

《刑事事宜相互法律協助(愛爾蘭)令》
(第 525 章，附屬法例 M)

Mutual Legal Assistance in Criminal Matters (Ireland) Order
(Cap. 525 sub. leg. M)

版本日期
Version date
23.1.2020

經核證文本
Verified Copy

(《法例發布條例》(第 614 章)第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

如某內頁的頁底標明：

- “經核證文本”；及
 - 以下列表顯示的該頁的最後更新日期，
- 該頁所載條文即視作於上述“版本日期”的正確版本。

此文本所載條文，如並非正在實施，會有附註作說明。

A provision is presumed to be correctly stated as at the above version date if it is on a page marked at the bottom with:

- the words “Verified Copy”; and
- the last updated date shown in this table for the page.

Any provision included in this copy that is not in force is marked accordingly.

條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	23.1.2020
附表 1 Schedule 1	S1-1—S1-38	23.1.2020
附表 2 Schedule 2	S2-1—S2-4	23.1.2020

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.

制定史

本為 2003 年第 184 號法律公告 —— 2020 年第 1 號編輯修訂紀錄

Enactment History

Originally L.N. 184 of 2003 — E.R. 1 of 2020

《刑事事宜相互法律協助(愛爾蘭)令》

Mutual Legal Assistance in Criminal Matters (Ireland)
Order

(第 525 章, 附屬法例 M)

(Cap. 525 sub. leg. M)

目錄

Contents

條次		頁次	Section		Page
1.	(已失時效而略去)	1	1.	(Omitted as spent)	2
2.	條例適用於香港與愛爾蘭之間	1	2.	Ordinance to apply between Hong Kong and Ireland	2
附表 1	中華人民共和國香港特別行政區政府與愛爾蘭政府關於刑事事宜相互司法協助的協定	S1-1	Schedule 1	Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of Ireland Concerning Mutual Legal Assistance in Criminal Matters	S1-2
附表 2	對本條例作出的變通	S2-1	Schedule 2	Modifications to the Ordinance	S2-2

《刑事事宜相互法律協助(愛爾蘭)令》

(第 525 章第 4 條)

(略去制定語式條文——2020 年第 1 號編輯修訂紀錄)

[2011 年 1 月 6 日] 2010 年第 176 號法律公告
(格式變更——2020 年第 1 號編輯修訂紀錄)

1. (已失時效而略去——2020 年第 1 號編輯修訂紀錄)

2. 條例適用於香港與愛爾蘭之間

現就——

- (a) 適用於特區政府與愛爾蘭政府；及
- (b) 副本附錄於附表 1，

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

Mutual Legal Assistance in Criminal Matters (Ireland) Order

(Cap. 525, section 4)

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

[6 January 2011] L.N. 176 of 2010
(Format changes—E.R. 1 of 2020)

1. (Omitted as spent—E.R. 1 of 2020)

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

In relation to the arrangements for mutual legal assistance—

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

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

S1-1
第 525M 章

附表 1

Schedule 1

S1-2
Cap. 525M

附表 1

[第 2 條]

中華人民共和國香港特別行政區政府
與
愛爾蘭政府
關於
刑事事宜相互司法協助的協定

目錄

第一條	提供協助的範圍
第二條	中心機關
第三條	其他協定或安排
第四條	要求的形式和內容
第五條	執行要求
第六條	提供協助的限制
第七條	代表及開支
第八條	使用限制
第九條	取得證據、物品或文件
第十條	取得陳述
第十一條	有關人士的所在或身分

Schedule 1

[s. 2]

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

TABLE OF CONTENTS

Article 1	Scope of Assistance
Article 2	Central Authority
Article 3	Other Agreements or Arrangements
Article 4	Form and Contents of Requests
Article 5	Execution of Requests
Article 6	Limitations on Assistance
Article 7	Representation and Expenses
Article 8	Limitations on Use
Article 9	Obtaining of Evidence, Articles or Documents
Article 10	Obtaining Statements of Persons
Article 11	Location or Identity of Persons

S1-3
第 525M 章

附表 1

Schedule 1

S1-4
Cap. 525M

第十二條	送達文件
第十三條	可向公眾提供的文件和官方文件
第十四條	核證及認證
第十五條	移交被羈押的人
第十六條	移交其他人
第十七條	安全通行
第十八條	搜查及檢取
第十九條	在關乎犯罪得益的法律程序中提供協助
第二十條	解決爭議
第二十一條	生效及終止

Article 12	Service of Documents
Article 13	Publicly Available and Official Documents
Article 14	Certification and Authentication
Article 15	Transfer of Persons in Custody
Article 16	Transfer of Other Persons
Article 17	Safe Conduct
Article 18	Search and Seizure
Article 19	Assistance in Proceedings relating to Proceeds of Crime
Article 20	Settlement of Disputes
Article 21	Entry into Force and Termination

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，與愛爾蘭政府，為加強締約雙方在偵查、檢控和防止罪案及追查、限制和充公犯罪得益和犯罪工具方面的執法效能，協議如下：

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 and the Government of Ireland,

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

Have agreed as follows :

第一條

提供協助的範圍

- (1) 締約雙方須按照本協定的條文，在偵查和檢控刑事罪行及與刑事事宜有關的法律程序方面互相提供協助。
- (2) 提供的協助包括以下各項：
 - (a) 辨認及追尋有關的人；
 - (b) 送達文件；
 - (c) 取得證據，包括有關人士的證供或陳述；
 - (d) 執行搜查和檢取的要求；
 - (e) 便利有關人士親自出席以提供證據或其他協助；
 - (f) 暫時移交被羈押的人以提供證據或其他協助；
 - (g) 辨認、追查、限制、沒收和充公犯罪得益和犯罪工具；
 - (h) 提供資料、物品、文件及紀錄，包括司法或官方紀錄；
 - (i) 交付財產，包括借出證物；
 - (j) 經締約雙方同意並符合本協定目的的任何其他協助。
- (3) 本協定純為締約雙方互相提供協助而設。本協定的條文並不給予任何私人取得、隱藏、或排除證據的權利，或阻礙執行協助要求的權利。

ARTICLE 1

SCOPE OF ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of evidence, including testimony or statements of persons;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to give evidence or provide other assistance;
 - (f) effecting the temporary transfer of persons in custody to give evidence or provide other assistance;
 - (g) identifying, tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of crime;
 - (h) providing information, articles, documents and records, including judicial or official records;
 - (i) delivery of property, including lending of exhibits;
 - (j) such other assistance as may be agreed between the Parties and which is consistent with the objectives of this Agreement.
- (3) 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.

S1-7
第 525M 章

附表 1

Schedule 1

S1-8
Cap. 525M

第二條

中心機關

- (1) 締約雙方須各自指定一個中心機關，以便根據本協定提出和接受要求。
- (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。愛爾蘭的中心機關為司法、平等及法律改革部長或其指定的人。締約任何一方均可更改其中心機關。在此情況下，締約一方須將有關更改通知締約另一方。
- (3) 中心機關可就本協定的事宜互相直接聯絡。

第三條

其他協定或安排

本協定不得損害締約雙方根據其他協定可享的其他權利和所需承擔的其他義務，亦不得妨礙締約雙方或雙方的執法機關根據其他協定或正式或非正式的安排互相提供協助。

ARTICLE 2

CENTRAL AUTHORITY

- (1) Each Party shall designate a Central Authority to make and receive requests pursuant to this Agreement.
- (2) The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorised officer. The Central Authority for Ireland shall be the Minister for Justice, Equality and Law Reform or a person designated by the Minister. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (3) The Central Authorities may communicate directly with one another for the purposes of this Agreement.

ARTICLE 3

OTHER AGREEMENTS OR ARRANGEMENTS

This Agreement shall be without prejudice to other rights and obligations between the Parties pursuant to other agreements and shall not prevent the Parties or their law enforcement authorities from providing assistance to each other pursuant to other agreements or formal or informal arrangements.

第四條

要求的形式和內容

- (1) 協助要求須以書面提出，但被要求方的中心機關也可在緊急情況下接納以其他形式提出的要求。在後述情況下，除非被要求方的中心機關同意其他的安排，否則要求方須在提出要求後十天內以書面確認要求。此外，除非締約雙方另行同意，否則要求須以被要求方的一種法定語文提出。
- (2) 協助要求須包括以下內容：
- (a) 要求方代其提出要求的有關當局的名稱；
 - (b) 對該項要求的目的及所要求協助性質的描述；
 - (c) 對該項偵查、檢控、罪行或刑事事宜的標的和性質的描述，以及說明是否已提起法律程序；
 - (d) 如法律程序已提起，則說明法律程序的細節；
 - (e) 有關事實及法律的撮要；以及
 - (f) 正被偵查或檢控的人的身分。
- (3) 在有必要及可能的範圍內，協助要求並須包括以下內容：
- (a) 關於任何被尋求提供證據的人的身分及其所在的資料；
 - (b) 關於被送達人的身分及其所在、該人與法律程序的關係，以及送達方式的資料；
 - (c) 關於被追尋的人的身分及可能下落的資料；
 - (d) 對要搜查的地方或人，及要檢取的物品的準確描述；
 - (e) 對要取得或記錄任何證據或陳述的方式的描述；
 - (f) 要向任何人提出的問題清單；
 - (g) 在執行要求時須遵循的任何特別程序的描述；

ARTICLE 4

FORM AND CONTENTS OF REQUESTS

- (1) A request for assistance shall be in writing except that the Central Authority of the Requested Party may accept a request in another form in emergency situations. In the latter case, the request shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested Party agrees otherwise. The request shall be in an official language of the Requested Party unless otherwise agreed.
- (2) Requests for assistance shall include the following:
- (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 subject matter and nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
 - (d) where proceedings have been instituted, details of the proceedings;
 - (e) a summary of the relevant facts and laws; and
 - (f) the identity of any person or persons being investigated or prosecuted.
- (3) To the extent necessary and possible, a request shall also include:
- (a) information on the identity and location of any person from whom evidence is sought;
 - (b) information on the identity and location of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

S1-11
第 525M 章

附表 1

- (h) 關於被要求在要求方管轄區出席的人有權獲得的津貼和費用的資料；
 - (i) 關於保密的任何要求；
 - (j) 順應該項要求的時限的細節；
 - (k) 被尋求強制執行的法庭判令或其經核證的副本，以及就該判令乃不可上訴的最終判令的陳述；
 - (l) 便利被要求方執行要求的任何其他資料。
- (4) 在被要求方的要求下，為支持要求而提交的所有文件須附有被要求方的一種法定語文的譯本。

Schedule 1

S1-12
Cap. 525M

- (c) information on the identity and possible whereabouts of any person to be located;
 - (d) a precise description of any place or person to be searched and of any articles to be seized;
 - (e) a description of the manner in which any evidence or statement is to be taken and recorded;
 - (f) a list of questions to be asked of any person;
 - (g) a description of any particular procedure to be followed in executing the request;
 - (h) information as to the allowances and expenses to which any person asked to appear in the Requesting Party will be entitled;
 - (i) any requirements for confidentiality;
 - (j) details of the period within which the request should be complied with;
 - (k) any court order, or a certified copy thereof, sought to be enforced and a statement to the effect that it is a final order;
 - (l) any other information which may facilitate the execution of the request.
- (4) All documents submitted in support of a request shall if required by the Requested Party be accompanied by a translation in an official language of the Requested Party.

S1-13
第 525M 章

附表 1

Schedule 1

S1-14
Cap. 525M

第五條

執行要求

- (1) 被要求方的中心機關須迅速執行要求，或安排通過其主管機關執行要求。
- (2) 協助要求須在符合被要求方的法律的情況下予以執行，並須在被要求方的法律所不禁止的範圍內，在切實可行的情況下依照要求內所述的指示予以執行。
- (3) 被要求方須迅速將任何可能導致嚴重延遲回應該項要求的情況通知要求方。
- (4) 被要求方須迅速就全部或部分不順應協助要求的決定及作出該決定的理由通知要求方。

第六條

提供協助的限制

- (1) 如出現以下情況，被要求方須拒絕提供協助：
 - (a) 有關的協助要求會損害愛爾蘭或就香港特別行政區政府而言，中華人民共和國的主權、安全或公共秩序；
 - (b) 有關的協助要求關乎被要求方認為屬政治性質的罪行；
 - (c) 有關的要求關乎的罪行，乃在軍法下構成的罪行，而在一般刑法下則不構成罪行；

ARTICLE 5

EXECUTION OF REQUESTS

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed subject to the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with any 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.

ARTICLE 6

LIMITATIONS ON ASSISTANCE

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of Ireland or, in the case of the Government of the Hong Kong Special Administrative Region, of the People's Republic of China;
 - (b) the request for assistance relates to an offence that is regarded by the Requested Party as an offence of a political character;

S1-15
第 525M 章

附表 1

Schedule 1

S1-16
Cap. 525M

- (d) 被要求方認為有充分理由相信有關的協助要求將會引致某人基於其種族、宗教、國籍或政治見解而蒙受不利；
- (e) 有關的協助要求關乎就某一罪行而對某人進行檢控，而該人已因同一罪行在被要求方管轄區被定罪、裁定無罪或赦免；或該罪行假使是在被要求方的管轄區觸犯，亦會由於時效消失而不能再進行檢控；
- (f) 被要求方認為批准有關要求將會嚴重損害其本身的基要利益；
- (g) 要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；
- (h) 被指稱構成罪行的作為或不作為，假使在被要求方的管轄區發生，並不構成罪行；
- (i) 如有關要求關乎在要求方屬可判死刑的罪行，但被要求方就該罪行並無判處死刑的規定，或通常不會執行死刑，則除要求方作出被要求方認為充分的保證，即要求方不會判處死刑，或即使判處死刑亦不會執行，否則被要求方須拒絕提供協助；
- (j) 有關要求關乎稅務罪行的偵查，而偵查的主要目的是為評估或徵收稅項。
- (2) 就第 (1)(f) 款而言，被要求方可考慮提供協助會否令任何人的安全蒙受損害或會否對被要求方的資源造成過大的負擔。
- (3) 就第 (1)(h) 款而言，
- (a) 應考慮被指稱構成觸犯要求方法律的作為或不作為的總體情況，而非只是考慮該罪行的法律元素；
- (b) 就涉及稅項、關稅或海關管制的罪行方面，被要求方的法律並無徵收相同的稅項或關稅的規定，或設相同的海關管制，或其法律並無與要求方法律所載相同的稅項、關稅或海關方面的規例，這一點並不具關鍵性。
- (4) 如執行要求會妨礙被要求方正在根據其法律進行的偵查、檢控或法律程序，被要求方可暫緩提供協助。

- (c) the request relates to an offence under military law that would not be an offence under ordinary criminal law;
- (d) it considers that there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his or her race, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the 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;
- (g) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
- (h) 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;
- (i) the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out;
- (j) in relation to the investigation of taxation offences, the primary purpose of the investigation is the assessment or collection of tax.
- (2) For the purpose of paragraph (1)(f) the Requested Party may take into account whether the provision of assistance could prejudice the safety

S1-17
第 525M 章

附表 1

- (5) 在根據本條拒絕或暫緩提供協助前，被要求方須通過其中心機關：
- (a) 迅速將其就拒絕或暫緩提供協助所考慮的理由知會要求方；及
 - (b) 與要求方磋商，以決定可否只批准部分協助，或在符合被要求方認為必需的條款及條件下提供協助。
- (6) 要求方如接受在第(5)(b)款所述條款及條件下所提供的協助，則必須遵守該等條款及條件。

Schedule 1

S1-18
Cap. 525M

- of any person or impose an excessive burden on the resources of the Requested Party.
- (3) For the purpose of paragraph (1)(h):
- (a) the totality of the acts or omissions alleged to constitute the offence against the law of the Requesting Party shall be considered and not merely the legal elements of that offence;
 - (b) for offences relating to taxes, duties, or customs controls, it shall be immaterial that the law of the Requested Party does not impose the same kind of tax, duty or customs control or does not contain a tax, duty or customs regulation of the same kind as the law of the Requesting Party.
- (4) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing criminal investigation, prosecution or proceeding under the law of that Party.
- (5) 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 the assistance sought should only be granted in part or subject to such terms and conditions as the Requested Party deems necessary.
- (6) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (5)(b), it shall comply with those terms and conditions.

第七條

代表及開支

- (1) 被要求方須作出一切必要安排，使要求方在因協助要求而引起的任何法律程序中獲得代表，並須在其他情況下代表要求方的利益。
- (2) 被要求方須承擔在其管轄區內執行要求的所有一般性開支，但下述項目除外：
 - (a) 應要求方要求而聘請律師的費用；
 - (b) 聘請專家的費用；
 - (c) 翻譯及傳譯的費用；
 - (d) 往來要求方與被要求方的人士的交通費用及津貼；以及
 - (e) 屬非一般性的其他開支。
- (3) 在執行要求期間，如察覺須作非一般性開支，以執行有關要求，締約雙方須進行磋商，以決定繼續執行該要求的條款及條件。

第八條

使用限制

- (1) 被要求方須把協助要求、要求內容及任何支持文件和批准提供協助的事實在被要求的範圍內保密，但在為執行要求而有必要作出

ARTICLE 7

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 jurisdiction except:
 - (a) fees of counsel retained at the request of the Requesting Party;
 - (b) fees of experts;
 - (c) expenses of translation and interpretation;
 - (d) travel expenses and allowances of persons travelling between the Parties; and
 - (e) other expenses to the extent that these are of an extraordinary nature.
- (3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

ARTICLE 8

LIMITATIONS ON USE

- (1) The Requested Party shall, to any extent requested, keep confidential a request for assistance, its contents and any supporting

S1-21
第 525M 章

附表 1

披露的範圍內除外。如無法在不違反被要求的保密規定的情況下執行要求，被要求方須通知要求方，由要求方決定其所冀望的執行要求的程度。

- (2) 要求方須把被要求方提供的任何證據及資料在被要求的範圍內保密，但在為進行要求內所述的偵查、檢控或法律程序而有必要作出披露的範圍內除外。
- (3) 未經被要求方同意和符合被要求方認為必需的條款及條件下，要求方不得使用因要求而取得的證據或資料作不屬於要求內所述的用途。

第九條

取得證據、物品或文件

- (1) 要求方如就與在其管轄區內的刑事事宜有關的偵查、檢控或法律程序提出取證要求，被要求方須作出安排以錄取有關證據。
- (2) 就本協定而言，提供或錄取證據包括交出文件、紀錄或其他物料。
- (3) 就根據本條提出要求而言，要求方須指明擬向證人提出的問題或擬向證人訊問的事項。
- (4) 凡根據本條提出的協助要求而取證，則在要求方進行的該等偵查、檢控或法律訴訟所關乎的人、將作證的人以及要求方的代表，可在不抵觸被要求方的法律規限的情況下出席或由法律代表出席或兩者一起出席，以向作證的人提出問題。
- (5) 根據協助要求而須作證的人如宣稱根據被要求方的法律可獲豁免、無能力作證或享有特權毋須作證，則應根據被要求方的法律予

Schedule 1

S1-22
Cap. 525M

documents, and the fact of granting such assistance except to the extent that disclosure is necessary to execute the request. If the request cannot be executed without breaching such confidentiality as may be requested, the Requested Party shall so inform the Requesting Party which shall then determine the extent to which it wishes the request to be executed.

- (2) The Requesting Party shall, to any extent requested, keep confidential any evidence and information provided by the Requested Party, except to the extent that disclosure is necessary for the investigation, prosecution or proceeding described in the request.
- (3) The Requesting Party shall not use for purposes other than those stated in a request evidence or information obtained as a result of it, without prior consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary.

ARTICLE 9

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (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 or other material.
- (3) For the purposes of requests under this Article the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.
- (4) Where 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

S1-23
第 525M 章

附表 1

Schedule 1

S1-24
Cap. 525M

以解決。如作證的人是根據要求方的法律作出宣稱，則仍須取證，並須把有關宣稱知會要求方的中心機關，由該方的中心機關在取證後解決。

(6) 如要求方提出要求，被要求方的中心機關須預先提供根據本條取證的日期和地點的資料。

evidence and representatives of the Requesting Party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the evidence.

(5) If a person who is required to give evidence pursuant to a request for assistance asserts a claim of immunity, incapacity, or privilege under the law of the Requested Party, it shall be resolved pursuant to the Requested Party's law. If such a claim is asserted under the law of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for subsequent resolution by the authorities of that Party.

(6) Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of evidence pursuant to this Article.

第十條

ARTICLE 10

取得陳述

OBTAINING STATEMENTS OF PERSONS

要求方如就與在其管轄區內的刑事事宜有關的偵查、檢控或法律程序要求取得某人的陳述，被要求方須盡力取得有關陳述。

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

第十一條

ARTICLE 11

有關人士的所在或身分

LOCATION OR IDENTITY OF PERSONS

如要求方提出要求，被要求方須盡力查明要求內所指的人的所在或身分。

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

S1-25
第 525M 章

附表 1

Schedule 1

S1-26
Cap. 525M

第十二條

送達文件

- (1) 被要求方須將任何獲轉傳作送達之用的文件予以送達。
- (2) 如有關文件與被送達人作出回應有關，或與被送達人在要求方管轄區內出席有關，要求方須於預定回應或出席的日期前的一段合理時間內，向被要求方提出送達該等文件的要求。
- (3) 如要求方要求送達的文件與被送達人在要求方管轄區內出席有關，則要求方的中心機關須在合理的情況下，盡可能在要求內提供關於在刑事事宜中針對被送達人的待執行的拘捕令或其他法庭命令的通知。
- (4) 在符合其法律的規定下，被要求方須按要求方指定的形式，交回送達證明。
- (5) 被送達人不得因其沒有遵從送達給他的法律程序文件的規定而根據要求方或被要求方的法律遭受處罰或處以強制措施。

第十三條

可向公眾提供的文件和官方文件

- (1) 在符合其法律規定的情況下，被要求方須提供任何可向公眾提供的文件。
- (2) 就政府部門或機構所管有但並非可向公眾提供的任何文件、紀錄或資料的文本，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，酌情向要求方提供。

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 pertaining to a response or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.
- (3) A request for the service of a document pertaining to an appearance in the Requesting Party shall include such notice as the Central Authority of the Requesting Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
- (4) The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party.
- (5) A person who fails to comply with any process served on him or her shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party or Requested Party.

ARTICLE 13

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law the Requested Party shall provide copies of publicly available documents.
- (2) The Requested Party may at its discretion 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

S1-27
第 525M 章

附表 1

Schedule 1

S1-28
Cap. 525M

第十四條

核證及認證

轉傳至要求方的文件、謄本、紀錄、陳述或其他物料，只有在要求方提出要求的情況下，才須予以核證或認證。有關的物料只在要求方的法律明確規定的情況下，才須由領事人員或外交人員核證或認證。

第十五條

移交被羈押的人

- (1) 締約一方如要求某被羈押在另一方管轄區內的人到要求方以提供本協定所規定的協助，則在該人和締約雙方的同意下，該人須就此目的被移交。
- (2) 就本條而言，
 - (a) 接收方有責任繼續羈押該名被移交的人，除非發送方授權作其他安排；
 - (b) 接收方在環境許可的情況下須盡快將被移交的人歸還給發送方羈押，除非締約雙方和被移交的人同意其他安排；
 - (c) 接收方不得要求發送方提起引渡法律程序以歸還被移交的人；及
 - (d) 被移交的人在發送方管轄區內須服的刑期，須扣除他被羈押在接收方管轄區內所服的期間。

under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

ARTICLE 14

CERTIFICATION AND AUTHENTICATION

Documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified or authenticated if the Requesting Party so requests. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

ARTICLE 15

TRANSFER OF PERSONS IN CUSTODY

- (1) A person in the custody of one Party whose presence in the other Party is sought for purposes of assistance under this Agreement shall be transferred for those purposes if the person and both Parties consent.
- (2) For the purpose of this Article:
 - (a) the receiving Party shall have the obligation to keep the person transferred in custody unless otherwise authorised by the sending Party;
 - (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit, unless otherwise agreed by both Parties and the person transferred;

S1-29
第 525M 章

附表 1

Schedule 1

S1-30
Cap. 525M

(3) 如根據本條被移交的人的監禁刑期於該人身在接收方管轄區時屆滿，發送方須就此事通知接收方，而接收方須確保把該人釋放，並在恰當的情況下就該人返回發送方提供方便。

- (c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and
- (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

(3) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the receiving Party the sending Party shall so advise the receiving Party which shall ensure the person's release from custody, and where appropriate facilitate the person's return to the sending Party.

第十六條

ARTICLE 16

移交其他人

TRANSFER OF OTHER PERSONS

- (1) 要求方可要求被要求方協助邀請任何人在要求方出席，以便根據本協定提供協助。
- (2) 在接獲上述要求時，被要求方須邀請該人前往要求方提供協助，並須知會要求方該人的回應。

- (1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the Requesting Party for the purpose of providing assistance pursuant to this Agreement.
- (2) Upon receipt of such a request, the Requested Party shall invite the person to travel to the Requesting Party to provide assistance and shall inform the Requesting Party of the person's response.

第十七條

ARTICLE 17

安全通行

SAFE CONDUCT

(1) 同意根據本協定第十五或十六條的規定提供協助的人，在要求方管轄區根據本協定提供協助期間，不得因其在離開被要求方之前所犯的任何刑事罪行而在要求方被檢控、拘留或被限制人身自由，或遭受民事起訴。

(1) A person who consents to provide assistance pursuant to Articles 15 or 16 of this Agreement shall, while he or she is in the jurisdiction of the Requesting Party giving assistance under this Agreement, not be prosecuted, detained, or restricted in his or her personal liberty for

S1-31
第 525M 章

附表 1

Schedule 1

S1-32
Cap. 525M

- (2) 如有關的人並非為根據第十五條移交的被羈押的人，而他本可自由離去，但在該人接獲通知毋須再逗留後的 15 天內仍未離開要求方，或在離開要求方後返回者，則第 (1) 款不適用。
- (3) 同意根據第十五或十六條作證的人，不得基於其所作的證供而遭受檢控，但偽證罪或藐視法庭罪則不在此限。
- (4) 同意根據第十五或十六條提供協助的人，除與該項要求有關的法律程序外，不得被要求在任何其他法律程序中提供協助。
- (5) 任何人不得因其不同意根據第十五或十六條提供協助，而遭受要求方或被要求方的法院的處罰或處以強制措施。

第十八條

搜查及檢取

- (1) 被要求方在本身法律許可的範圍內，須執行搜查、檢取及交付予要求方與刑事事宜的偵查、檢控或法律程序有關的物料。
- (2) 被要求方在要求方的要求下須提供有關搜查的結果、檢取的地點、檢取的情況，以及財產在檢取後的保管的資料。
- (3) 被要求方把檢取到的財產交付予要求方，要求方須遵守被要求方就交還及安全保管該等財產所施加的任何條件，包括保障第三者就該等財產所享有的權益的任何條款及條件。

any criminal offence, or subject to suit in any civil matter, which preceded his or her departure from the Requested 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 or her presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Articles 15 or 16 shall not be subject to prosecution based on his or her testimony, except for perjury or contempt.

(4) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be required to give 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 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

ARTICLE 18

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 of seizure, the circumstances of seizure and the subsequent custody of the property seized.

(3) The Requesting Party shall observe any conditions as to return and safe custody imposed by the Requested Party in relation to any seized

第十九條

在關乎犯罪得益的法律程序中提供協助

- (1) 如要求方提出要求，被要求方須盡力查明是否有任何犯罪得益或工具位於其管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把其相信該等得益或工具可能位於被要求方管轄區內的理由通知被要求方。
- (2) 如根據第(1)款找到懷疑為犯罪得益或工具的財物時，被要求方須採取本身法律容許的措施，以防止任何人處理、轉讓或處置這些懷疑為犯罪得益或工具的財物，以待要求方的法院就這些財物作出最終裁定。
- (3) 要求方如要求協助充公犯罪得益或工具，被要求方須在符合其法律的情況下執行要求，方法可包括強制執行要求方法院作出的命令、就要求內所涉及的犯罪得益或工具提起法律程序，或在該等法律程序中提供協助。
- (4) 負責保管犯罪得益或工具的締約一方須按照本身的法律處置該等財物。締約一方可在該方法律容許的範圍內及按照雙方議定的條件，把全部或部分該等財物或出售該等財物的得益轉移予締約另一方。

property which is delivered to the Requesting Party, including any terms and conditions to protect third party interests in the property.

ARTICLE 19

ASSISTANCE IN PROCEEDINGS RELATING TO PROCEEDS
OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities of crime are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instrumentalities may be located in its jurisdiction.
- (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 proceeds or instrumentalities pending a final determination in respect of them by a court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation of proceeds or instrumentalities of crime such request shall be executed subject to the law 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 of crime to which the request relates.
- (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 transferring Party's law and upon such terms as the Parties may agree.

第二十條

解決爭議

任何因本協定的解釋、適用或實施所引起的爭議，如雙方的中心機關無法自行達成協議，則須通過外交途徑解決。

第二十一條

生效及終止

- (1) 本協定將於締約雙方以書面通知對方已履行各自為使本協定生效的規定之日後 30 天開始生效。
- (2) 締約一方可隨時通知締約另一方終止本協定。在此情況下，本協定於締約另一方接獲通知三個月後失效。但在本協定終止前已接獲的協助要求，則仍須按照本協定的條款處理，猶如本協定仍然生效一樣。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

ARTICLE 20

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 21

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) Either Party may terminate this Agreement at any time by giving notice to the other Party. In that event the Agreement shall cease to have effect three months following the date of notification. 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 it was still in force.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

S1-37
第 525M 章

附表 1

本協定於二零零一年九月十九日在香港特別行政區簽訂，一式兩份，每份均用中文、愛爾蘭文及英文寫成，各文本均同等真確。

Schedule 1

S1-38
Cap. 525M

Done in duplicate at the Hong Kong Special Administrative Region this nineteenth day of September Two thousand and one in the Chinese, Irish and English languages, each text being equally authentic.

S2-1
第 525M 章

附表 2

Schedule 2

S2-2
Cap. 525M

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，而該項檢控 ——*
 - (i) 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→**—*
 - (A)* 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
 - (B)* 已**接受該地方或香港的*法律所規定的懲罰；
 - (ii) 是就某一作為或不作為而進行的，且假使該作為或不作為在香港發生，便會因時效消失而不再能夠就該作為或不作為在香港進行檢控；**”。
2. 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**有機會離開香港而在自他有該機會起計的 15 天屆滿後*仍留在香港，但並非為下述目的而留在香港 ——
 - (i) 該項請求所關乎的目的；或
 - (ii) 為給予香港刑事事宜方面的協助的目的，而該刑事事宜屬律政司司長以書面證明適宜由該人就該事宜給予協助的。”。

* 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)。

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—*
 - (i)* for an external offence in a case where the person—*
 - (A)* has been convicted, acquitted or pardoned by a competent court or other authority in the place; ** or Hong Kong;* or
 - (B)* 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;
 - (ii) 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 17(3)(b) of the Ordinance shall be modified to read as follows—
 - “(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* has remained in Hong Kong otherwise than for—
 - (i) the purpose to which the request relates; or
 - (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the

S2-3
第 525M 章

附表 2

Schedule 2

S2-4
Cap. 525M

** 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)。

Secretary for Justice to be a criminal matter in relation to which it is desirable that the person gives assistance.”.

* 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).