

《刑事事宜相互法律協助(加拿大)令》  
(第 525 章，附屬法例 J)

**Mutual Legal Assistance in Criminal Matters (Canada) Order**  
(Cap. 525 sub. leg. J)

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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	21.11.2019
附表 1 Schedule 1	S1-1—S1-32	21.11.2019
附表 2 Schedule 2	S2-1—S2-4	21.11.2019

**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 2001 年第 290 號法律公告 —— 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(加拿大)令》

## (第 525 章, 附屬法例 J)

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Mutual Legal Assistance in Criminal Matters (Canada)  
Order

## (Cap. 525 sub. leg. J)

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## 《刑事事宜相互法律協助(加拿大)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)

[2002 年 3 月 1 日] 2002 年第 24 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. 條例適用於香港與加拿大之間

現就——

- (a) 適用於特區政府與加拿大政府；及
- (b) 副本附錄於附表 1，

的相互法律協助的安排，指示本條例在撮錄於附表 2 的變通的規限下，適用於香港與加拿大之間。

## Mutual Legal Assistance in Criminal Matters (Canada) Order

(Cap. 525, section 4)

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

[1 March 2002] L.N. 24 of 2002  
(Format changes—E.R. 5 of 2019)

1. (Omitted as spent—E.R. 5 of 2019)

### 2. Ordinance to apply between Hong Kong and Canada

In relation to the arrangements for mutual legal assistance—

- (a) which are applicable to the Government and the Government of Canada; and
- (b) a copy of which is annexed at Schedule 1,

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

## 附表 1

[ 第 2 條 ]

### 中華人民共和國香港特別行政區政府 與 加拿大政府 關於 刑事司法協助的協定

中華人民共和國香港特別行政區政府經中華人民共和國中央人民政府正式授權，與加拿大政府，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法律程序方面互相提供協助。不論協助是由法院還是其他機關要求或提供，有關協助都必須由被要求方提供。

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[s. 2]

### Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Canada on Mutual Legal Assistance in Criminal Matters

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised by the Central People's Government of the People's Republic of China, and the Government of Canada, Desiring to improve the effectiveness of both Parties in the investigation, prosecution and prevention of crime and the confiscation of criminal proceeds;

Have agreed as follows:

#### ARTICLE 1 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 offences. Such assistance shall be given by the Requested Party, irrespective of whether

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- (2) 就本條第(1)款而言，“罪行”一詞在香港特別行政區是指香港法例訂明的罪行；在加拿大則是指議會通過的法律或省立法機關所訂立的罪行。
- (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法律程序。
- (4) 提供的協助，包括以下各項：
- (a) 辨認和追尋有關的人和物品；
  - (b) 送達文件；
  - (c) 提供資料、文件和其他紀錄，包括司法紀錄和官方紀錄；
  - (d) 取得證據，包括提交物品和文件，以及向有關的人錄取口供；
  - (e) 交付物品，包括借出證物；
  - (f) 執行搜查和檢取物品的要求；
  - (g) 安排被拘留的人及其他人作證或協助調查；
  - (h) 索究、禁制、沒收和充公犯罪活動得益和犯罪工具；及
  - (i) 任何與本協定宗旨一致而又與被要求方法律並無牴觸的其他協助。
- (5) 本協定純為締約雙方互相提供協助而設。協定的條文並不給予任何個人取得、隱瞞、或排除任何證據，或妨礙執行協助要求的任何權利。

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- the assistance is sought or to be provided by a court or some other authority.
- (2) For the purposes of paragraph (1) of this Article, the term “offences” means, in the case of the Hong Kong Special Administrative Region, offences under Hong Kong law, and in the case of Canada, offences created by a law of Parliament or by the legislature of a province.
- (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 include:
- (a) identifying and locating persons and objects;
  - (b) service of documents;
  - (c) provision of information, documents and other records, including judicial records and official records;
  - (d) taking evidence, including the production of articles and documents and obtaining statements of persons;
  - (e) delivery of property, including lending of exhibits;
  - (f) executing requests for search and seizure;
  - (g) making detained persons and others available to give evidence or assist investigations;
  - (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities; and
  - (i) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (5) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

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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) 香港特別行政區的中心機關為律政司司長或經其正式授權的人員。加拿大的中心機關為司法部部長或其指定的官員。
- (3) 中心機關須傳達和接收為施行本協定而向中心機關提出的所有要求和回應。

## 第三條 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執行，並須在該法律所不禁止的範圍內，依照要求方提出的方式執行。
- (3) 被要求方須應要求通知要求方執行協助要求的時間和地點。
- (4) 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。

## ARTICLE 2 CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorized officer. The Central Authority for Canada shall be the Minister of Justice or an official designated by that Minister.
- (3) Central Authorities shall transmit and receive all requests and responses thereto for the purposes of this Agreement.

## ARTICLE 3 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) Requests for assistance shall be executed in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner requested by the Requesting Party.
- (3) The Requested Party shall, upon request, inform the Requesting Party of the time and place of execution of the request for assistance.
- (4) 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.

#### 第四條 要求的內容

- (1) 除非在緊急情況下，否則要求必須以書面提出。在緊急情況下，可提出口頭的要求，但必須及早以書面確認。
- (2) 協助要求須包括以下內容：
  - (a) 負責進行與要求有關的調查、檢控或法律程序的機關的名稱；
  - (b) 說明提出要求的目的及所需協助的性質；
  - (c) 說明調查、檢控或法律程序的性質；
  - (d) 案件有關事實及法律的撮要；
  - (e) 有關保密的任何要求；
  - (f) 履行要求的期間的詳細說明；
  - (g) 要求方希望被要求方依循的任何特別程序的細節；
  - (h) 在可能的範圍內，有關該項調查、檢控或法律程序的當事人的身分及其所在；
  - (i) 對於獲取證據或搜查及檢取的要求，說明要求方相信在被要求方管轄區可能找到證據的理據；
  - (j) 對於從某些人士獲取證據的要求，說明供詞是否要經過宣誓或以非宗教方式宣誓、列明擬向該等人士提出的問題，或說明擬向他們訊問的事項；
  - (k) 對於借給證物的要求，說明保管證物的人的身分、證物會被移往的地方、擬進行的測試，以及交還證物的日期；
  - (l) 對於移交被拘留的人的要求，說明移交期間負責看管的人的身分、被羈留者會被移往的地方，以及交還該人的日期；以及

#### ARTICLE 4 CONTENT OF REQUESTS

- (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 promptly thereafter.
- (2) Requests for assistance shall include:
  - (a) the name of the authority conducting the investigation, prosecution or proceedings to which the request relates;
  - (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 or proceedings;
  - (d) a summary of the relevant facts and laws;
  - (e) any requirements for confidentiality;
  - (f) details of the period within which the request should be complied with;
  - (g) details of any particular procedure the Requesting Party wishes to be followed;
  - (h) where possible, the identity and location of the person or persons who are the subject of the investigation, prosecution or proceedings;
  - (i) in the case of requests for the taking of evidence or search and seizure, a statement indicating the basis for belief that evidence may be found in the jurisdiction of the Requested Party;
  - (j) in the case of requests to take evidence from persons, a statement as to whether sworn or affirmed statements are required, a list of questions to be put to the persons or a description of the subject-matter about which they are to be examined;



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- (m) 被要求執行的法庭判令(如有的話),或該判令經證明的副本,並附有關判令為最終判令的說明。
- (3) 被要求方如果認為要求所包含的資料不足以處理該項要求,可以要求對方提供更多資料。
- (4) 要求及支持文件必須採用被要求方的法定語文或附有被要求方法定語文的譯本。

- (k) in the case of lending of exhibits, the person or class of persons who will have custody of the exhibit, the place to which the exhibit is to be removed, any tests to be conducted and the date by which the exhibit will be returned;
- (l) in the case of making detained persons available, the person or class of persons who will have custody during the transfer, the place to which the detained person is to be transferred and the date of that person's return; and
- (m) 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.
- (3) If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, that Party may request that additional details be furnished.
- (4) Requests and supporting documents shall be either in an official language of the Requested Party or accompanied by a translation into an official language of the Requested Party.

### 第五條 履行協定的限制

- (1) 如出現以下情況,被要求方須拒絕提供協助:
- (a) 就加拿大而言,加拿大政府認為協助要求會損害其國家的主權、安全或公共秩序,或就香港特別行政區而言,中華人民共和國中央人民政府認為有關要求會損害其國家的主權、安全或公共秩序;
- (b) 被要求方認為應允要求將會嚴重損害其本身的基要利益;或
- (c) 協助要求關乎只在軍法下才構成的罪行。
- (2) 如出現以下情況,被要求方的法律又有規定,則須拒絕提供協助:
- (a) 協助要求關乎政治性質的罪行;

### ARTICLE 5 LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
- (a) in the case of Canada, the request for assistance would, in the opinion of the Government of Canada, impair its sovereignty, security or public order or, in the case of the Hong Kong Special Administrative Region, the request would, in the opinion of the Central People's Government of the People's Republic of China, impair the sovereignty, security or public order of the People's Republic of China;
- (b) it is of the opinion that the granting of the request would seriously impair its essential interests; or
- (c) the request for assistance relates to an offence only under military law.

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- (b) 有充分理由相信協助要求將會引致某人因其種族、宗教、國籍或政治意見而受到不利的待遇；
- (c) 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；
- (d) 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。
- (3) 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假使是在被要求方的管轄區犯該罪行，會由於時效消失而不能被檢控；
- (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。
- (4) 就本條第(1)(b)款而言，被要求方在考慮其基要利益是否受損害時，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。
- (5) 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。
- (6) 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。
- (7) 在根據本條拒絕或延期提供協助前，被要求方須通過中心機關：
- (a) 將其考慮拒絕或延期提供協助的理由及早知會要求方；及
- (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。
- (8) 要求方如接受合乎本條第(7)(b)款所述條件下的協助，必須遵守該等條件。

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- (2) The Requested Party shall, if required by its laws, refuse assistance if:
- (a) the request for assistance relates to an offence of a political character;
- (b) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
- (c) 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;
- (d) 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.
- (3) The Requested Party may refuse assistance if:
- (a) the request for assistance relates to the prosecution of a person for an offence 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 Requested Party;
- (b) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.
- (4) For the purpose of paragraph (1)(b) of this Article, 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.
- (5) 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.

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### 第六條 有關人士的所在及身分及物品的所在

如要求方提出要求，被要求方須致力查明要求內所指人物的所在及身分或物品的所在。

### 第七條 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) 被要求方在其法律允許的限度內，須按要求方指定的形式，交回已送達文件的證明。

(6) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.

(7) 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.

(8) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (7)(b) of this Article, it shall comply with those terms and conditions.

### ARTICLE 6 LOCATION AND IDENTITY OF PERSONS AND OBJECTS

The Requested Party shall, if requested, endeavour to ascertain the location and identity of persons or the location of objects specified in the request.

### ARTICLE 7 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) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party.

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(4) 被送達人未有遵照送達給他的法律文件的規定而行事，要求方或被要求方均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。

(4) A person who fails to comply with any process served shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

### 第八條 傳送文件和物品

### ARTICLE 8 TRANSMISSION OF DOCUMENTS AND OBJECTS

(1) 協助要求如關乎傳送可供公眾查閱的紀錄和文件以外的紀錄和文件，被要求方可傳送其經核證的真確副本。被要求方可酌情傳送該等紀錄和文件的正本。

(1) When the request for assistance concerns the transmission of records and documents, other than publicly available records and documents, the Requested Party may transmit certified true copies thereof. Originals may be transmitted at the discretion of the Requested Party.

(2) 已傳送給要求方的紀錄或文件的正本或物品的原物，須於被要求方提出要求時盡快交還。

(2) Original records or documents or objects transmitted to the Requesting Party shall be returned to the Requested Party as soon as possible, upon the latter's request.

(3) 對於可供公眾查閱的紀錄和文件，被要求方只須提供該等紀錄和文件的副本。

(3) In the case of publicly available records and documents, the Requested Party shall only be obliged to provide copies thereof.

(4) 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。

(4) 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.

(5) 在被要求方法律不禁止的情況下，所有紀錄、文件或物品須按照要求方所要求的形式送達，或連同所要求的有關證明送達，使以上各項可按要求方的法律獲法院接納。

(5) Insofar as not prohibited by the law of the Requested Party, all records, documents or objects shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Party in order to make them admissible according to the law of the Requesting Party.

### 第九條 獲取證據

- (1) 如要求方就刑事調查、刑事檢控或刑事法律程序提出取證要求，被要求方在其法律不禁止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提交文件、紀錄或其他物料。
- (3) 如某人因協助要求而必須作證，在要求方管轄區內有關法律程序的當事人、他們的法律代表、或要求方的代表，可在被要求方法律不禁止的情況下出庭及向該證人發問。
- (4) 在執行要求時出庭的人士，可獲准擬備法律程序的逐字逐句謄本。逐字逐句謄本可以採用技術設備擬備。
- (5) 如雙方的法律容許，締約雙方按照本條就某些個案向證人取證，可同意透過視像會議或以其他科技設備取證。
- (6) 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法律程序中出現類似情況時，該證人可獲准拒絕作證；或
  - (b) 根據要求方的法律，如在要求方管轄區內進行該類法律程序，該證人可獲准拒絕作證。
- (7) 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 9 TAKING OF EVIDENCE

- (1) Where a request is made that evidence be taken for the purpose of an investigation, prosecution of a criminal offence or proceeding in relation to a criminal matter, the Requested Party shall, to the extent not prohibited by 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) Where, pursuant to a request for assistance a person is to give evidence, the parties to the relevant proceedings in the Requesting Party, their legal representative or representatives of the Requesting Party may, to the extent not prohibited by the laws of the Requested Party, appear and question the person giving that evidence.
- (4) The persons present at the execution of a request shall be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted.
- (5) If permitted by their laws, the Parties may agree in specific cases that the taking of evidence of a witness in accordance with this Article may take place by means of video conference or other technological means.
- (6) 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) the law of the Requesting Party would permit that person to decline to give evidence in such proceedings in the Requesting Party.

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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罪行的調查、檢控或法律程序用途，被要求方須致力取得有關供詞。

### 第十一條 搜查及檢取

- (1) 要求方要求搜查、檢取及交付與刑事罪行的調查、檢控或法律程序有關的物品，被要求方在本身法律許可的範圍內，須執行要求方的要求。
- (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，以及物品檢取後繼續管有的情況等資料，被要求方必須提供。
- (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。

(7) 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 Central Authority of the Requesting Party.

### ARTICLE 10 OBTAINING STATEMENTS OF PERSONS

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

### ARTICLE 11 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 an investigation, prosecution or proceeding in relation to a criminal offence.
- (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 continuity of possession 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.

**第十二條**  
**安排被羈押的人提供協助**

- (1) 任何被羈押在被要求方的人如獲要求方要求他到要求方以便根據本協定提供協助，則在被要求方的同意下該人須就此目的被移交要求方，但須得該人同意。
- (2) 如根據被要求方的法律，被移交的人必須予以羈押，要求方須把該人羈押起來，並須於要求執行後把該名被羈押的人送還。
- (3) 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，而要求方須確保把該人釋放，並把該人作為本協定第十四條第(3)款所指的人對待。

**第十三條**  
**安排其他人提供協助**

- (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) 被要求方須邀請該人提供協助並徵求該人同意提供協助。該人須被通知可以發給的費用和津貼。

**ARTICLE 12**  
**AVAILABILITY OF PERSONS IN CUSTODY TO GIVE ASSISTANCE**

- (1) A person in custody in the Requested Party whose presence in the Requesting Party is requested for the purpose 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.
- (2) Where the person transferred is required to be kept in custody under the law of the Requested Party, the Requesting Party shall hold that person in custody and shall return the person in custody at the conclusion of the execution of the request.
- (3) Where the sentence of imprisonment of a person transferred pursuant to this Article expires while the person is in the Requesting 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 14(3) of this Agreement.

**ARTICLE 13**  
**AVAILABILITY OF OTHER PERSONS TO GIVE ASSISTANCE**

- (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 invite the person to provide assistance and seek that person's concurrence thereto. That person shall be informed of any expenses and allowances payable.

#### 第十四條 安全通行

- (1) 除本協定第十二條第(2)款另有規定外，同意根據第十二或十三條規定提供協助的人，不得因其在離開被要求方之前的作為或不作為而在要求方被檢控、拘留或被限制人身自由，而該人也無責任提供與要求無關的其他協助。
- (2) 任何人同意根據本協定第十二或十三條作證，不得根據該人所作證供而對其檢控，但作假證供、藐視法庭及作出互相矛盾證供的情況則不在此限。
- (3) 如有關的人並非根據本協定第十二條移交的被羈押的人，並本可自由離去，但在該人接獲通知毋須再逗留後 30 天內仍未離開要求方，或在離開要求方後返回者，則本條第(1)及(2)款不適用。
- (4) 任何人未有在要求方管轄區內出庭，該人不得在被要求方或要求方受制裁或強制性措施。

#### 第十五條 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犯罪得來的財物或犯罪工具存放於其管轄區內，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或工具可能存放於被要求方管轄區內的理由通知被要求方。
- (2) 被要求方如根據本條第(1)款找到懷疑為犯罪得益的財物或犯罪工具時，須採取本身法律容許的措施，防止任何人就這些懷疑為犯

#### ARTICLE 14 SAFE CONDUCT

- (1) Subject to Article 12(2) of this Agreement, a person who consents to provide assistance pursuant to Articles 12 or 13 shall not be prosecuted, detained or restricted in their personal liberty in the Requesting Party for any acts or omissions which preceded that person's departure from the Requested Party, nor shall that person be obliged to provide assistance other than the assistance to which the request relates.
- (2) Persons who consent to give evidence under Articles 12 or 13 of this Agreement shall not be subject to prosecution based on their testimony, except for perjury, contempt and contradictory evidence.
- (3) Paragraphs (1) and (2) of this Article shall not apply if the person, not being a person in custody transferred under Article 12 of this Agreement and being free to leave, has not left the Requesting Party within a period of 30 days after being notified that that person's presence is no longer required, or having left the Requesting Party, has returned.
- (4) Any person who fails to appear in the Requesting Party may not be subjected to any sanction or compulsory measure in the Requested or Requesting Party.

#### ARTICLE 15 PROCEEDS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of crime 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 or instrumentalities may be located in its jurisdiction.



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罪得益的財物或犯罪工具進行交易、轉讓或處置，以待要求方的法庭就這些財物或工具作出最後裁定。

(3) 如要求方要求協助沒收犯罪得益或犯罪工具，被要求方須依據本身法律執行有關要求。協助的方法可包括執行要求方法院作出的命令、就要求涉及的犯罪得益或犯罪工具提起法律程序，或就該等法律程序提供協助。

(4) 除非雙方另有協議，否則根據本協定沒收的犯罪得益或犯罪工具須由被要求方保留。

(2) Where, pursuant to paragraph (1) of this Article, suspected proceeds or instrumentalities 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 or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds or instrumentalities such request shall be executed pursuant to the laws of the Requested Party. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds or instrumentalities to which the request relates.

(4) Proceeds or instrumentalities confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

## 第十六條 使用限制

(1) 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或該等資料或證據的來源保密，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。

(2) 未經被要求方中心機關事先同意，要求方不得為了要求內所述用途以外的其他目的，透露或使用被要求方提供的資料或證據。

(3) 除為執行要求而須透露的範圍外，被要求方須在要求方要求的範圍內，將要求、要求的內容、支持文件及根據要求採取的行動保密。

## ARTICLE 16 LIMITATIONS OF USE

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requesting Party 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.

(3) The Requested Party shall, to the extent requested, keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

### 第十七條 證明和認證

除本協定第八條第(1)款另有規定外，轉送往要求方的文件、抄件、紀錄、供詞或其他資料，只有在要求方提出要求的情況下，才須予以證明或認證。有關的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。

### 第十八條 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法律程序中獲得代表，否則被要求方須代表要求方，保障要求方的利益。
- (2) 被要求方須承擔在其境內執行要求的所有一般性開支，但下述項目除外：
  - (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；及
  - (d) 交通費用及有關人等的津貼。
- (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。

### ARTICLE 17 CERTIFICATION AND AUTHENTICATION

Subject to the provisions of Article 8(1) of this Agreement, documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

### ARTICLE 18 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 within its boundaries, except:
  - (a) fees of counsel retained at the request of the Requesting Party;
  - (b) fees of experts;
  - (c) expenses of translation; and
  - (d) travel expenses and allowances of persons.
- (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.

### 第十九條 其他協助

締約雙方可按照其他協定、安排或慣例要求或提供協助。

### 第二十條 磋商及解決爭議

- (1) 任何一方的中心機關提出要求，雙方的中心機關都必須迅速就本協定的解釋、適用或執行本協定進行磋商。
- (2) 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通知對方已履行法律規定後的翌月首天開始生效。
  - (2) 本協定適用於生效後提出的要求，即使有關的作為或不作為是在本協定生效之前發生。
  - (3) 締約一方可隨時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。

### ARTICLE 19 OTHER ASSISTANCE

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

### ARTICLE 20 CONSULTATIONS AND DISPUTE SETTLEMENT

- (1) The Central Authorities shall consult promptly, at the request of either of them, concerning the interpretation, application or 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 themselves unable to reach agreement.

### ARTICLE 21 ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force on the first day of the second month after the date on which the Parties have notified each other that their legal requirements have been complied with.
- (2) This Agreement shall apply to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.
- (3) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on 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 were still in force.

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附表 1

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本協定於二零零一年二月十六日在香港特別行政區簽訂，一式兩份。  
每份均用中文、法文及英文寫成，各文本均同等作準。

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IN WITNESS WHEREOF, the undersigned, being duly authorized thereto  
by their respective Governments, have signed this Agreement.

Done at the Hong Kong Special Administrative Region on the sixteenth  
day of February Two Thousand and One in two copies, in Chinese, French  
and English, each text being equally authentic.

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## 附表 2

[ 第 2 條 ]

### 對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通而以下文代替 ——  
“(e) 該項請求關乎因外地罪行而\*\*對某人進行的檢控，而該項檢控是因外地罪行而進行的，且\*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→\*\*——\*  
(i)\* 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  
(ii)\* 已接受該地方或香港的\*法律所規定的懲罰；”。
2. 本條例第 17(3)(b) 條須予變通而以下文代替 ——  
“(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 30 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—\*  
(i)\* has been convicted, acquitted or pardoned by a competent court or other authority in the place,\*\* or Hong Kong;\* or  
(ii)\* 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, 30 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 Secretary for Justice to be a criminal matter in relation to which it is desirable that the person give assistance.”.

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附表 2

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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).