

《刑事事宜相互法律協助(德國)令》  
(第 525 章, 附屬法例 U)

**Mutual Legal Assistance in Criminal Matters (Germany) Order**  
(Cap. 525 sub. leg. U)

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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	16.1.2020
附表 1 Schedule 1	S1-1—S1-32	16.1.2020
附表 2 Schedule 2	S2-1—S2-4	16.1.2020

**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 2007 年第 15 號法律公告 —— 2020 年第 1 號編輯修訂紀錄

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**Enactment History**

Originally L.N. 15 of 2007 — E.R. 1 of 2020

## 《刑事事宜相互法律協助(德國)令》

Mutual Legal Assistance in Criminal Matters  
(Germany) Order

## (第 525 章, 附屬法例 U)

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

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## 《刑事事宜相互法律協助(德國)令》

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

(第 525 章第 4 條)

(Cap. 525, section 4)

(略去制定語式條文——2020 年第 1 號編輯修訂紀錄)

(*Enacting provision omitted—E.R. 1 of 2020*)

[2009 年 4 月 11 日] 2009 年第 62 號法律公告

[11 April 2009] *L.N. 62 of 2009*

(格式變更——2020 年第 1 號編輯修訂紀錄)

(*Format changes—E.R. 1 of 2020*)

1. (已失時效而略去——2020 年第 1 號編輯修訂紀錄)

1. (*Omitted as spent—E.R. 1 of 2020*)

2. 條例在香港與德國之間適用

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

現就副本附錄於附表 1 的相互法律協助的安排，指示本條例在指明於附表 2 的變通的規限下，在香港與德意志聯邦共和國之間適用。

In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance shall, subject to the modifications specified in Schedule 2, apply as between Hong Kong and the Federal Republic of Germany.

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## 附表 1

[ 第 2 條 ]

## Schedule 1

[s. 2]

### 《中華人民共和國香港特別行政區政府與德意志聯邦共和國政府關於刑事事宜相互法律協助的協定》#

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

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，與德意志聯邦共和國政府；

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 the Federal Republic of Germany;

為加強締約雙方在偵查、檢控及防止罪案及沒收犯罪得益方面的執法效能；

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;

協議如下：

Have agreed as follows:

註：# 《中華人民共和國香港特別行政區政府與德意志聯邦共和國政府關於刑事事宜相互法律協助的協定》以中文、英文及德文簽訂，各文本均具同等真確性。特區政府保安局備有該協定的德文文本供參閱。

Note: # The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Federal Republic of Germany concerning Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and German languages, each text being equally authentic. The German text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

第一條

Article 1

提供法律協助的範圍

Scope of Legal Assistance

- (1) 締約雙方須按照本協定的條文，就刑事罪行的偵查和檢控以及刑事事宜的法律程序提供相互法律協助。
- (2) 就第(1)款而言，“相互法律協助”須為在刑事事宜上的任何協助，不論協助是由法庭還是其他機關要求或提供的。
- (3) 提供的協助，包括：
  1. 向有關的人取證及取得陳述；
  2. 提供資料、文件及其他紀錄，包括司法及官方紀錄的摘錄；
  3. 追尋有關的人及物件，包括辨認該等人或物件；
  4. 搜查及檢取；
  5. 追查、限制、充公及沒收犯罪活動得益和犯罪工具；
  6. 交付財產，包括借出證物；
  7. 安排被拘留的人及其他人作證或協助偵查；
  8. 送達文件，包括要求有關的人出席的文件；及
  9. 既符合本協定的目的，亦不抵觸被請求方的法律的其他協助。
- (4) 本協定所指的協助，包括關乎稅務罪行的協助。
- (5) 本協定純為締約雙方提供相互協助而設。協定的條文並不給予任何私人取得、隱藏或排除任何證據或阻礙執行請求的權利。

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual legal assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Mutual legal assistance, for the purpose of paragraph (1), shall be any assistance in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.
- (3) Assistance shall include:
  1. taking of evidence and obtaining of statements of persons;
  2. provision of information, documents and other records, including extracts from judicial and official records;
  3. location of persons and objects, including their identification;
  4. search and seizure;
  5. tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
  6. delivery of property, including lending of exhibits;
  7. making detained persons and others available to give evidence or assist investigations;
  8. service of documents, including documents seeking the attendance of persons; and
  9. other assistance consistent with the objects of this Agreement, which is not inconsistent with the law of the Requested Party.
- (4) Assistance under this Agreement shall include assistance in relation to taxation offences.

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## 第二條

### 通訊途徑

根據本協定提出的請求及對請求作出的回應，須通過中華人民共和國香港特別行政區律政司及德意志聯邦共和國聯邦司法部傳送。該等請求可由法庭、檢控人員及負責刑事事宜的偵查或法律程序的機關提出，或由他人代法庭、檢控人員或該等機關提出。

## 第三條

### 其他法律協助

締約雙方可按照其他協定、安排或慣例提供法律協助。

## 第四條

### 拒絕或暫緩提供協助

## Article 2

### Channels of Communication

(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.

Requests under this Agreement and responses thereto shall be transmitted through the Department of Justice of the Hong Kong Special Administrative Region of the People's Republic of China and the Federal Ministry of Justice of the Federal Republic of Germany. Such requests may be made by or on behalf of courts, prosecutors and authorities responsible for investigations or proceedings related to criminal matters.

## Article 3

### Other Legal Assistance

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

## Article 4

### Refusal or Postponement of Assistance

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(1) 如有以下情況，而被請求方的法律有所規定，則被請求方須拒絕提供協助：

1. 執行協助請求，就香港特別行政區政府而言，會損害中華人民共和國的主權、安全或公共秩序，或就德意志聯邦共和國而言，會損害德意志聯邦共和國的主權、安全或公共秩序；
2. 被請求方認為應允請求將會嚴重損害其本身的基要利益；
3. 協助請求關乎屬政治性質的罪行；
4. 協助請求關乎只在軍法下才構成的罪行；
5. 有充分理由相信協助請求將會引致某人因其種族、宗教、國籍、性別、族裔或政治見解而蒙受不利；
6. 協助請求關乎對某人進行的檢控，而該人已因同一罪行在被請求方的司法管轄區被定罪、裁定無罪或赦免；
7. 提出請求的主要目的是評估或徵收稅項；
8. 被指稱構成罪行的作為或不作為，如在被請求方的司法管轄區發生，並不構成罪行。

(2) 如有關請求關乎在請求方的司法管轄區屬可判處死刑的罪行，被請求方須拒絕提供協助；而在就任何該等罪行進行的法律程序中，請求方不得使用向其提供的證據或資料。

(3) 如請求方不能遵守任何有關保密或限制使用獲提供的物料的條件，被請求方可拒絕提供協助。

(4) 如執行請求會損害正在被請求方的司法管轄區進行的偵查或法律程序，被請求方可暫緩提供協助。

(5) 在根據本條拒絕或暫緩提供協助前，被請求方——

1. 須迅速將考慮拒絕或暫緩提供協助的理由知會請求方；及
2. 須與請求方磋商，以決定可否在被請求方認為必需的條款和條件的規限下提供協助。

(1) The Requested Party shall, if required by its law, refuse assistance if:

1. the execution of the request for assistance would, in the case of the Government of the Hong Kong Special Administrative Region, impair the sovereignty, security or public order of the People's Republic of China or, in the case of the Government of the Federal Republic of Germany, impair the sovereignty, security or public order of the Federal Republic of Germany;
2. it is of the opinion that the granting of the request would seriously impair its essential interests;
3. the request for assistance relates to an offence of a political character;
4. the request for assistance relates to an offence only under military law;
5. 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, sex, ethnic origin or political opinions;
6. 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 jurisdiction of the Requested Party;
7. the main purpose of the request is the assessment or collection of tax;
8. 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 shall refuse assistance if the request relates to an offence which carries the death penalty in the jurisdiction of the Requesting Party and the Requesting Party shall not use evidence or information provided to it in proceedings for any such offence.



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(6) 如被請求方在第(5)款第2項所述條款及條件的規限下提供協助，請求方須遵守該等條款及條件。

(3) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.

(4) The Requested Party may postpone assistance if execution of the request would impair ongoing investigations or proceedings in the jurisdiction of the Requested Party.

(5) Before denying or postponing assistance pursuant to this Article, the Requested Party

1. shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
2. 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.

(6) If the Requested Party provides assistance subject to certain terms and conditions referred to in paragraph (5) number 2, the Requesting Party shall comply with those terms and conditions.

## 第五條

## Article 5

### 協助請求

### Requests for Assistance

- (1) 協助請求須以書面提出。
- (2) 協助請求須包括：
  1. 請求所關乎的刑事事宜所涉及的機關的名稱；
  2. 對該項請求的目的及所需協助性質的描述；
  3. 對刑事事宜的性質的描述，及有關事實和法律的撮要；
  4. 有關保密的任何要求；
  5. 請求方希望得以遵循的任何特別程序的細節；
  6. 請求方希望請求得以履行的時限的細節；

- (1) Requests for assistance shall be made in writing.
- (2) Requests for assistance shall include:
  1. the name of the authority concerned with the criminal matter to which the request relates;
  2. a description of the purpose of the request and the nature of the assistance requested;
  3. a description of the nature of the criminal matter and a summary of the relevant facts and laws;
  4. any requirements for confidentiality;

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7. (如可能的話)有關的偵查的目標人物或有關的刑事法律程序的當事人的身分和所在處；及
8. 任何有助於執行該項請求的其他資料。
- (3) 此外，協助請求須包括：
1. 就送達文件的請求而言，被送達文件的人的姓名及地址；
  2. 就交付藉搜查及檢取或將會藉搜查及檢取而取得的財產的請求而言：
    - a) 由請求方某主管機關作出的聲明，表示假使該財產位於請求方的司法管轄區，則可藉強制措施而取得；或
    - b) 由請求方的法庭發出的授權檢取該財產的命令；
  3. 就向有關的人的取證的請求而言，說明擬向該人訊問的事，如可能的話，包括列明各條問題，及該人根據請求方的法律可拒絕作證的任何權利的細節。
- (4) 有關的請求及(在被請求方的要求下)為支持請求而呈交的所有文件，須翻譯為被請求方的法定語文。

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5. details of any particular procedure the Requesting Party wishes to be followed;
  6. details of any period within which the Requesting Party wishes the request to be complied with;
  7. where possible, the identity and location of the person who is the subject of the investigation or criminal proceedings; and
  8. any other information which is required to facilitate execution of the request.
- (3) In addition, requests for assistance shall include:
1. in the case of requests for service of documents, the name and address of the person to be served;
  2. in the case of requests for delivery of property obtained, or to be obtained, by search and seizure:
    - a) a declaration by a competent authority of the Requesting Party that seizure of the property could be obtained by compulsory measures if it were situated in the jurisdiction of the Requesting Party; or
    - b) an order by a court in the Requesting Party authorising seizure of the property;
  3. in the case of requests to take evidence from a person, the subject matter on which the person is to be examined, including, where possible, a list of questions and details of any right of that person to decline to give evidence under the law of the Requesting Party.
- (4) The request and, if so required by the Requested Party, all documents submitted in support of the request shall be translated into an official language of the Requested Party.

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## 第六條

### 執行請求

- (1) 被請求方須迅速執行請求，或安排通過其主管機關執行請求。
- (2) 請求須按照被請求方的法律予以執行，並須在根據被請求方的法律屬可能的範圍內，按照請求所述的指示來執行。
- (3) 被請求方須迅速將任何可能導致嚴重延遲回應請求的情況知會請求方。
- (4) 被請求方須迅速將全部或部分不履行協助請求的決定及作出該決定的理由知會請求方。
- (5) 除非請求方另有授權，否則被請求方須盡其所能將請求及其內容保密。

## 第七條

### 開支

- (1) 被請求方須支付執行協助請求的費用，但請求方須承擔：
  1. 應請求方要求而將任何人送往或送離被請求方的地方的有關開支，及須向該人支付的與執行請求相關的任何津貼或開支；
  2. 在被請求方或請求方的地方的專家的開支和費用；

## Article 6

### Execution of Requests

- (1) 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 possible under the law of the Requested Party, in accordance with the directions stated in the request.
- (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) The Requested Party shall use its best efforts to keep confidential a request and its contents except when authorised otherwise by the Requesting Party.

## Article 7

### Expenses

- (1) The Requested Party shall meet the cost of executing the request for assistance, except that the Requesting Party shall bear:
  1. the expenses associated with conveying any person to or from the area of the Requested Party at the request of the Requesting Party, and any allowances or expenses payable to that person in connection with the execution of the request;

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3. 應請求方要求而聘請的律師的費用；及
4. 應請求方要求而進行的翻譯開支。

(2) 在執行請求期間，如察覺需支付屬特殊性質的開支(包括管理財產的費用)，以履行請求，締約雙方須進行磋商，以決定繼續執行請求的條款及條件。

2. the expenses and fees of experts in the area of either the Requested Party or the Requesting Party;
3. fees of counsel retained at the request of the Requesting Party; and
4. expenses of translation carried out at the request of the Requesting Party.

(2) If during the execution of the request it becomes apparent that exceptional expenses, including the costs of managing property, 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 8

#### 使用限制

#### Limitations on Use

- (1) 被請求方在與請求方磋商後，可要求將所提供的資料或證據(包括文件、物品或紀錄)保密，或只限在被請求方所指明的條款及條件的規限下方可透露或使用該等資料或證據。
- (2) 未經被請求方事先同意，請求方不得透露或使用獲提供的資料或證據(包括文件、物品或紀錄)作請求所述以外的用途。

- (1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished, including documents, articles or records, 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, including documents, articles or records, for purposes other than those stated in the request without the prior consent of the Requested Party.

### 第九條

### Article 9

#### 個人資料

#### Personal Data

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(1) 在本條中，“個人資料”指關於某身分經確認或身分可確認的自然人的任何資料。

(2) 基於本協定而傳送的個人資料，須為傳送該等資料的目的而使用，並須受傳送該等資料的一方所決定的條件所規限。此外，該等資料可由接收的一方為預防對其安全造成重大危險的目的而使用。如為其他目的而使用該等資料，則須得到傳送該等資料的一方事先同意。

(3) 在締約雙方各自的法律的規限下，以下條文適用於傳送和使用為根據本協定提出的協助請求而傳送的個人資料——

1. 只傳送與請求有關的資料；
2. 接收該等資料的一方須應請求而確認所接獲的資料及將使用該等資料的情況以及從中達成的結果，知會傳送該等資料的一方；
3. 如傳送資料的一方覺得曾將不正確的資料傳送，或曾將不應傳送的資料傳送，則該方須通知已接收該等資料的一方，不得延擱，而已接收該等資料的一方須更正任何錯誤或將該等資料銷毀，不得延擱；
4. 締約雙方須就資料的傳送及接收以可隨時檢索的形式備存紀錄；
5. 締約雙方須保護個人資料，以防止未經授權的查閱、未經授權的更改及未經授權的發表。

## 第十條

取得證據、文件、物品或紀錄

(1) In this Article “personal data” means any information about an identified or identifiable natural person.

(2) Personal data transmitted on the basis of this Agreement shall be used for the purposes for which the data were transmitted and subject to such conditions as the transmitting Party determines. In addition such data may be used by the Party which has received it for the purpose of warding off substantial dangers to its security. Use of the data for other purposes requires the prior consent of the Party transmitting the data.

(3) Subject to the respective law of each Party, the following provisions shall apply to the transmission and use of personal data transmitted for the purpose of a request for assistance under this Agreement—

1. only data that relates to the request shall be transmitted;
2. upon request, the Party which has received the data shall identify the data received, and inform the transmitting Party of the use made of the data and the results achieved therefrom;
3. if it appears to the transmitting Party that incorrect data have been transmitted or that data have been transmitted that should not have been, the transmitting Party shall notify without delay the Party that has received the data; the Party that has received the data shall without delay rectify any errors or destroy the data;
4. the Parties shall keep records in a readily retrievable form concerning the transmission and receipt of data;
5. the Parties shall protect personal data against unauthorised access, unauthorised alteration and unauthorised publication.

## Article 10

Obtaining of Evidence, Documents, Articles or Records

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- (1) 如請求方提出請求，被請求方須安排向證人取證，並於取證後向請求方提供書面紀錄，其中包括由證人按照被請求方的法律交出的文件、物品或紀錄。
- (2) 如請求方提出請求，被請求方須將執行協助請求的時間和地點知會請求方。
- (3) 在被請求方的法律的規限下，請求方的法官或官員及其他與有關的偵查或法律程序相關的人，可獲准在執行請求時在場，或可獲准出席或由律師代表出席在被請求方的司法管轄區進行的法律程序，以及向在該法律程序中作證的人提出問題。
- (4) 根據協助請求而需在被請求方的司法管轄區作證的人，在締約任何一方的法律容許該人拒絕作證的情況下，可拒絕作證。
- (5) 如任何人聲稱有權根據請求方的法律拒絕作證，被請求方須就有關問題取得請求方的證明書。

### 第十一條

#### 送達文件

- (1) 請求方交付送達的文件，被請求方須予以送達。
- (2) 如請求將傳票送達予某被控人，則除非有特殊情況，否則被請求方只在預定的被控人出席日期的最少一個月之前接獲該請求的情況下，始須執行請求。如被送達人並非被控人，則送達請求須於合理時間內交付被請求方。

- (1) The Requested Party shall, upon request, arrange for evidence to be taken from a witness and, following the taking of the evidence, shall make available to the Requesting Party a written record including any documents, articles or records produced by the witness in accordance with the law of the Requested Party.
- (2) The Requested Party shall, upon request, inform the Requesting Party of the time and place of execution of the request for assistance.
- (3) Subject to the law of the Requested Party, judges or officials of the Requesting Party and other persons concerned in the investigation or proceedings may be permitted to be present at the execution of the request, to appear or be legally represented in the proceedings in the jurisdiction of the Requested Party and to question the person giving evidence at such proceedings.
- (4) A person who is required to give evidence in the jurisdiction of the Requested Party pursuant to a request for assistance may decline to do so where the law of either of the Parties permits the witness to decline to give evidence.
- (5) If any person claims that he has a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto obtain a certificate from the Requesting Party.

### Article 11

#### Service of Documents

- (1) The Requested Party shall effect the service of documents transmitted to it by the Requesting Party for this purpose.
- (2) A request for service of a summons on an accused person shall, unless there are exceptional circumstances, be executed only if it is received by the Requested Party at least one month before the date fixed for the person's appearance. Where the person to be served is not an

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(3) 被請求方須在其法律的規限下，按請求方要求的形式，交回送達證明。

(4) 如被送達人未有遵守送達給他的法律程序文件的規定，請求方或被請求方不得根據本身的法律而處罰該被送達人或向其施加強制措施。

## 第十二條

### 官方文件

被請求方在回應請求時，可在其法律的規限下，向請求方提供不供公眾取閱的官方文件的副本。

## 第十三條

### 核證和認證

除非請求方另有要求，否則根據本協定傳送的證據或文件無須經任何形式的認證。有關的物料只有在請求方的法律有特別規定的情況下，才會由領館或使館核證或認證。

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accused person, the request for service shall be sent to the Requested Party within a reasonable time.

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

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

## Article 12

### Official Documents

In response to a request the Requested Party may, subject to its law, provide the Requesting Party with copies of official documents which are not publicly available.

## Article 13

### Certification and Authentication

Unless otherwise requested, evidence or documents transmitted pursuant to this Agreement shall not require any form of authentication. Material shall be certified or authenticated by consular posts or diplomatic missions only if the law of the Requesting Party specifically so requires.

#### 第十四條

#### Article 14

##### 安排被拘留的人在偵查或刑事法律程序中提供協助

##### Making Detained Persons Available to Assist in Investigations or Criminal Proceedings

- (1) 請求方如請求把羈押在被請求方的司法管轄區的人暫時移交到請求方的司法管轄區，以在偵查或刑事法律程序中提供協助，而該人同意移交，且沒有具壓倒性的理由反對將該人移交，則須暫時移交該人。
- (2) 如被移交的人根據被請求方的法律須予羈押，請求方須將該人羈押，並於有關的偵查或刑事法律程序完結時或被請求方所指定的較早時間，將該名被羈押的人交還。
- (3) 凡判處的刑期已屆滿，或被請求方通知請求方已無須羈押該名被移交的人，則該人須獲得釋放，並須被視為根據第十五條提出的請求而身處請求方的司法管轄區的人。

- (1) A person in custody in the jurisdiction of the Requested Party shall, at the request of the Requesting Party, be temporarily transferred to the jurisdiction of the Requesting Party to assist in investigations or criminal proceedings provided that the person consents to that transfer and there are no overriding grounds against transferring the person.
- (2) While 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 either at the conclusion of the investigations or criminal proceedings, or at such earlier time stipulated by the Requested Party.
- (3) Where the sentence imposed expires, or where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the jurisdiction of the Requesting Party pursuant to a request under Article 15.

#### 第十五條

#### Article 15

##### 其他人的出席

##### Appearance of Other Persons

- (1) 請求方可請求被請求方協助邀請某人在請求方的司法管轄區出席，以在偵查或刑事法律程序中提供協助。
- (2) 被請求方須將該人的回應知會請求方。

- (1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the jurisdiction of the Requesting Party to assist in investigations or criminal proceedings.
- (2) The Requested Party shall inform the Requesting Party of that person's response.



第十六條

Article 16

安全通行

Safe Conduct

- (1) 任何人如因應要求他出席的請求而身處請求方的司法管轄區，則不得因他在離開被請求方的司法管轄區之前的作為、不作為或定罪而在請求方的司法管轄區被檢控或拘留或被施加人身自由上的其他限制。
- (2) 任何人如被傳召到請求方的司法機關席前，就針對他的法律程序之標的之作為進行答辯，則不得因他在離開被請求方的司法管轄區之前的沒有在傳票中指明的作為、不作為或定罪，而被檢控或拘留或被施加人身自由上的其他限制。
- (3) 如有關的人已接獲請求方通知無須再逗留，且在該通知的日期起計連續 15 天內本有離開的機會，但仍留在請求方的司法管轄區，或離開請求方的司法管轄區後返回，第(1)及(2)款所訂的豁免即終止。
- (4) 同意根據第十四或十五條作證的人，不得因其所作證供而遭受檢控。
- (5) 任何人如因應要求他出席的請求而身處請求方的司法管轄區，則除與該項請求有關的偵查或刑事法律程序外，無須在其他偵查或法律程序中提供協助。
- (6) 任何人如不回應要求他出席的請求，則即使該請求載有一項刑罰通知，亦不得因此而遭受懲罰或被施加限制措施。

- (1) A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the jurisdiction of that Party in respect of acts, omissions or convictions prior to his departure from the jurisdiction of the Requested Party.
- (2) A person summoned before the judicial authorities of the Requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts, omissions or convictions prior to his departure from the jurisdiction of the Requested Party and not specified in the summons.
- (3) The immunities provided for in paragraphs (1) and (2) shall cease when the person, having been notified by the Requesting Party that his presence is no longer required and having had, for a period of 15 consecutive days from the date of notification, an opportunity to leave has nevertheless remained in the jurisdiction of the Requesting Party or having left the jurisdiction of the Requesting Party has returned.
- (4) A person who consents to give evidence under Articles 14 or 15 shall not be subject to prosecution based on his testimony.
- (5) A person present in the jurisdiction of the Requesting Party in response to a request seeking that person's attendance shall not be obliged to provide assistance in any investigations or criminal proceedings other than those to which the request relates.

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### 第十七條

#### 搜查及檢取

- (1) 請求方如請求搜查、檢取及交付在偵查、檢控或刑事法律程序中作為相關證據的財產及文件，被請求方在本身法律容許的範圍內，須執行該請求。
- (2) 根據第(1)款請求交付的財產及文件，須按被請求方認為適當的條款及條件交付。此外，被取去有關財產的人可獲交還該財產。
- (3) 交付根據第(1)款請求交付的財產，不得影響第三方的權利。請求方須遵循被請求方就交付予請求方的檢獲財產所施加的任何條件。
- (4) 如請求方要求提供與搜查的結果、檢取的地點、情況以及檢獲財產的保管有關的資料，被請求方須予提供。

### 第十八條

#### 犯罪得益

- (1) 如請求方提出請求，被請求方須盡力查明是否有任何因觸犯請求方法律而得來的犯罪得益處於其司法管轄區，並須把調查結果通

### Article 17

#### Search and Seizure

- (6) A person who does not respond to a request seeking that person's attendance shall not, even if the request contains a notice of penalty, be subjected to any punishment or measure of constraint.

- (1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of property and documents to the Requesting Party which are relevant to an investigation, prosecution or criminal proceeding as evidence.
- (2) The delivery of property and documents requested under paragraph (1) shall be made upon such terms and conditions as the Requested Party sees fit. In addition, property may be returned to the person who was deprived of it.
- (3) The delivery of property requested under paragraph (1) shall not affect the rights of third parties. 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.
- (4) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

### Article 18

#### Proceeds of Crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party

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知請求方。請求方在提出請求時，須把相信這些得益可能處於被請求方的司法管轄區的理由通知被請求方。

(2) 被請求方如根據第(1)款尋獲涉嫌犯罪得益，則須採取其法律容許的措施，防止任何人處理、轉讓或處置這些涉嫌犯罪得益，以待請求方的法院就這些得益作出最後裁定。

(3) 有關協助沒收得益的請求，須根據被請求方的法律執行。協助的方法可包括強制執行在請求方的司法管轄區的法院所作出的命令。

(4) 除非締約雙方另有協議，否則根據本協定沒收的得益須由被請求方保留。

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 under 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) Where a request is made for assistance in securing the confiscation of proceeds such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the jurisdiction of the Requesting Party.

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

## 第十九條

## Article 19

### 解決爭議

### Settlement of Disputes

任何因本協定的解釋、適用或履行而產生的爭議，如締約雙方無法自行達成協議，須通過外交途徑解決。

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

## 第二十條

## Article 20

### 生效、中止及終止

### Entry into Force, Suspension and Termination

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附表 1

- (1) 本協定將於締約雙方通知對方已各自履行為使本協定生效的規定的日期起計 30 天後開始生效。較後發出的通知的接獲日期具決定性。締約雙方須自簽訂本協定的日期起按照各自的法律暫時應用本協定。
- (2) 本協定並無設定終止日期。締約一方可隨時通知締約另一方中止或終止本協定。在接獲有關的中止通知時，本協定即告中止。就終止而言，在接獲終止通知起計六個月後，本協定即告失效。

本協定于二零零六年五月二十六日在香港簽訂，原文一式兩份，每份均用中文、英文及德文寫成。各文本均具同等效力。

(編輯修訂——2020 年第 1 號編輯修訂紀錄)

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- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds 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 may be located in its jurisdiction.
- (2) This Agreement shall be of unlimited duration. Each of the Parties may suspend or terminate this Agreement at any time by giving notification to the other. Suspension shall take effect on receipt of the relevant notification. In the event of termination the Agreement shall cease to have effect six months after receipt of the relevant notification.

Done at Hong Kong, this 26th day of May 2006 in two originals in the Chinese, English and German languages, each text 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) 條須予變通至如下所示 ——  
“(e) 該項請求關乎因外地罪行而對某人進行的檢控，而 ——\*  
(i)\* 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  
(ii)\* 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，\* 已 \*\* 接受該地方或香港的 \* 法律所規定的懲罰；”。
2. 本條例第 17(1) 條須予變通，刪去第 (ii) 段。
3. 本條例第 17(3)(b) 條須予變通至如下所示 ——  
“(b) 該人在 \*\* 有機會離開香港的情況下 \*\*，並接獲通知他已無須為下述任何目的逗留，但他在接獲通知的日期起計連續 15 天內 \* 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。”。
4. 本條例第 23(2)(a) 條須予變通 ——

## 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 in respect of that offence or of another external offence constituted by the same act or omission as that offence,\* 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(1) of the Ordinance shall be modified by deleting paragraph (ii).
3. 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 and has remained in Hong Kong for a period of 15 consecutive days from the date of being notified that his presence is no longer required for any of the following purposes\* otherwise than for\*\*—

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(a) 在第 (i) 節的末處加入“或”；

(b) 刪去第 (ii) 節。

\* 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)。

(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.”.

4. Section 23(2)(a) of the Ordinance shall be modified—

(a) by adding “or” at the end of subparagraph (i);

(b) by deleting subparagraph (ii).

\* 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).