

《刑事事宜相互法律協助(西班牙)令》
(第 525 章, 附屬法例 AE)

Mutual Legal Assistance in Criminal Matters (Spain) Order
(Cap. 525 sub. leg. AE)

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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	29.1.2015
附表 1 Schedule 1	S1-1—S1-38	20.7.2014
附表 2 Schedule 2	S2-1—S2-4	20.7.2014
附表 3 Schedule 3	S3-1—S3-2	12.11.2015

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 2014 年第 35 號法律公告——2014 年第 2 號編輯修訂紀錄，
2015 年第 1 號編輯修訂紀錄，2015 年第 3 號編輯修訂紀錄

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Enactment History

Originally L.N. 35 of 2014 — E.R. 2 of 2014, E.R. 1 of 2015, E.R. 3 of
2015

《刑事事宜相互法律協助(西班牙)令》

Mutual Legal Assistance in Criminal Matters (Spain)
Order

(第 525 章, 附屬法例 AE)

(Cap. 525 sub. leg. AE)

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《刑事事宜相互法律協助 (西班牙) 令》

Mutual Legal Assistance in Criminal Matters (Spain) Order

(第 525 章第 4 條)

(Cap. 525, section 4)

(略去制定語式條文 —— 2014 年第 2 號編輯修訂紀錄)

(*Enacting provision omitted—E.R. 2 of 2014*)

[2014 年 7 月 20 日] 2014 年第 101 號法律公告

[20 July 2014] *L.N. 101 of 2014*

1. (已失時效而略去 —— 2015 年第 1 號編輯修訂紀錄)
2. **本條例在香港與西班牙之間適用**
 - (1) 現就副本附錄於附表 1 的相互法律協助的安排，指示本條例在附表 2 指明的變通的規限下，在香港與西班牙之間適用。
 - (2) 第 (1) 款提述的變通撮錄於附表 3。

1. (*Omitted as spent—E.R. 1 of 2015*)
2. **Ordinance applies between Hong Kong and Spain**
 - (1) In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance, subject to the modifications specified in Schedule 2, applies as between Hong Kong and Spain.
 - (2) The modifications referred to in subsection (1) are summarized in Schedule 3.

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附表 1

Schedule 1

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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與西班牙關於刑事事宜相互法律協助的協定》#

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

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，與西班牙政府訂立本協定，

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (“Hong Kong Special Administrative Region”) having been duly authorised by the Central People's Government of the People's Republic of China to conclude this Agreement with the Government of Spain,

香港特別行政區與西班牙(以下稱為“締約雙方”)，

為加強締約雙方在偵查、檢控、防止罪案及沒收犯罪得益方面的執法效能，

The Hong Kong Special Administrative Region and Spain, hereinafter referred to as the Parties,

協議如下：

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

Have agreed as follows:

註：# 《中華人民共和國香港特別行政區與西班牙關於刑事事宜相互法律協助的協定》以中文、英文及西班牙文簽訂，各文本均具同等真確性。特區政府保安局備有該協定的西班牙文文本供參閱。

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

I. 一般條文

第一條

提供協助的範圍

- (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) 提供的協助包括：
 - (a) 辨認和追尋有關的人；
 - (b) 送達文件；
 - (c) 取得證據(包括文件、物品和紀錄)；
 - (d) 執行搜查和檢取的請求；
 - (e) 為有關的人出席提供協助而給予便利；
 - (f) 安排暫時移交被羈押的人以提供協助；
 - (g) 追查、限制、充公和沒收犯罪活動的得益和工具；
 - (h) 交付財產，包括復還財產及借出證物；

I. GENERAL PROVISIONS

ARTICLE 1

SCOPE OF ASSISTANCE

- (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) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of evidence including documents, articles and records;
 - (d) executing requests for search and seizure;
 - (e) facilitating the appearance of persons to provide assistance;
 - (f) effecting the temporary transfer of persons in custody to provide assistance;
 - (g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
 - (h) delivery of property, including the restitution of property and lending of exhibits;

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- (i) 交換關於在被請求方的刑事作為以及在該方提起的刑事法律程序的資料；及
- (j) 符合本協定的目的且不抵觸被請求方法律的其他協助。
- (3) 根據本協定可就觸犯與稅項、關稅，外匯管制或其他稅務事宜有關的法律的罪行提供協助。
- (4) 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、隱藏或排除證據或阻礙執行請求的權利。

- (i) exchange of information relating to criminal acts and institution of criminal proceedings in the Requested Party; and
- (j) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters.
- (4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of the 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.

第二條

中心機關

- (1) 締約雙方須各自指定一個中心機關，以負責按照本協定的條文處理關乎相互法律協助的請求。
- (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。西班牙的中心機關為司法部。
- (3) 締約任何一方均可更改其中心機關，但須將有關更改通知另一方。
- (4) 根據本協定提出的請求須由請求方的中心機關交付給被請求方的中心機關。中心機關之間可就本協定的事宜直接通訊。

ARTICLE 2

CENTRAL AUTHORITY

- (1) Each Party shall designate a Central Authority which shall be responsible for processing requests for mutual legal assistance in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. The Central Authority for Spain is the Ministry of Justice.
- (3) Either Party may change its Central Authority in which case it shall notify the other Party of the change.
- (4) Requests made under this Agreement shall be transmitted by the Central Authority of the Requesting Party to the Central Authority

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第三條

拒絕理由

- (1) 如有以下情況，被請求方須拒絕提供協助：
- (a) 協助請求，就香港特別行政區而言會損害中華人民共和國的主權、安全或公共秩序，或會損害西班牙的主權、安全或公共秩序；
 - (b) 協助請求關乎屬政治性質的罪行；
 - (c) 協助請求關乎在被請求方被認為是純粹屬軍事性質的罪行；
 - (d) 有充分理由相信協助請求的提出，是為了因某人的種族、宗教、國籍、族裔、政治見解或性別而對該人進行偵查或檢控；或有充份理由相信該項請求的提出，是為了使該人受到任何形式的歧視；
 - (e) 協助請求關乎就某罪行而對某人進行的檢控，而該人已因同一罪行在被請求方被定罪、裁定無罪或赦免，或假使該人是在被請求方的司法管轄區犯該罪行，由於時效消失，已不能因此而被檢控；
 - (f) 被請求方認為批准請求會嚴重損害其基要利益；或

ARTICLE 3

GROUNDS FOR REFUSAL

- (1) The Requested Party shall refuse assistance if:
- (a) the request for assistance impairs the sovereignty, security or public order of the People's Republic of China in the case of the Hong Kong Special Administrative Region, or, of Spain;
 - (b) the request for assistance relates to an offence of a political character;
 - (c) the request for assistance relates to an offence considered to be exclusively military in the Requested Party;
 - (d) there are substantial grounds to believe that the request for assistance has been made to investigate or prosecute a person for reasons of his race, religion, nationality, ethnic origin, political opinion or sex, or that the request is being made to subject that person to any form of discrimination;
 - (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party, or 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;
 - (f) it is of the opinion that the granting of the request would seriously impair its essential interests; or

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(g) 就涉及強制措施的請求而言，被指稱構成罪行的作為或不作為，假使在被請求方的司法管轄區發生，根據被請求方的法律，並不構成罪行。

(g) in the case of requests involving compulsory measures, the acts or omissions alleged to constitute the offence would not have constituted an offence under the law of the Requested Party if they had occurred within the jurisdiction of that Party.

(2) 就本條第(1)(b)款而言，“屬政治性質的罪行”並不包括恐怖活動罪行以及被請求方認為已被適用於該方的任何國際協定排除於該類別之外的任何其他罪行。

(2) For the purpose of paragraph (1)(b) of this Article, “an offence of a political character” does not include terrorist offences or any other offence which the Requested Party considers excluded from that category by any international agreement that applies to that Party.

(3) 如請求關乎在請求方屬可判死刑的罪行，但在被請求方並無就該罪行判死刑的規定，或通常不會就該罪行執行死刑，則除非請求方作出被請求方認為充分的保證，保證不會判處死刑或即使判處死刑也不會執行，否則被請求方亦須拒絕提供協助。

(3) The Requested Party shall also 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, will not be carried out.

(4) 如請求關乎根據請求方的法律屬可判處終身監禁或無確定期限監禁的罪行，則除非請求方作出被請求方認為充分的保證，保證不會判處該等刑罰或即使判處該等刑罰也不會執行，否則被請求方可拒絕提供協助。

(4) The Requested Party may refuse assistance if the request relates to an offence which is punishable according to the law of the Requesting Party with life imprisonment or carries a prison sentence of undetermined duration, unless the Requesting Party gives such assurance as the Requested Party considers sufficient that these penalties will not be imposed, or if imposed, will not be carried out.

(5) 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。

(5) 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.

(6) 如執行請求會妨礙正在被請求方進行的偵查或檢控，被請求方可暫緩提供協助。

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

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- (7) 在根據本條拒絕或暫緩提供協助前，被請求方須通過其中心機關——
- (a) 迅速將考慮拒絕或暫緩提供協助的理由知會請求方；及
 - (b) 與請求方磋商，以決定可否在被請求方認為必需的條款及條件的規限下提供協助。
- (8) 請求方如接納在第 (7)(b) 款所述條款及條件的規限下接受協助，則須遵守該等條款及條件。

- (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), it shall comply with those terms and conditions.

第四條

ARTICLE 4

請求的形式及語文

FORM AND LANGUAGE OF REQUESTS

- (1) 請求須以書面提出。在緊急情況下，請求可藉電傳、傳真、電子郵件或任何其他能作出書面紀錄的方法交付，但須在其後 10 天內以有關文件的正本確認。
- (2) 向香港特別行政區提出的協助請求以及任何支持文件，均須附有中文或英文譯本。向西班牙提出的協助請求以及任何支持文件，則須附有西班牙文譯本。

- (1) Requests shall be made in writing. In urgent cases requests may be transmitted by telex, fax, electronic mail or any other means capable of affording a written record, but shall be confirmed by the original documents within 10 days thereof.
- (2) Requests for assistance addressed to the Hong Kong Special Administrative Region and any supporting documents shall be accompanied by a translation into Chinese or English. Requests for assistance addressed to Spain and any supporting documents shall be accompanied by a translation into Spanish.

第五條

ARTICLE 5

請求的內容

CONTENT OF REQUESTS

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- (1) 協助請求須包括：
- (a) 透過請求方代為提出請求的機關的名稱；
 - (b) 對請求的目的及所需協助的性質的描述；
 - (c) 對有關偵查、檢控、罪行或刑事事宜的性質的描述，及說明是否已提起法律程序；
 - (d) (如已提起法律程序) 法律程序的細節；及
 - (e) 有關事實及法律的撮要。
- (2) 如有需要，協助請求可包括：
- (a) 有關保密的要求；
 - (b) 請求方希望得以遵循的任何特別程序的細節；
 - (c) 履行請求的時限的細節；及
 - (d) 有助於執行請求的任何其他資料。

第六條

執行請求

- (1) Requests for assistance shall include:
- (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the purpose of the request and the nature of the assistance requested;
 - (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
 - (d) where proceedings have been instituted, details of the proceedings; and
 - (e) a summary of the relevant facts and laws.
- (2) If necessary, requests for assistance may include:
- (a) any requirements for confidentiality;
 - (b) details of any particular procedure the Requesting Party wishes to be followed;
 - (c) details of the period within which the request should be complied with; and
 - (d) any other information which is required to facilitate execution of the request.

ARTICLE 6

EXECUTION OF REQUESTS

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附表 1

- (1) 被請求方的中心機關須迅速執行請求，或將請求交付給其主管機關執行。
- (2) 請求須按照被請求方的法律予以執行，並須在該方的法律所不禁止的範圍內，在可行的情況下按照請求所述的指示執行。
- (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) 被請求方須盡其所能將請求及其內容保密，但在為執行請求而有必要作出透露的範圍內者，則不在此限。

第七條

開支

- (1) 被請求方須承擔在其境內執行請求的所有一般性開支，但下述項目除外：
 - (a) 應請求方請求而聘請的律師的費用；
 - (b) 專家的費用；
 - (c) 翻譯開支；及
 - (d) 往來請求方與被請求方的人的交通開支及津貼。

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- (1) The Central Authority of the Requested Party shall promptly execute the request or transmit it to its competent authority for execution.
- (2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited thereby, in accordance with the directions stated in the request so far as practicable.
- (3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (4) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.
- (5) The Requested Party shall use its best efforts to keep confidential a request and its contents except to the extent necessary to execute it.

ARTICLE 7

EXPENSES

- (1) 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 who travel between the Requesting and Requested Parties.

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(2) 在執行請求期間，如察覺需支付非一般性開支，以履行有關請求，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) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

第八條

ARTICLE 8

保密

CONFIDENTIALITY

(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。

(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) 未經被請求方中心機關事先同意，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。

(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 Central Authority of the Requested Party.

II. 協助形式

II. FORMS OF ASSISTANCE

第九條

ARTICLE 9

取得證據、文件、物品及紀錄

OBTAINING EVIDENCE, DOCUMENTS ARTICLES AND RECORDS

(1) 如請求方就在其司法管轄區的與刑事事宜有關的偵查、檢控或法律程序提出取證請求，被請求方須安排取得有關證據。

(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) 就本協定而言，作證或取證包括交出文件、物品及紀錄。

(2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, articles and records.

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- (3) 就根據本條提出的請求而言，請求方須指明擬向證人提出的問題或訊問證人所關乎的事項。
- (4) 凡因應根據本條提出的協助請求而取證，就向作證的人提出問題一事而言，則在請求方進行的偵查、檢控或法律程序所關乎的人、將作證的人以及請求方的代表，均可在被請求方的法律的規限下出席或由法律代表出席或兩者一起出席。
- (5) 因應協助請求而需在被請求方作證的人，可在以下情況下拒絕作證：
- (a) 假使在被請求方提起的法律程序出現類似情況，被請求方的法律容許該證人拒絕作證；或
 - (b) 假使在請求方進行類似的法律程序，請求方的法律容許該證人拒絕作證。
- (6) 如任何人聲稱有權根據請求方的法律拒絕作證，在決定有關問題時，被請求方須以請求方的主管機關所發出的證明書為憑據。

- (3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.
- (4) Where evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting Party relates, the person who is to give evidence and representatives of the Requesting party may, subject to the laws of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the evidence.
- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to do so 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 such witness to decline to give evidence in similar proceedings in the Requesting Party.
- (6) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate issued by a competent authority of the Requesting Party.

第十條

取得有關的人自願作出的陳述

如請求方為在該方進行的刑事事宜的偵查、檢控或法律程序的目的而請求取得某人自願作出的陳述，則被請求方須盡力取得該陳述。

ARTICLE 10

OBTAINING VOLUNTARY STATEMENTS OF PERSONS

Where a request is made to obtain a voluntary statement of a person for the purpose of an investigation, prosecution or proceeding in

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第十一條

透過視像會議獲取證供

如屬可行和符合締約雙方的法律，締約雙方可同意在指明的條件下透過視像會議獲取證供。

第十二條

送達文件

- (1) 被請求方如接獲交付予該方送達的任何文件，該方須將該文件送達。
- (2) 如請求方請求送達文件，而該文件規定被送達人作出回應或在請求方出席，則該方須於預定回應或出席的日期前的一段合理時間內交付該請求。
- (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) 任何人如沒有遵守要求他在請求方出席的傳票的規定，締約任何一方均不得根據本身的法律而處罰該人或向他施加強制措施。

第十三條

ARTICLE 11

TESTIMONY BY VIDEO CONFERENCE

Where possible and consistent with the laws of both Parties, the Parties may agree that testimony may be taken by means of video conference under specified conditions.

ARTICLE 12

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 that requires 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.
- (4) A person who fails to comply with a summons to appear in the Requesting Party shall not thereby be liable to any penalty or coercive measure pursuant to the law of either Party.

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可供公眾取閱的文件和官方文件

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

如請求方提出請求，被請求方在其法律的規限下：

Subject to its law, at the request of the Requesting Party, the Requested Party:

- (a) 須提供可供公眾取閱的官方文件、紀錄及資料的副本；及
- (b) 可就被請求方的政府部門或機構所管有但不供公眾取閱的文件、紀錄或資料而按照該方向本身的執法和司法機關提供該類文件、紀錄或資料的相同範圍和條件，提供副本。如被請求方拒絕提供本段所訂明的協助，該方無須透露其拒絕的理由。

- (a) shall provide copies of official documents, records and information available to the public; and
- (b) 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. If assistance stipulated in this sub-paragraph is refused, the Requested Party shall not be obliged to reveal its reason for refusal.

第十四條

ARTICLE 14

在請求方提供協助

ASSISTANCE IN THE REQUESTING PARTY

- (1) 請求方可請求被請求方協助邀請某人按本協定在請求方提供協助。
- (2) 被請求方接獲該等請求後，須邀請有關的人前往請求方，並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 provide assistance in the Requesting Party pursuant to this Agreement.
- (2) Upon receipt of such a request the Requested Party shall invite the person to travel to the Requesting Party and inform the Requesting Party of the person's response.

第十五條

ARTICLE 15

暫時移交被羈押的人以提供協助

TEMPORARY TRANSFER OF PERSONS IN CUSTODY TO PROVIDE ASSISTANCE

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- (1) 如請求方請求把羈押在被請求方的人移交到請求方，以按本協定提供協助，而被請求方及該人均同意，且請求方又保證把該人繼續羈押及在事後送還給被請求方，則該人須被移交到請求方以提供有關的協助。
- (2) 如根據本條被移交的人的監禁刑期於該人身在請求方時屆滿，被請求方須就此事告知請求方，而請求方須確保把該人釋放。

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party 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 and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
- (2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.

第十六條

ARTICLE 16

豁免權

IMMUNITY

- (1) 同意根據第十四或十五條提供協助的人：
- (a) 除第十五條另有規定外，不得因其在離開被請求方之前所犯的任何刑事罪行而在請求方被檢控、拘留或被限制人身自由；
- (b) 假如不在請求方便不得因某事而遭受民事起訴，則該人不得因該事而遭受民事起訴。
- (2) 如有關的人並非根據第十五條移交的被羈押的人，且本可自由離開，但卻沒有在接獲通知已無須逗留後的 15 天內離開請求方，或在離開請求方後返回，則第 (1) 款不適用。

- (1) A person who consents to provide assistance pursuant to Articles 14 or 15:
- (a) shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party, except as provided in Article 15;
- (b) shall not be subject to a civil suit to which the person could not be subject if he were not in the Requesting Party.
- (2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 15, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

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- (3) 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，但犯偽證罪則不在此限。
- (4) 同意根據第十四或十五條提供協助的人，除與該項請求有關的法律程序外，不得被要求在任何其他法律程序中提供協助。
- (5) 如任何人不同意根據第十四或十五條提供協助，該人不得因此而被請求方的法院或被請求方的法院處罰或施加強制措施。

第十七條

搜查及檢取

- (1) 如請求方請求搜查、檢取及交付與刑事事宜的偵查、檢控或法律程序有關的物料，被請求方在本身法律容許的範圍內，須執行該請求。
- (2) 如請求方要求提供與搜查的結果、檢取的地點和情況以及檢獲財產的保管有關的資料，被請求方須予提供。
- (3) 如被請求方把檢獲財產交付請求方，請求方須遵循被請求方就該等財產施加的任何條件。

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- (3) A person who consents to give evidence under Articles 14 or 15 shall not be subject to prosecution based on his testimony, except for perjury.
- (4) A person who consents to provide assistance pursuant to Articles 14 or 15 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.
- (5) A person who does not consent to provide assistance pursuant to Articles 14 or 15 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

ARTICLE 17

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 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 and 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.

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交換與刑事法律程序有關的資料

- (1) 締約任何一方可未經事先請求，就在締約另一方提起刑事法律程序一事，向該方提交資料或證據。
- (2) 獲提交該等資料或證據的締約一方須將所採取的任何行動通知締約另一方，並須提交就該行動所作出的任何決定的副本。

EXCHANGE OF INFORMATION RELATING TO CRIMINAL PROCEEDINGS

- (1) Either Party may, without prior request, submit information or evidence to the other Party with a view to the institution of criminal 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 in respect thereof.

第十九條

ARTICLE 19

犯罪得益及犯罪工具

PROCEEDS AND INSTRUMENTALITIES OF CRIME

- (1) 締約任何一方可請求辨認位於締約另一方境內的涉及犯罪的財產、犯罪工具或犯罪得益，或請求就該等財產、工具或得益採取預防措施。
- (2) 被請求方如根據第(1)款尋獲涉嫌犯罪得益或犯罪工具，則須採取其法律容許的措施，防止任何人處理、轉移或處置這些涉嫌犯罪得益或犯罪工具，以待請求方的法院就這些得益或工具作出最後裁定。
- (3) 有關協助沒收犯罪得益或犯罪工具的請求，須根據被請求方的法律執行。協助的方法可包括就請求所關乎的得益或工具，強制執行請求方法院所作出的命令、提起法律程序或在有關的法律程序中提供協助。

- (1) A Party may request the identification or adoption of precautionary measures regarding property, instrumentalities or proceeds of a crime that are located in the territory of the other Party.
- (2) Where, pursuant to paragraph (1), 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, 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.

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(4) 負責保管犯罪得益或犯罪工具的締約一方須按照本身的法律處置該等財物。締約任何一方可在其本身的法律容許的範圍內，及按照締約雙方議定的條款，把該等財物的全部或部分，或出售該等財物的全部或部分後的得益，移交締約另一方。

(4) The Party that has custody over proceeds or instrumentalities of crime shall dispose of them in accordance with its law. Either Party may transfer all or part of such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the law of the transferring Party and upon such terms as may be agreed by both Parties.

(5) 就本協定而言：

(5) For the purposes of this Agreement:

(a) “犯罪得益”包括——

(a) “proceeds of crime” includes—

- (i) 代表與犯罪所得的財產及其他利益相等的價值的財產；及
- (ii) 直接或間接來自犯罪的財產，或直接或間接來自將犯罪所得變現的財產；

- (i) property which represents the equivalent value of property and other benefits derived from the commission of an offence; and
- (ii) property derived or realized directly or indirectly from the commission of an offence;

(b) “犯罪工具”包括用於或擬用於與犯罪有關的用途的財產，或與該等財產相等的價值。

(b) “instrumentalities of crime” includes property used or intended to be used in connection with the commission of an offence or the equivalent value of such property.

第二十條

ARTICLE 20

歸還文件、紀錄及證據物品

RETURN OF DOCUMENTS, RECORDS AND ITEMS OF EVIDENCE

如被請求方提出請求，則請求方須盡快把被請求方因執行請求而提供予請求方的任何文件、紀錄或物品歸還。如締約雙方的中心機關同意，則該等文件、紀錄或物品須以雙方均接受的方式處置。

Upon the request of the Requested Party, the Requesting Party shall return such documents, records or items furnished to it in execution of a request as soon as possible. If agreed between the Central Authorities, such documents, records or items shall be disposed of in a mutually acceptable manner.

III. 最後條款

III. FINAL PROVISIONS

第二十一條

豁免認證

就本協定的應用而言，由締約任何一方的法院或主管機關草擬或核證的文件及譯本，均可無需經任何形式的認證而在法律程序中獲接納。

第二十二條

與其他國際協定的配合

本協定所列出的協助及程序，並不阻止締約任何一方透過其他適用的國際協定或根據其本身的法律而向締約另一方提供協助。

第二十三條

磋商

締約雙方的中心機關可作出磋商，以促使本協定得到最有效的運用，並可視乎需要而議定實際的措施，以便利本協定的執行。

ARTICLE 21

EXEMPTION FROM AUTHENTICATION

For the purpose of application of this Agreement documents and translations drafted or certified by the courts or a competent authority of either Party shall be admitted in proceedings without any form of authentication.

ARTICLE 22

COMPATIBILITY WITH OTHER INTERNATIONAL AGREEMENTS

Assistance and procedures set out in this Agreement shall not prevent either of the Parties from granting assistance to the other Party through other applicable international agreements or pursuant to the law of each Party.

ARTICLE 23

CONSULTATION

The Central Authorities of the Parties may consult with each other to promote the most effective use of this Agreement and agree upon such practical measures as may be necessary to facilitate the implementation of the Agreement.

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第二十四條

解決爭議

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。

第二十五條

適用

本協定適用於在其生效日期後提交的請求，儘管有關的作為或不作為是在該日期之前發生。

第二十六條

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的日期起計 30 天後生效。
- (2) 締約一方可隨時藉給予締約另一方通知而終止本協定。在此情況下，本協定將於締約另一方接獲通知的日期起計 90 天後失效。但在本協定失效日期前已接獲的協助請求，則仍須按照本協定的條款處理，猶如本協定仍然生效一樣。

ARTICLE 24

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 25

APPLICATION

This Agreement shall apply to any request presented after the date of its entry into force even if the relevant acts or omissions occurred prior to that date.

ARTICLE 26

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force 30 days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) 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 90 days after the day on which notice is received by the other Party. Requests for assistance which have been received prior to the date on

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下列簽署人已在本協定上簽字為證。

本協定於二零一二年十一月十五日在馬德里簽訂，一式兩份，
每份均用中文、英文及西班牙文寫成，各文本均具同等效力。

which the Agreement ceases to have effect 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 have signed this Agreement

Done in duplicate in Madrid, this Fifteenth day of November, Two
thousand and Twelve in the Chinese, English and Spanish languages, each
text being equally authentic.

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附表 2

Schedule 2

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附表 2

[第 2 條及附表 3]

對本條例的變通

1. 本條例第 5(1)(d) 條現予變通至如下所示 ——
“(d) 有充分理由相信該項請求提出的目的是基於某人的種族、宗教、國籍、族裔、*或** 政治見解或性別 * 而對該人進行檢控、懲罰或以其他方式使該人蒙受不利；”。
2. 本條例第 5(1)(e) 條現予變通至如下所示 ——
“(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；”。
3. 本條例第 5(1) 條現予變通，加入 ——
“(ea) 該項請求關乎就某作為或不作為而對某人進行的檢控，而假使該作為或不作為是在香港發生，便會因時效消失，而不再能夠在香港予以檢控；*”。

Schedule 2

[s. 2 & Sch. 3]

Modifications to the Ordinance

1. Section 5(1)(d) of the Ordinance is modified to read as follows—
“(d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, religion, nationality, ethnic origin, or** political opinions or sex*;”.
2. Section 5(1)(e) of the Ordinance is 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;”.
3. Section 5(1) of the Ordinance is modified by adding—
“(ea) the request relates to the prosecution of a person in respect of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time,**”.

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附表 2

4. 本條例第 17(3)(b) 條現予變通至如下所示——
- “(b) 該人可自由離開香港，並接獲通知該人已無須為下述任何目的逗留，但該人沒有在接獲該通知後的 15 天內離開香港 * 在有機會離開香港的情況下仍留在香港，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。”。

* 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)。

Schedule 2

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4. Section 17(3)(b) of the Ordinance is modified to read as follows—
- “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that the person’s presence is no longer required for any of the following purposes* ~~has had an opportunity of leaving Hong Kong and 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.”.

* The text underlined is added. (The underlining is for ease of identifying the modification).

** The text crossed out is deleted. (The crossing out is for ease of identifying the modification).

附表 3

[第 2 條]

對本條例的變通的撮錄

1. 附表 2 第 1、2 及 3 條指明對本條例第 5(1) 條的變通，該等變通令律政司司長如認為有以下情況，則由香港以外某地方提出的要求根據本條例提供協助的請求，亦須予拒絕——(2015 年第 3 號編輯修訂紀錄)
 - (a) 有充分理由相信，該項請求的目的，是基於某人的族裔或性別，而對該人進行檢控、懲罰或以其他方式使該人蒙受不利；
 - (b) 該項請求關乎因外地罪行而檢控某人，而該人已就該罪行或由構成該罪行的同一作為或不作為所構成的另一外地罪行，被香港的管轄法院或其他當局定罪、裁定無罪或赦免，或已接受香港法律所規定的懲罰；
 - (c) 該項請求關乎就某作為或不作為而檢控某人，而假使該作為或不作為是在香港發生，便會因時效消失，而不再能夠在香港予以檢控。
2. 附表 2 第 4 條指明對本條例第 17(3)(b) 條的變通，以更準確地說明在甚麼情況下，依據律政司司長提出的請求而身處香港以就刑事事宜給予協助的人，不再根據本條例第 17(1) 條享有豁免權。

Schedule 3

[s. 2]

Summary of Modifications to the Ordinance

1. Sections 1, 2 and 3 of Schedule 2 specify modifications to section 5(1) of the Ordinance so that a request by a place outside Hong Kong for assistance under the Ordinance must also be refused if, in the opinion of the Secretary for Justice—
 - (a) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's ethnic origin or sex;
 - (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in Hong Kong, or has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence;
 - (c) the request relates to the prosecution of a person in respect of an act or omission that, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time.
2. Section 4 of Schedule 2 specifies modifications to section 17(3)(b) of the Ordinance to more precisely delineate the circumstances under which a person who is in Hong Kong to give assistance in relation to a criminal matter, pursuant to a request made by the Secretary for Justice, ceases to have immunities under section 17(1) of the Ordinance.