

# 《刑事事宜相互法律協助(瑞士)令》

## (第 525 章，附屬法例 I)

# Mutual Legal Assistance in Criminal Matters (Switzerland) Order

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

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## 經核證文本

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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—S1-52	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 —

Please see Hong Kong e-Legislation (<https://www.elegislation.gov.hk>) for information of provisions and amendments not yet in operation.

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### 制定史

本為 2000 年第 238 號法律公告——2002 年第 23 號，2003 年第 14 號，  
2019 年第 5 號編輯修訂紀錄

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### Enactment History

Originally L.N. 238 of 2000 — 23 of 2002, 14 of 2003, E.R. 5 of 2019

## 《刑事事宜相互法律協助(瑞士)令》

## (第 525 章，附屬法例 I)

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Mutual Legal Assistance in Criminal Matters  
(Switzerland) Order

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

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## 《刑事事宜相互法律協助(瑞士)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 10 月 16 日] 2002 年第 140 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. 條例在香港特別行政區與瑞士之間適用  
就——

- (a) 適用於香港特別行政區政府和瑞士聯邦委員會，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，本條例在香港特別行政區與瑞士之間適用。

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

(Cap. 525, section 4)

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

[16 October 2002] L.N. 140 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 Special Administrative Region and Switzerland**

In relation to the arrangements for mutual legal assistance—

- (a) which are applicable to the Government of the Hong Kong Special Administrative Region and the Swiss Federal Council; 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 the Hong Kong Special Administrative Region and Switzerland.

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## 附表 1

[ 第 2 條 ]

### 中華人民共和國香港特別行政區政府 與 瑞士聯邦委員會 關於 刑事司法協助的協定

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## Schedule 1

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### Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Swiss Federal Council Concerning Mutual Legal Assistance in Criminal Matters

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中華人民共和國香港特別行政區(“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訂立本協定，與瑞士聯邦委員會(下文稱為“締約雙方”)，

為加強雙方在調查、檢控和制止罪案方面的執法效能，  
協議如下：

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The Government of the Hong Kong Special Administrative Region of the People's Republic of China (“Hong Kong Special Administrative Region”), having been duly authorized to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Swiss Federal Council, hereinafter called the “Parties”

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

Have agreed as follows:

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**第一章 —— 一般條文****第一條  
互相提供協助的責任**

1. 如於提出互相協助的要求時，有關罪行的懲罰屬要求方司法管轄範圍之內，締約雙方須按照本協定，在進行有關的調查、檢控或訴訟時，互相提供最大程度的協助。
2. 協助包括所有為促進要求方進行調查、檢控或有關訴訟而作出的措施，包括強制措施，特別是：
  - (a) 辨認和追尋有關的人；
  - (b) 送達文件；
  - (c) 取得證供或其他供詞；
  - (d) 提交物品、文件、紀錄及證據，包括證物；
  - (e) 歸還財產和金錢；
  - (f) 提供資料；
  - (g) 執行搜查和檢取物品的要求；
  - (h) 安排有關人士出庭作證或提供其他協助；
  - (i) 獲取司法或可供公眾查閱的文件和官方文件；
  - (j) 索究、禁制和充公犯罪得益和犯罪工具。

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Cap. 525I**CHAPTER I—GENERAL PROVISIONS****ARTICLE 1  
OBLIGATION TO PROVIDE MUTUAL ASSISTANCE**

1. The Parties shall provide, in accordance with the provisions of this Agreement, the widest measure of mutual assistance in investigations, prosecutions or proceedings in respect of offences the punishment of which, at the time of the request for mutual assistance, falls within the jurisdiction of the Requesting Party.
2. Assistance shall include all measures, including compulsory measures, taken to advance investigations, prosecutions or related proceedings in the Requesting Party, and in particular:
  - (a) identifying and locating persons;
  - (b) serving of documents;
  - (c) taking testimony or other statements;
  - (d) producing objects, documents, records and evidence, including exhibits;
  - (e) restitution of property and money;
  - (f) providing information;
  - (g) executing requests for search and seizure;
  - (h) facilitating the appearance of persons to give evidence or to provide other assistance;
  - (i) obtaining production of judicial records or publicly available and official documents;



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## 第二條 除外情況

本協定不適用於以下情況：

- (a) 移交逃犯；
- (b) 實施或執行關乎剝奪自由的最終刑事判決，但如在被要求方的法律及本協定所容許的限度之內則除外。
- (c) 與軍事法律所訂罪行有關的調查或訴訟，而該罪行在一般刑事法下並不構成罪行。

## 第三條 拒絕或延期的理由

1. 如出現以下情況，被要求方須拒絕提供協助：
  - (a) 協助要求會損害瑞士或就香港特別行政區而言，中華人民共和國的主權、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本利益；
  - (c) 協助要求關乎政治性質的罪行；

## ARTICLE 2 EXCLUSION

This Agreement shall not apply to the following cases:

- (a) surrender of fugitive offenders;
- (b) the enforcement or execution of final criminal judgments regarding the deprivation of liberty except to the extent permitted by the law of the Requested Party and this Agreement;
- (c) investigations or proceedings relating to an offence under military law which is not an offence under ordinary criminal law.

## ARTICLE 3 GROUNDS FOR REFUSAL OR POSTPONEMENT

1. The Requested Party shall refuse assistance if:
  - (a) the request for assistance impairs the sovereignty, security or public order of Switzerland or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;
  - (b) it is of the opinion that the granting of the request would seriously impair its essential interests;

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- (d) 要求關乎被要求方認為屬有關財務的罪行；不過，如調查或訴訟涉及欺詐計劃或與財務事宜有關的欺詐行為，則被要求方可選擇履行該項要求；
- (e) 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；
- (f) 協助要求所涉及的被告人，已因同一罪行在被要求方管轄區被定罪、無罪釋放或被赦免；或
- (g) 就涉及強制措施的要求，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假使是在被要求方的管轄區犯該罪行，會因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；或
- (c) 要求關乎在要求方屬可判死刑的罪行，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。

3. 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。

4. 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) 及早知會要求方考慮拒絕或延期提供協助的理由；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。

- (c) the request for assistance relates to an offence of a political character;
- (d) the request relates to an offence considered by the Requested Party to be a fiscal offence; however the Requested Party has the option of complying with the request if the investigation or proceeding concerns a fraudulent scheme or a fraud relating to a fiscal matter;
- (e) 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;
- (f) 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 Requested Party; or
- (g) in the case of requests involving compulsory measures, 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 of a person who 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 relating to confidentiality or limitation as to the use of material provided; or

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5. 要求方如在第 4(b) 款所述的條件下接受協助，必須遵守該等條件。

第四條  
適用的法律

要求須按照被要求方的法律予以執行。

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(c) 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 assurance as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.

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

4. 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.

5. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 4(b), it shall comply with those terms and conditions.

ARTICLE 4  
APPLICABLE LAW

A request shall be executed in accordance with the law of the Requested Party.

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## 第五條 強制措施

除非獲得要求方事先同意，否則對關乎獲取證據、出示文件(包括銀行文件)、搜查和檢取或禁制和充公犯罪得益的強制措施的要求，不得以不同的措施取代。

## 第二章——獲取證據

### 第六條 一般原則

1. 要求方如就在其管轄區內的刑事案件的調查、檢控或訴訟提出取證要求，被要求方須安排獲取該等證據。
2. 就本協定而言，提供或獲取證據包括出示文件、紀錄、資料或物品。

## ARTICLE 5 COMPULSORY MEASURES

When compulsory measures are requested in relation to the obtaining of evidence, the production of documents, including bank documents, search and seizure or the restraint and confiscation of criminal proceeds, these measures may not be replaced by different measures unless the Requesting Party gives its prior consent.

## CHAPTER II—OBTAINING EVIDENCE

### ARTICLE 6 GENERAL PRINCIPLES

1. Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.
2. For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records, material or objects.

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第七條  
使用限制

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。

ARTICLE 7  
LIMITATION OF USE

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.

第八條  
搜查及檢取

1. 如要求方要求搜查、檢取及移交與刑事案件的調查或訴訟有關的物品，被要求方須執行要求方的要求。
2. 如要求方要求提供有關任何搜查的結果、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，被要求方須予提供。
3. 被要求方把任何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。

ARTICLE 8  
SEARCH AND SEIZURE

1. The Requested Party shall carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to an investigation or proceeding in relation to a criminal matter.
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.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

第九條  
有關人士的出席

1. 如要求方提出明確的要求，被要求方的中心機關須通知要求方執行要求的日期和地點。
2. 如被要求方同意的話，有關當局及人士以及其法律代表可在執行要求時出席。

第十條  
取得證供或其他供詞

1. 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，該人可拒絕作證。
2. 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。
3. 為根據本條提出要求的目的，要求方須列明擬向該人提出的問題或擬向該人訊問的事項。

ARTICLE 9  
PRESENCE OF PERSONS

1. If the Requesting Party expressly so requests, the Central Authority of the Requested Party shall inform it of the date when and place where the request will be executed.
2. The authorities and persons involved and their legal representatives may be present at such execution if the Requested Party agrees.

ARTICLE 10  
TAKING TESTIMONY OR OTHER STATEMENTS

1. 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 person 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.
2. 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.

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4. 如有需要，被要求方的主管機關可自發地，或在第九條第 2 款所提及的任何人士的要求下，向該人提出本條第 3 款指明以外的任何問題。

第十一條  
物品、文件、紀錄及證據的交付

1. 第三者宣稱對被要求方管轄區內的物品、文件、紀錄或其他證據擁有權利，並不阻止被要求方把該等物品、文件、紀錄或其他證據交付要求方。
2. 除非另有協議，否則要求方須盡快並最遲於訴訟結束時，把被要求方交付的物品、文件、紀錄或其他證據交還。

第十二條  
歸還財產和金錢

在對由第三者提出有關產權的申索予以適當考慮後，被要求方所檢取到與犯罪有關連的財產及金錢亦可交回要求方，以供歸還之用。

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3. For the purpose of requests under this Article the Requesting Party shall specify the questions to be put to the person or the subject matter about which he or she is to be examined.

4. If necessary any questions additional to those specified in paragraph 3 of this Article may be put to the person by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in paragraph 2 of Article 9.

ARTICLE 11  
**TRANSMISSION OF OBJECTS, DOCUMENTS, RECORDS AND EVIDENCE**

1. Rights claimed by third parties to objects, documents, records or other evidence in the Requested Party shall not prevent their transmission to the Requesting Party.
2. Unless otherwise agreed the Requesting Party shall return what was transmitted as quickly as possible and at the end of the proceedings at the latest.

ARTICLE 12  
**RESTITUTION OF PROPERTY AND MONEY**

Property and money obtained in connection with the commission of an offence and seized by the Requested Party may also be returned to the Requesting Party for the purpose of its restitution, having due regard to any claim concerning rights of property raised by a third person.



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第十三條  
可供公眾查閱的文件和官方文件

1. 被要求方須向要求方提供任何可供公眾查閱的文件。
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及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。

第十四條  
司法紀錄

被要求方的法庭或其他司法機關紀錄，包括判決及決定，被要求方須按照其向本身的機關提供有關紀錄的相同條件和範圍，向要求方提供。

第十五條  
交換來自犯罪紀錄的資料

締約一方須在符合其法律規定的情況下，通知締約另一方判處有關人等的所有監禁刑期。就香港特別行政區而言，有關人等指香

ARTICLE 13  
PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

1. The Requested Party shall provide copies of publicly available documents.
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.

ARTICLE 14  
JUDICIAL RECORDS

The Requested Party shall make available to the authorities of the Requesting Party its records of courts or other judicial authorities, including judgments and decisions, on the same conditions and to the same extent as it does to its own authorities.

ARTICLE 15  
EXCHANGE OF INFORMATION FROM CRIMINAL RECORDS

Each Party shall, subject to the requirements of its law, inform the other Party of all sentences of imprisonment imposed in respect of persons who are, in the case of the Hong Kong Special Administrative



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港特別行政區永久性居民，就瑞士而言則指其國民。該等資料須最少每年一次通過中心機關傳送。

第十六條  
提交與訴訟有關的資料

1. 締約任何一方可未經事先要求，就在締約另一方管轄區內進行的訴訟，向該締約方提交資料或證據。
2. 獲提交該等資料或證據的締約方須將所採取的任何行動通知締約另一方，並須提交所作出的任何決定。

**第三章 —— 送達文件、有關人士出庭**

第十七條  
送達文件

1. 要求方交付送達的令狀、司法判決的紀錄及其他文件，被要求方須予以送達。
2. 如要把令狀、紀錄或其他文件送達，被要求方只須把有關文件交付被送達人。在要求方明確作出要求時，被要求方須按本身法律所規定送達類似文件的方式，或按符合該等法律的特別方式，把文件送達。

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Region, permanent residents or, in the case of Switzerland, nationals. Such information shall be communicated through the Central Authority at least once per year.

ARTICLE 16  
**SUBMITTING INFORMATION IN CONNECTION WITH  
PROCEEDINGS**

1. Either Party may, without prior request, submit information or evidence to the other Party with a view to proceedings in that Party.
2. The Party to whom such information or evidence is submitted shall notify the other Party of any action taken and shall forward a copy of any decision made.

**CHAPTER III—SERVICE OF DOCUMENTS APPEARANCE OF  
PERSONS**

ARTICLE 17  
**SERVICE OF DOCUMENTS**

1. The Requested Party shall effect service of writs and records of judicial verdicts and other documents which are transmitted to it for this purpose by the Requesting Party.
2. Service may be effected by simple transmission of the writ, record or other documents to the person to be served. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in

3. 有關送達文件的證明須以由被送達人註明日期及簽署的收條，或由被要求方的主管當局聲明已把文件送達，並載明送達文件的形式及日期等方法作出。上述其中一種送達文件的證明須立即交予要求方。如要求方提出要求，被要求方須表明是否已根據本身的法律把文件送達。如未能把文件送達，被要求方須立即通知要求方有關原因。

4. 有關向在被要求方管轄區內的被告人送達傳票的要求，須在預定出庭日期最少 30 天前送交被要求方的中心機關。如被送達人並非被告人，有關送達文件的要求則須在一段合理時間內，送交被要求方的中心機關。

#### 第十八條 證人及專家在要求方管轄區內出庭

1. 被要求方管轄區內的任何人均可被要求在要求方管轄區內進行的調查或訴訟中，以證人或專家的身分出庭，但該人不得為有關調查或訴訟的對象。

2. 被要求方須邀請該人出庭，並須盡快把該人的回覆通知要求方。

3. 有關津貼及費用須由要求方支付。該名證人或專家須獲通知其有權獲得的津貼或費用，並可要求預支該等津貼或費用。

the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.

3. Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a statement made by a competent authority in the Requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the Requesting Party. The Requested Party shall, if the Requesting Party so requests, state whether service has been effected in accordance with the law of the Requested Party. If service cannot be effected, the reasons shall be communicated immediately by the Requested Party to the Requesting Party.

4. A request for the service of a summons on an accused person who is in the Requested Party shall be sent to the Central Authority of that Party at least 30 days before the date set for the appearance. Where the person to be served is not an accused person, the request for service shall be sent to the Central Authority of the Requested Party within a reasonable time.

#### ARTICLE 18 APPEARANCE OF WITNESSES AND EXPERTS IN THE REQUESTING PARTY

1. Any person in the Requested Party may be called upon to appear as a witness or as an expert in an investigation or proceeding underway in the Requesting Party, if he or she is not the subject of that investigation or proceeding.

2. The Requested Party shall invite the person to appear and shall communicate the person's reply to the Requesting Party without delay.

3. Allowances and expenses shall be payable by the Requesting Party. The witness or expert shall be informed of the allowances or expenses

### 第十九條 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出庭提供本協定所規定的協助，如要求方保證把該人繼續拘留及在事後送還給被要求方，則可在第 2 款的規限下把該人由被要求方移交給要求方以提供有關的協助。
2. 在以下情況下可拒絕移交被拘留的人：
  - (a) 被拘留的人不同意出庭；
  - (b) 該人須出席在被要求方管轄區內進行的調查或訴訟；
  - (c) 移交很可能會延長該人被拘留的時間；或
  - (d) 有其他至為重要的理由拒絕移交。
3. 除非被要求方要求釋放被移交的人，否則該人身在要求方管轄區內期間須繼續受拘留。
4. 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。

to which he or she will be entitled and may require an advance of such allowances or expenses.

### ARTICLE 19 TRANSFER OF PERSONS IN CUSTODY

1. A person in custody in the Requested Party whose appearance is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall, subject to paragraph 2, be transferred from the Requested Party to the Requesting Party for that purpose, provided that the Requesting Party has guaranteed the maintenance in custody of the person and his or her subsequent return to the Requested Party.
2. Transfer may be refused if:
  - (a) the person in custody does not consent to appear;
  - (b) his or her presence is required for an investigation or proceeding underway in the Requested Party;
  - (c) the transfer is likely to prolong detention; or
  - (d) there are other overriding grounds against transfer.
3. The person transferred shall remain in detention while in the Requesting Party unless the Requested Party asks that he or she be released.
4. Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst 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.

第二十條  
未能出庭

任何人如未能回應有關其出庭的要求，即使向其送達的文件載有一項罰則通知，亦不得遭受懲罰或強制措施的對待，除非其後該人自願進入要求方管轄區內，並在該處再次被適當地送達有關文件。

第二十一條  
安全通行

1. 同意根據第十八或十九條規定出庭的人，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；亦不得因其在離開被要求方之前的任何作為或不作為而受民事起訴，而有關的民事訴訟屬於假如該人不在要求方便不予起訴的訴訟。
2. 任何人同意根據第十八或十九條出庭，不得根據該人所作證供而對其檢控，但作假證供的情況則不在此限。
3. 任何同意根據第十八或十九條出庭的人，除與該項要求有關的訴訟外，不得被要求就任何其他訴訟作證。
4. 任何人應要求方傳訊，以便就構成向其提起訴訟的主題的作為進行答辯，不得因其在離開被要求方之前以及並沒有在傳票中指定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。

ARTICLE 20  
FAILURE TO APPEAR

A person who fails to answer a request for his or her appearance shall not, even if a document served on him or her contains a notice of penalty, be subjected to any punishment or compulsory measure unless, subsequently, he or she voluntarily enters the Requesting Party and is there again duly served.

ARTICLE 21  
SAFE CONDUCT

1. A person who consents to appear pursuant to Article 18 or 19 shall not be prosecuted, detained, or restricted in his or her personal liberty in the Requesting Party for any criminal offence or be subject to civil suit being a civil suit to which the person could not be subjected if the person were not in the Requesting Party for any act or omission which preceded his or her departure from the Requested Party.
2. A person who consents to appear pursuant to Articles 18 or 19 shall not be subject to prosecution based on his or her testimony, except for perjury.
3. A person who consents to appear pursuant to Article 18 or 19 shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
4. A person who responds to a summons from the Requesting Party to answer for acts forming the subject of proceedings against him or her

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5. 如有關的人本可自由離去，但在該人接獲通知毋須再出庭後 30 天內仍未離開要求方，或在離開要求方後返回者，則第 1 及 4 款不適用。

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shall not be prosecuted or detained or restricted in his or her personal liberty in the Requesting Party for acts or omissions which preceded his or her departure from the Requested Party and which are not specified in the summons.

5. Paragraphs 1 and 4 shall not apply if the person, being free to leave, has not left the Requesting Party within a period of 30 days after being notified that his or her appearance is no longer required, or having left the Requesting Party, has returned.

#### 第四章——犯罪得益

#### CHAPTER IV—PROCEEDS OF CRIME

##### 第二十二條 追查

##### ARTICLE 22 TRACING

如要求方提出要求，被要求方須致力查明是否有任何違反要求方法律的犯罪得益或犯罪工具存放於被要求方管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把何以相信犯罪得益或犯罪工具可能存於被要求方管轄區內的理由通知被要求方。

The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of a 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 or instrumentalities may be located in its jurisdiction.

##### 第二十三條 臨時措施

##### ARTICLE 23 PROVISIONAL MEASURES

被要求方如根據第二十二條找到懷疑為犯罪得益或犯罪工具的財物，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或犯罪工具的財物進行交易、轉讓或處置，以待要求方的法院就這些犯罪得益或犯罪工具作出最後裁定。

Where pursuant to Article 22 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

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## 第二十四條 充公

1. 如要求方要求協助充公犯罪得益或犯罪工具，被要求方須採取適當方法提供所需的協助。協助的方法可包括執行要求方法院的命令、或就要求涉及的犯罪得益或犯罪工具提起訴訟，或就該等訴訟提供協助。
2. 除非雙方另行商定，否則根據本協定充公的犯罪得益或犯罪工具須由被要求方保留。

## 第二十五條 自動提供的資料

當一方認為向另一方透露有關犯罪得益或犯罪工具的資料可能會有助對方進行調查或訴訟或可能會引發對方根據本協議提出要求，則在不妨礙其本身的調查或訴訟的情況下，可在對方未作出要求前先把上述資料交予對方。

## ARTICLE 24 CONFISCATION

1. Where a request is made for assistance in securing the confiscation of proceeds or instrumentalities of crime such assistance shall be given by whatever means as appropriate. 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 of crime to which the request relates.
2. Proceeds or instrumentalities of crime confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

## ARTICLE 25 SPONTANEOUS INFORMATION

Without prejudice to its own investigations or proceedings a Party may, without prior request, forward to the other Party information on proceeds or instrumentalities of crime when it considers that the disclosure of such information might assist the receiving Party in carrying out investigations or proceedings or might lead to a request by that Party under this Agreement.



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## 第五章——程序

### 第二十六條 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官員。瑞士的中心機關為設於伯爾尼的聯邦司法和警察部轄下的聯邦司法辦公室。(2002 年第 23 號第 126 條)
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。
4. 雙方的中心機關須與對方直接通訊。
5. 中心機關亦可透過國際刑警組織轉遞要求。

### 第二十七條 要求的內容

1. 司法協助要求須以書面提出，並須包括以下內容：
  - (a) 要求方代其提出要求的機關的名稱；

## CHAPTER V—PROCEDURE

### ARTICLE 26 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 Switzerland shall be the Federal Office of Justice of the Federal Department of Justice and Police in Bern. (23 of 2002 s. 126)
3. Requests under this Agreement shall only be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
4. The Central Authorities of the Parties shall communicate directly with each other.
5. The Central Authority may also transmit requests through Interpol.

### ARTICLE 27 CONTENTS OF REQUESTS

1. Requests for assistance shall be in writing and include:
  - (a) the name of the authority on behalf of which the request is made;

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- (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；
- (d) 除非提出的要求是屬第十七條所述的送達文件要求，否則須包括引致要求方開展調查或提出訴訟的有關事實的撮要(包括犯罪的日期、地點及有關情況)；
- (e) 法例條文文本，如不可能提供的話，則須說明適用的有關法例；
- (f) 如可能的話，提供就提出要求之日作為調查或訴訟對象的人的全名、出生地點及日期、國籍及地址；
- (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。

2. 此外，協助要求須包括：

- (a) 如須送達文件，收件人的姓名及地址；
- (b) 如屬要求錄取證供或其他供詞，則須提供該人須接受的聆訊的主題，如需要的話，亦須包括須提出的問題的清單；
- (c) 如屬要求移交被扣留的人，須包括該人的身分及在移交期間對該人的扣留負責的人的說明、該人將被送往的地方以及移交期的最長時限。

3. 在不抵觸本協定第十六條的情況下，被要求方不得着要求方在提出要求時一併附上證據。

- (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;
- (d) a summary of the relevant facts (date, place and circumstances in which the offence was committed) giving rise to the investigation or proceedings in the Requesting Party, unless the request is one for service within the meaning of Article 17;
- (e) the text of the statutory provisions or where this is not possible a statement of the relevant law applicable;
- (f) where possible, the complete name, place and date of birth, nationality and address of the person who is the subject of the investigation or proceedings as of the date the request is made;
- (g) any requirements for confidentiality;
- (h) details of any particular procedure the Requesting Party wishes to be followed;
- (i) details of the period within which the request should be complied with.

2. In addition, requests for assistance shall include:

- (a) in the case of service of documents, the name and address of the person to be served;
- (b) in the case of a request for the taking of testimony or other statements, the subject matter regarding which the person is to be heard, including, if necessary, a list of questions to be asked;



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## 第二十八條 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. 遇緊急情況下，被要求方的中心機關須在收到所有文件前便致力就要求開展行動。
3. 倘若要求不符合本協定的規定，被要求方的中心機關須立即通知要求方的中心機關，以便能把要求妥為更改。
4. 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。
5. 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。
6. 執行要求後，主管機關須把要求的正本及所收集的資料和證據交予被要求方的中心機關。中心機關須負責確保要求已完全及正確地執行，並須把結果告知要求方的中心機關。

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- (c) in the case of a request for the transfer of a person in custody, the person's identity and a description of the persons responsible for his or her custody during the transfer, of the place to which he or she will be transferred and the maximum length of the period of the transfer.
3. Subject to Article 16 of this Agreement, the Requested Party shall not ask that the request be accompanied by evidence.

## ARTICLE 28 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. In cases of urgency, the Central Authority of the Requested Party shall use its best endeavours to commence action on a request in advance of receipt of all the documentation.
3. If the request does not conform with the provisions of this Agreement, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party without delay with a view to having the request appropriately amended.
4. 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.
5. 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.

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第二十九條  
保密

在符合當地法律規定的條件下，除非獲得要求方授權透露情況，否則被要求方須將要求及其內容保密。

第三十條  
通知拒絕協助要求的責任

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。

第三十一條  
手續要求

1. 文件、抄件、紀錄、供詞，以及其他物件或物品免受任何公證規定的管限。

ARTICLE 29  
**CONFIDENTIALITY**

Subject to the provisions of its domestic law the Requested Party shall keep the request and the information contained therein confidential except when otherwise authorized by the Requesting Party.

ARTICLE 30  
**OBLIGATION TO INFORM IN CASES OF REFUSAL**

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.

ARTICLE 31  
**FORMALITY REQUIREMENTS**

1. Documents, transcripts, records, statements, as well as other material or objects shall be exempted from any legalization requirement.

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2. 轉送往要求方的文件、抄件、紀錄、供詞，以及其他物件或物品，只有在要求方提出要求時，才須予以證明。就上述目的而言，由被要求方的中心機關提供證明即已足夠。
3. 文件、抄件、紀錄、供詞，以及其他物件或物品可豁免由領事人員或外交人員證明或認證。

### 第三十二條 語文

要求方為支持要求而提交的所有文件，必須附有被要求方所用官方語文的譯本，所用語文按每個個案由被要求方指定。

### 第三十三條 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) 應要求方的要求而聘請的律師的費用；
  - (b) 聘請專家的費用；

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2. Documents, transcripts, records, statements as well as other material or objects which are to be transmitted to the Requesting Party shall only be certified if the Requesting Party so requests. For that purpose certification by the Central Authority of the Requested Party shall be sufficient.
3. Documents, transcripts, records, statements as well as other material or objects shall not be required to be certified or authenticated by consular or diplomatic officers.

### ARTICLE 32 LANGUAGE

All documents submitted in support of a request shall be accompanied by a translation into an official language of the Requested Party to be specified by the Requested Party in each case.

### ARTICLE 33 REPRESENTATION AND EXPENSES

1. The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding 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:

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- (c) 翻譯及傳譯的費用；及
- (d) 涉及執行要求的人的交通費用及津貼。

3. 在執行要求期間，如察覺須作非一般性開支，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。

## 第六章——其他協助

### 第三十四條 警方合作

當毋須進行強制性措施時，可由締約雙方各自的警方或其他執法部門提供協助。有關該等協助的通訊一般可通過國際刑警組織進行。

### 第三十五條 其他協助的根據

締約雙方可按照其他協定或安排提供協助，或根據與本協定宗旨一致的當地法律提供協助。

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- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;
- (c) expenses of translation and interpretation; and
- (d) travel expenses and allowances of persons involved in the execution of a request.

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.

## CHAPTER VI—OTHER ASSISTANCE

### ARTICLE 34 POLICE COOPERATION

When compulsory measures are not required assistance may be provided between the respective police or other law enforcement agencies of the Parties. Communications in relation to such assistance shall normally be through Interpol.

### ARTICLE 35 OTHER BASES FOR ASSISTANCE

The Parties may provide assistance pursuant to other agreements or arrangements as well as assistance consistent with the objects of this Agreement which can be otherwise provided for under domestic law.

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## 第七章——最後條款

### 第三十六條 磋商

締約雙方的中心機關如認為有用，可以口頭或書面方式，就適用或執行本協定的一般情況或個案交換意見。

### 第三十七條 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。

### 第三十八條 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。

## CHAPTER VII—FINAL PROVISIONS

### ARTICLE 36 CONSULTATIONS

If they think it useful, the Central Authorities shall exchange views, orally or in writing, on the application or implementation of this Agreement, in general terms or in a particular case.

### ARTICLE 37 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 38 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.

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2. 締約一方可於任何時候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該通知後失效。但在終止協定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。

本協定於一九九九年三月十五日在香港特別行政區簽訂，一式兩份，每份均用中文、德文及英文寫成，三種文本均同等作準。

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2. 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 threat 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.

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 this fifteenth day of March One Thousand Nine Hundred and Ninety Nine in duplicate, in Chinese, German and English, each text being equally authentic.

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附表 2

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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→\*\*——\* (2003 年第 14 號第 24 條)

(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 30 天屆滿後他\*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 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).