 協助要求所涉及的被告人或受刑罰的人是在要求方管轄區以外的地區犯有關罪行，而被要求方的法律沒有規定在類似情況下犯罪須受刑罰。
- (3) 就第(1)(f)款而言，被要求方在考慮其基本利益是否受損害時，可同時考慮提供協助會否不利於任何人的安全或會否對被要求方的資源造成過大的負擔。
- (4) 如有關要求關乎在要求方管轄區屬可判死刑的罪行，但被要求方並無判處死刑的規定，或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即有關的人將不會被判死刑，或即使被判死刑亦不會執行，否則被要求方可拒絕提供協助。
- (5) 如執行要求會妨礙正在被要求方進行的調查或檢控，被要求方可延期提供協助。
- (6) 在根據本條文拒絕或延期提供協助前，被要求方須通過中心機關：
- (a) 及早知會要求方考慮拒絕或延期提供協助的理由；及

- (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 that person's race, sex, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requesting or Requested Party or has served the sentence imposed in either Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential interests; or
- (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.
- (2) The Requested Party may refuse assistance if:
- (a) the request for assistance relates to the prosecution or punishment of a person who could no longer be prosecuted by reason of lapse of time or for any other reason if the offence had been committed within the jurisdiction of the Requested Party;
- (b) the Requesting Party cannot comply with any conditions relating to confidentiality or limitation as to the use of material provided; or
- (c) the request for assistance relates to the prosecution or punishment of a person for an offence which is committed outside the area under the jurisdiction of the Requesting Party

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- (b) 與要求方磋商，以確定可否在合乎被要求方認為必需的條件下提供協助。
- (7) 要求方如接受合乎第 (6)(b) 款所述條件下的協助，必須遵守該等條件。

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- and the law of the Requested Party does not provide for the punishment of an offence committed in similar circumstances.
- (3) For the purpose of paragraph (1)(f) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.
- (4) The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.
- (5) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (6) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:
- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
 - (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (7) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (6)(b), it shall comply with those terms and conditions.

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第五條

Article V

要求

Requests

- (1) 除非在緊急情況下，要求必須以書面提出。在緊急情況下，可提出口頭的要求，但必須在其後 10 天內以書面確認。
- (2) 提出司法協助的要求須包括以下內容：
 - (a) 要求方代其提出要求的機關的名稱；
 - (b) 說明提出要求的目的及所需協助的性質；
 - (c) 說明調查、檢控、罪行或刑事案件的性質，及說明是否已提起訴訟；
 - (d) 如已提起訴訟，說明訴訟的詳情；
 - (e) 有待執行的法庭判令(如有的話)，或判令經證明的副本，並附說明有關判令乃最終判令；
 - (f) 案件有關事實及法律的撮要；
 - (g) 有關保密的任何要求；
 - (h) 要求方希望被要求方依循的任何特別程序的細節；
 - (i) 履行要求的期間的詳細說明。
- (3) 要求方提出的要求以及為支持要求而提交的所有文件，必須附有被要求方所用語文的譯本。

- (1) Requests shall be made in writing except in urgent cases. In urgent cases, requests may be made orally, but shall be confirmed in writing within 10 days thereafter.
- (2) Requests for assistance shall include:
 - (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the purpose of the request and the nature of the assistance requested;
 - (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
 - (d) where proceedings have been instituted, details of the proceedings;
 - (e) the court order, if any, or a certified copy thereof, sought to be enforced and a statement to the effect that it is a final order;
 - (f) a summary of the relevant facts and laws;
 - (g) any requirements for confidentiality;
 - (h) details of any particular procedure the Requesting Party wishes to be followed; and
 - (i) details of the period within which the request should be complied with.
- (3) Requests, and all documents submitted in support of requests, shall be accompanied by a translation in the language of the Requested Party.

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第六條

執行要求

- (1) 被要求方的中心機關須迅速執行要求，或安排通過其主管機關執行要求。
- (2) 協助要求須按照被要求方的法律予以執行，並須在被要求方的法律所不禁止的範圍內，在可行的情況下依照要求內所述的指示來執行。
- (3) 被要求方須迅速將任何可能導致嚴重延遲回應該項要求的情況通知要求方。
- (4) 被要求方須迅速就全部或部分不履行協助要求的決定及作出該決定的理由通知要求方。
- (5) 若被要求方提出要求，要求方在不再需要根據本協定提供的資料物品作有關的調查或審訊時，須將之交還。

第七條

代表及開支

- (1) 被要求方須作出一切必要安排，使要求方在因提出協助要求而引起的任何訴訟中獲得代表，否則被要求方須代表要求方，保障要求方的利益。
- (2) 被要求方須承擔執行要求的所有一般性開支，但下述項目除外：

Article VI

Execution of requests

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.
- (3) 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.
- (4) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.
- (5) Where required by the Requested Party, the Requesting Party shall return the material provided under this Agreement when no longer needed for the relevant investigation or proceeding.

Article VII

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 assume all ordinary expenses of executing a request except:

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- (a) 應要求方要求而聘請的律師的費用；
 - (b) 聘請專家的費用；
 - (c) 翻譯費用；
 - (d) 與運送任何人往返被要求方有關的開支，以及當有關的人因根據本協定作出的要求而留在要求方境內時須付給該人的任何費用、津貼或開支；及
 - (e) 與運送看管或押送人員有關的開支。
- (3) 在執行要求期間，如察覺需作非一般性開支，以履行有關要求，締約雙方須進行磋商，以決定繼續執行要求的條件。

- (a) fees of counsel retained at the request of the Requesting Party;
 - (b) fees of experts;
 - (c) expenses of translation;
 - (d) the expenses associated with conveying any person to or from the Requested Party, and any fees, allowances or expenses payable to that person whilst in the Requesting Party pursuant to a request under this Agreement; and
 - (e) the expenses associated with conveying custodial or escorting officers.
- (3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

第八條

Article VIII

保密和使用限制

Confidentiality and limitations of use

- (1) 被要求方必須盡最大努力把要求、要求的內容和已答允要求的事實保密，但已獲要求方授權透露者屬例外。如無法在不違反保密規定的情況下執行要求，則被要求方須通知要求方，由要求方決定是否仍然需要執行要求。
- (2) 被要求方在與要求方磋商後，可要求將所提供的資料或證據保密，或只限在被要求方所指定的條件下方可透露或使用該等資料或證據。
- (3) 未經被要求方中心機關事先同意，要求方不得透露或使用被要求方提供的資料或證據作不屬於要求內所述的用途。

- (1) 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 authorized 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.
- (2) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
- (3) The Requesting Part shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

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獲取證據、物品或文件

- (1) 要求方如就在其管轄區內的刑事調查、刑事檢控或刑事訴訟提出取證要求，被要求方在不違反其法律的情況下須安排獲取有關證據。
- (2) 就本協定而言，提供或獲取證據包括出示文件、紀錄或其他資料。
- (3) 為根據本條提出要求的目的，要求方須列明擬向證人提出的問題或擬向證人訊問的事項。
- (4) 如因協助要求，某人須在被要求方管轄區內為在要求方管轄區內進行的訴訟的目的而作證，在要求方管轄區內的訴訟的當事人，他們的法律代表，及要求方的代表，可在被要求方的法律規限下出庭及向該證人發問。
- (5) 因協助要求而在被要求方管轄區內作證的人，可在以下情況下拒絕作證：
 - (a) 根據被要求方的法律，如在被要求方管轄區內的訴訟中出現類似情況時，該證人可拒絕作證；或
 - (b) 根據要求方的法律，如在要求方管轄區內進行該類訴訟，該證人可拒絕作證。
- (6) 如任何人宣稱有權根據要求方的法律拒絕作證，在決定有關問題時，被要求方須以要求方中心機關所發的證明書為憑據。

Article IX

Obtaining of evidence, articles or documents

- (1) Where a request is made that evidence be taken for the purpose of an investigation, a prosecution of a criminal offence or a proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party the Requested Party shall, subject to its laws, arrange to take such evidence.
- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
- (3) For the purposes of requests under this Article the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.
- (4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, subject to the laws of the Requested Party, appear and question the person giving that evidence.
- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence where either:
 - (a) the law of the Requested Party would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) where the law of the Requesting Party would permit the person to decline to give evidence in such proceedings in the Requesting Party.
- (6) 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

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第十條

錄取供詞

如要求方要求取得某人的供詞，供其管轄區內的刑事案件的調查或訴訟用途，被要求方須致力取得有關供詞。

第十一條

有關人士的所在及身分

如要求方提出要求，被要求方須致力查明要求內所指的任何人的所在及身分。

第十二條

送達文件

- (1) 要求方交付送達的任何文件，被要求方須予以送達。
- (2) 如有關文件需要被送達人作出回應，或需要被送達人在要求方管轄區內出庭，要求方須於預定回應或出庭的日期前的一段合理時間內，向被要求方提出送達該等文件的要求。
- (3) 如要求方要求送達的文件需要被送達人在要求方管轄區內出庭，要求方的中心機關在發出要求時，須把在刑事案件中關乎被送達

with respect thereto rely on a certificate of the Central Authority of the Requesting Party.

Article X

Obtaining statements of persons

Where a request is made to obtain the statement of a person for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour to obtain such statement.

Article XI

Location or identity of persons

The Requested Party shall, if requested, endeavour to ascertain the location or identity of any person specified in the request.

Article XII

Service of documents

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (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.
- (3) A request for the service of a document pertaining to an appearance in the Requesting Party shall include such notice as the Central Authority

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人的待執行的拘捕令或其他法庭命令的資料，在合理情況下盡可能在協助要求內說明。

- (4) 被要求方可以利用郵遞或在要求方作出要求時，按要求方法律規定而又不與被要求方法律相抵觸的方式，把任何文件送達。
- (5) 在其法律允許的限度內，被要求方須按要求方指定的形式，交回已送達文件的證明。如果未能把文件送達，要求方須獲得通報，並獲告知有關理由。
- (6) 被送達人未有遵照送達給他的法律文件的規定而行事，要求方不得根據本身的法律而對該被送達人施加懲罰或強制性措施。

第十三條

可供公眾查閱的文件和官方文件

- (1) 在其法律允許的限度內，被要求方須向要求方提供任何可供公眾查閱的文件、紀錄或資料。
- (2) 被要求方的政府部門或機構所管有但不供公眾查閱的任何文件、紀錄或資料，被要求方可按照其向本身的執法或司法機關提供該類文件、紀錄或資料的相同範圍和條件，向要求方提供。

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of the Requesting Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

- (4) The Requested Party may effect service of any document by mail or, if the Requesting Party so requests, in any other manner required by the law of the Requesting Party which is not inconsistent with the law of the Requested Party.
- (5) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.
- (6) Persons who fail to comply with any process served on them shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party.

Article XIII

Publicly available and official documents

- (1) Subject to its law the Requested Party shall provide copies of publicly available documents, records or information.
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

第十四條

證明和認證

- (1) 如提出協助的要求涉及使用強制措施或充公或沒收犯罪得益，則有關的支持文件或資料在符合下列條件的情況下，得在被要求方的訴訟程序中獲接納：
- (a) 文件顯示經在要求方內或隸屬要求方的法官、裁判官或其他官員簽署或證明；及
 - (b) 文件顯示經蓋上要求方或要求方官員的官式印章或公印。
- (2) 回應要求而提供的文件或資料只有在被要求的情況下，才須予以簽署、證明及蓋印。其他文件或資料只有在要求方的法律明確規定的情況下，才須由領事人員或外交人員證明或認證。

第十五條

移交被拘留的人

- (1) 要求方要求把被拘留在被要求方管轄區內的人移交給要求方以提供本協定所規定的協助，如該人同意，而要求方又保證把該人繼續拘留及在事後送還給被要求方，則在被要求方同意的情況下可把該人移交給要求方以提供有關的協助。
- (2) 如根據本條被移交的人的監禁刑期於該人身在要求方管轄區時屆滿，被要求方須就此事通知要求方。要求方須確保把該人釋放，並把該人作為第十六條所指的人對待。

Article XIV

Certification and authentication

- (1) Documents or materials supporting a request for assistance involving the use of compulsory measures or the forfeiture or confiscation of the proceeds of crime shall be admissible in proceedings in the Requested Party if they—
- (a) purport to be signed or certified by a Judge, Magistrate or other officer in or of the Requesting Party; and
 - (b) purport to be sealed with an official or public seal of the Requesting Party or an officer of the Requesting Party.
- (2) Documents or materials furnished in response to a request shall only be signed or certified and sealed if requested. Other documents or materials shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

Article XV

Transfer of persons in custody

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall if the Requested Party consents be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and their subsequent return to the Requested Party.
- (2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting

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第十六條

移交其他人

- (1) 要求方可要求被要求方協助安排任何人提供本協定所規定的協助。
- (2) 被要求方如信納要求方會為該人的安全作出令人滿意的安排，須要求該人同意前往及留在要求方提供協助。

第十七條

安全通行

- (1) 同意根據第十五或十六條規定提供協助的人，不得因其在離開被要求方之前所犯的任何刑事罪行而在要求方被檢控、拘留或被限制人身自由，或因其在離開被要求方之前所涉及的民事案件而被起訴。
- (2) 如有關的人並非根據第十五條移交的被拘留人，並本可自由離去，但在該人接獲通知毋須再逗留後 15 天內仍未離開要求方，或在離開要求方後返回者，則第 (1) 款不適用。
- (3) 任何人同意根據第十五或十六條作證，不得根據該人所作證供而對其檢控，但作假證供及藐視法庭的情況則不在此限。
- (4) 任何同意根據第十五或十六條提供協助的人，除與該項要求有關的訴訟或調查外，不得被要求就任何其他事件作證或協助調查。
- (5) 任何人不同意根據第十五或十六條提供協助，要求方或被要求方的法庭不得因此而要他遭受懲罰或強制措施的對待。

Article XVI

Transfer of other persons

Party the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody and that the person is treated as a person referred to in Article XVI.

- (1) The Requesting Party may request the assistance of the Requested Party in making a person available for the purpose of providing assistance pursuant to this Agreement.
- (2) The Requested Party shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting Party, request the person to consent to travel to and remain in the Requesting Party to provide assistance.

Article XVII

Safe conduct

- (1) A person who consents to provide assistance pursuant to Articles XV or XVI shall not be prosecuted, detained, or restricted in their personal liberty in the Requesting Party for any criminal offence or proceeded against on a civil matter which preceded their departure from the Requested Party.
- (2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article XV, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that their presence is no longer required, or having left the Requesting Party, has returned.

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第十八條

搜查及檢取

- (1) 要求方要求搜查、檢取及移交與刑事案件的訴訟或調查有關的物品，被要求方在本身法律許可的範圍內，須執行要求方的要求，條件是按被要求方的法律，所提供的資料足證明有關行動是適當的。
- (2) 要求方如要求提供有關搜查的結果、檢取物品的地點、檢取物品的情況，以及物品檢取後的保管情況等資料，被要求方須提供。
- (3) 被要求方把檢取到的物品交付予要求方，要求方須遵守被要求方就該等物品提出的任何條件。

(3) A person who consents to give evidence under Articles XV or XVI shall not be subject to prosecution based on that person's testimony, except for perjury and contempt.

(4) A person who consents to provide assistance pursuant to Articles XV or XVI shall not be required to give evidence or to assist any investigation other than the proceeding or investigation to which the request relates.

(5) A person who does not consent to give assistance pursuant to Articles XV or XVI shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting or Requested Party.

Article XVIII

Search and seizure

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter provided that the information supplied would justify such action under the law of 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 material seized.

(3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party.

第十九條

犯罪得益

- (1) 如要求方提出要求，被要求方須致力查明是否有任何因觸犯要求方的法律而得來的財物存放於其管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把何以相信這些財物可能存放於被要求方管轄區內的理由通知被要求方。
- (2) 被要求方如根據第(1)款找到懷疑為犯罪得益的財物時，須採取本身法律容許的措施，防止任何人就這些懷疑為犯罪得益的財物進行交易、轉讓或處置，以待要求方的法庭就這些財物作出最後裁定。
- (3) 如要求方提出要求，被要求方在本身法律許可的範圍內，須執行要求方法庭對充公或沒收犯罪得益的最後判令。
- (4) 在引用此條時，必須按被要求方的法律，尊重真誠第三者的權利。
- (5) 除非雙方就個別案件另有決定，否則根據本協定沒收的犯罪得益須由被要求方保留。
- (6) 在本條內，“犯罪得益”包括：
 - (a) 在與犯罪行為中關連使用的財物；
 - (b) 從犯罪直接或間接衍生或獲得的財產；或
 - (c) 代表從犯罪所得的財產及其他利益的價值的財產。

Article XIX

Proceeds of crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds of crime are found the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting Party.
- (3) Upon request, the Requested Party shall, to the extent its laws permit, give effect to a final order forfeiting or confiscating proceeds of crime made by a court of the Requesting Party.
- (4) In the application of this Article, the rights of bona fide third parties shall be respected under the law of the Requested Party.
- (5) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise decided by the Parties in a particular case.
- (6) In this Article “proceeds of crime” includes:
 - (a) property used in connection with the commission of an offence;
 - (b) property derived or realized, directly or indirectly, from the commission of an offence; or

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第二十條

解決爭議

任何因本協定的解釋、適用或執行而產生的爭議，如雙方的中心機關無法自行達成協議，須通過外交途徑解決。

第二十一條

生效及終止

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日後 30 天開始生效。
- (2) 無論有關的作為或不作為是否在本協定生效之前發生，本協定都適用於有關要求。
- (3) 締約一方可隨時以書面通知締約另一方終止本協定。在此情況下，本協定於締約另一方接獲通知三個月後失效。但在協定終止前已接獲的提供協助要求，則仍須按照協定的條款處理，如同協定仍然生效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

- (c) property which represents the value of property and other benefits derived from the commission of an offence.

Article XX

Settlement of disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

Article XXI

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 requirements for the entry into force of the Agreement have been complied with.
- (2) This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to this Agreement entering into force.
- (3) Each of the Parties may terminate this Agreement at any time by giving notice in writing to the other. 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.

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附表 1

本協定於一九九六年九月二十三日在澳大利亞悉尼簽訂。每份均用中文及英文寫成，各文本均同等作準。

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DONE at Sydney, Australia, this twenty-third day of September one thousand nine hundred and ninety six, in Chinese and English, both texts being equally authentic.

附表 2

[第 2 條]

對本條例作出的變通

1. 本條例第 5(1)(e) 條須加以變通而以下文代替 ——
 - “(e) 該項請求關乎因外地罪行而對某人進行的檢控，而該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，被有關地方或香港* 的管轄法院或其他當局定罪、裁定無罪或赦免，或已接受該地方或香港的* 法律所規定的懲罰；”。 (2003 年第 14 號第 24 條)
2. 本條例第 17(3)(b) 條須加以變通而以下文代替 ——
 - “(b) 該人在有機會離開香港的情況下** 有機會離開香港而在自他有該機會起計的 15 天屆滿後* 仍留在香港，但並非為下述目的而留在香港 ——
 - (i) 該項請求所關乎的目的；或
 - (ii) 為給予香港刑事事宜方面的協助的目的，而該刑事事宜屬律政司司長* 以書面證明適宜由該人就該事宜給予協助的。”。

Schedule 2

[s. 2]

Modifications to the Ordinance

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows—
 - “(e) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in the place or Hong Kong*, or has undergone the punishment provided by the law of that place or Hong Kong*, in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.
2. Section 17(3)(b) of the Ordinance shall be modified to read as follows—
 - “(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* has remained in Hong Kong otherwise than for—
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Attorney General** Secretary for Justice* to be a criminal matter in relation to which it is desirable that the person give assistance.”.

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- * 劃上底線的字句屬增訂部分。(劃上底線是為了使該項變通易於識別)。
- ** 劃上橫線的字句屬刪除部分。(劃上橫線是為了使該項變通易於識別)。

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- * The words underlined are added. (The underlining is for ease of identifying the modification).
- ** The words crossed out are deleted. (The crossing out is for ease of identifying the modification).