

《刑事事宜相互法律協助(印度)令》
(第 525 章，附屬法例 AD)

Mutual Legal Assistance in Criminal Matters (India) Order
(Cap. 525 sub. leg. AD)

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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	19.9.2019
附表 1 Schedule 1	S1-1—S1-30	11.6.2011
附表 2 Schedule 2	S2-1—S2-4	11.6.2011
附表 3 Schedule 3	S3-1—S3-2	11.6.2011

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 2011 年第 86 號法律公告 —— 2019 年第 4 號編輯修訂紀錄

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Enactment History

Originally L.N. 86 of 2011 — E.R. 4 of 2019

《刑事事宜相互法律協助(印度)令》

(第 525 章, 附屬法例 AD)

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Mutual Legal Assistance in Criminal Matters (India)
Order

(Cap. 525 sub. leg. AD)

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《刑事事宜相互法律協助(印度)令》

(第 525 章第 4 條)

(略去制定語式條文——2019 年第 4 號編輯修訂紀錄)

[2011 年 6 月 11 日] 2011 年第 100 號法律公告

1. (已失時效而略去——2019 年第 4 號編輯修訂紀錄)
2. **本條例在香港與印度之間適用**
 - (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，在香港與印度共和國之間適用。
 - (2) 第 (1) 款提述的變通撮錄於附表 3。

Mutual Legal Assistance in Criminal Matters (India) Order

(Cap. 525, section 4)

(Enacting provision omitted—E.R. 4 of 2019)

[11 June 2011] L.N. 100 of 2011

1. (Omitted as spent—E.R. 4 of 2019)
2. **Ordinance applies between Hong Kong and India**
 - (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 the Republic of India.
 - (2) The modifications referred to in subsection (1) are summarized in Schedule 3.

附表 1

[第 2 條]

《中華人民共和國香港特別行政區政府與印度共和國政府關於刑事事宜相互法律協助的協定》

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，與印度共和國政府(下稱“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和犯罪工具方面的執法效能;

協議如下:

第一條

提供協助的範圍

- (1) 締約雙方須按照本協定的條文，就屬於請求方司法管轄區內的刑事罪行的偵查和檢控以及就有關的法律程序，提供最大程度的相互法律協助。
- (2) 提供的協助包括:

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 the Republic of India Concerning Mutual Legal Assistance in Criminal Matters

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 the Republic of India (hereinafter referred to as ‘the Parties’);

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

Have agreed as follows:

ARTICLE I

SCOPE OF ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, the widest measures of mutual legal assistance in the investigation and prosecution of criminal offences falling within the jurisdiction of the Requesting Party and in proceedings related thereto.
- (2) Assistance shall include:

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- (a) 辨認和追尋有關的人；
 - (b) 送達文件；
 - (c) 取得資料、陳述、證據、物品或文件；
 - (d) 執行搜查和檢取的請求；
 - (e) 就有關的人親自出席提供協助給予便利；
 - (f) 安排暫時移交被羈押的人以提供協助；
 - (g) 致使交出司法或官方紀錄；
 - (h) 追查、限制、充公和沒收犯罪得益和犯罪工具；
 - (i) 提供資料、文件和紀錄；
 - (j) 交付財產，包括借出證物；及
 - (k) 符合本協定的目的且不抵觸被請求方法律的其他協助。
- (3) 根據本協定可就與違反關乎稅項、關稅、外匯管制或其他稅務的法律有關的刑事罪行批准提供協助，但如請求協助的主要目的是評估或徵收稅項，則屬例外。
- (4) 本協定不適用於以下情況：
- (a) 對某人執行逮捕或拘留，以將該人作為逃犯而移交該人；
 - (b) 強制執行已在請求方判定的刑事判決(但在被請求方的法律所容許的範圍內者，則不在此限)；
 - (c) 移交被羈押的人以便服刑；及
 - (d) 移交刑事事宜的法律程序。

- (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) obtaining of information, statements, evidence, articles or documents;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to provide assistance;
 - (f) effecting the temporary transfer of persons in custody to provide assistance;
 - (g) obtaining production of judicial or official records;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds and instruments of crime;
 - (i) providing information, documents and records;
 - (j) delivery of property, including lending of exhibits; and
 - (k) other assistance consistent with the objectives 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 criminal offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters but not if the primary purpose of the request for assistance is the assessment or collection of tax.
- (4) This Agreement shall not apply to:
- (a) the execution of arrests or detention of any person with a view to that person being surrendered as a fugitive offender;
 - (b) the enforcement of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;
 - (c) the transfer of persons in custody to serve sentences; and
 - (d) the transfer of proceedings in criminal matters.

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(5) 本協定純為締約雙方提供相互法律協助而設。本協定的條文並不給予任何私人取得、隱藏或排除證據或阻礙執行請求的權利。

(6) 就本協定而言，不論相互法律協助是由法院還是其他機關要求或提供，被請求方須批准提供該協助。

(5) This Agreement is intended solely for mutual legal 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.

(6) For the purpose of this Agreement, mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a Court or some other authority.

第二條

ARTICLE II

中心機關

CENTRAL AUTHORITY

- (1) 締約雙方須各自設立一個中心機關。
- (2) 香港特別行政區的中心機關為律政司司長或經其正式授權的人員。印度共和國的中心機關為內政部。
- (3) 根據本協定提出的請求須由請求方的中心機關交付被請求方的中心機關。
- (4) 被請求方的中心機關須迅速履行請求，或按適當情況將請求轉交該方的主管機關執行。

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorized officer. The Central Authority for the Republic of India shall be the Ministry of Home Affairs.
- (3) Requests under this Agreement shall only be transmitted by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.
- (4) The Central Authority of the Requested Party shall promptly comply with requests or, as appropriate, forward them to its competent authorities for them to carry out.

第三條

ARTICLE III

其他協助

OTHER ASSISTANCE

本協定不得影響締約雙方之間根據其他協定、安排、慣例或以別的方式而存續的義務，亦不得妨礙締約雙方根據該等協定、安排或慣例提供協助。

This Agreement shall not affect subsisting obligations between the Parties pursuant to other agreements, arrangements or practices or otherwise, nor prevent the Parties from providing assistance pursuant to such agreements, arrangements or practices.

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第四條

履行協定的限制

- (1) 如有以下情況，被請求方須拒絕提供協助：
- (a) 協助請求會損害印度共和國的主權、安全或公共秩序，或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；
 - (b) 被請求方認為批准請求將會嚴重損害其基要利益；
 - (c) 協助請求關乎屬政治性質的罪行；
 - (d) 有充分理由相信協助請求將會引致某人因其種族、宗教、國籍或政治見解而蒙受不利；
 - (e) 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；
 - (f) 協助請求關乎因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，該人不能因此而被檢控；
 - (g) 請求所關乎的作為或不作為假使在被請求方發生，並不構成罪行；及
 - (h) 協助請求關乎只在軍法下才構成的罪行。

ARTICLE IV

LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:
- (a) the request for assistance impairs the sovereignty, security or public order of the Republic of India or, in the case of the Hong Kong Special Administrative Region, the People's Republic of China;
 - (b) it is of the opinion that the granting of the request would seriously impair its essential interests;
 - (c) the request for assistance relates to an offence of a political character;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
 - (e) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
 - (f) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or 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;
 - (g) the request relates to an act or omission that would not, if it had occurred in the Requested Party, have constituted an offence; and
 - (h) the request for assistance relates to an offence only under military law.

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- (2) 就第 (1)(b) 款而言，被請求方在考慮其基要利益時，可考慮提供協助會否不利於任何人的安全或會否對被請求方的資源造成過大的負擔。
- (3) 就第 (1)(c) 款而言，被請求方在考慮請求是否關乎政治罪行時，須考慮有關事實、請求方提供的支持文件以及適用於締約雙方的國際公約條文。被請求方尤須適當地考慮不把侵害人的生命、身體健全、財產或自由的罪行視為政治罪行。
- (4) 被請求方不得基於在請求提出之時不知悉將提出的控罪而根據第 (1)(g) 款拒絕該請求。
- (5) 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) 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。
- (7) 請求方如接納在第 (6)(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。

第五條

請求

- (2) For the purpose of paragraph (1)(b) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.
- (3) For the purpose of paragraph (1)(c) in considering whether a request relates to a political offence, the Requested Party shall take into account the relevant facts, the supporting documents provided by the Requesting Party and provisions of international conventions which are applicable to both parties. The Requested Party shall particularly give due consideration to not regarding offences against life, physical integrity, property or freedom of persons as political offences.
- (4) A request shall not be refused under paragraph (1)(g) on the basis that it is not known at the time of making the request what offence will be charged.
- (5) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (6) 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.
- (7) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (6)(b), it shall comply with those terms and conditions.

ARTICLE V

REQUESTS

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- (1) 除非在緊急情況下，否則請求須以書面提出。在緊急情況或被請求方容許的其他情況下，請求可以口頭提出，但須在其後十(10)天內以書面確認。
- (2) 請求須包括：
 - (a) 請求方代其提出請求的機關的名稱；
 - (b) 對該項請求的目的及所需協助性質的描述；
 - (c) 對有關偵查、檢控、罪行或刑事事宜性質的描述；
 - (d) 有關事實及法律的撮要；
 - (e) 有關保密的任何要求；
 - (f) 請求方希望得以遵循的任何特別程序的細節；及
 - (g) 履行請求的時限的細節。
- (3) 除非獲得請求方授權，否則被請求方須盡其所能將請求、其內容、支持文件及根據請求而採取的任何行動保密。
- (4) 請求須採用被請求方的法定語文或翻譯成被請求方的法定語文。為支持請求而提交的所有文件，在被請求方的要求下，須連同被請求方的法定語文的譯本一併提交。

第六條

執行請求

- (1) Requests shall be made in writing except in urgent cases. In urgent cases or where otherwise permitted by the Requested Party, requests may be made orally, but shall be confirmed in writing within ten (10) days thereafter.
- (2) Requests 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;
 - (d) a summary of the relevant facts and laws;
 - (e) any requirements for confidentiality;
 - (f) details of any particular procedure the Requesting Party wishes to be followed; and
 - (g) details of the period within which the request should be complied with.
- (3) The Requested Party shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request except when otherwise authorized by the Requesting Party.
- (4) Requests shall be in, or translated into, an official language of the Requested Party. All documents submitted in support of a request shall be accompanied, if so required by the Requested Party, by a translation into an official language of the Requested Party.

ARTICLE VI

EXECUTION OF REQUESTS

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附表 1

- (1) 請求須按照被請求方的法律予以執行，並須在被請求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規定執行。
- (2) 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。
- (3) 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。

第七條

代表及開支

- (1) 被請求方須作出一切必需安排，使請求方在因協助請求而引起的任何法律程序中獲得代表，並須在其他方面代表請求方的利益。
- (2) 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) 專家的費用；
 - (b) 翻譯開支；
 - (c) 證人、專家、在羈押下被移交的人和押送人員的交通開支及津貼；及
 - (d) 應請求方要求而聘請的律師的費用。
- (3) 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。

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- (1) A request shall be executed in accordance with the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the requirements stated in the request so far as practicable.
- (2) 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.
- (3) 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 reasons for that decision.

ARTICLE VII

REPRESENTATION AND EXPENSES

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
- (2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:
 - (a) fees of experts;
 - (b) expenses of translation;
 - (c) travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers; and
 - (d) fees of counsel retained at the request of the Requesting Party.
- (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.

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第八條

使用限制

- (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作請求所述以外的用途。

第九條

有關的人的出席

就根據本協定提出的請求而言，被請求方可在其法律的規限下准許受在請求方內的有關法律程序所影響的人、其法律代表及請求方的代表，在執行請求時出席。

第十條

取得證據、物品或文件

- (1) 如請求方提出取證請求，被請求方須安排取得有關證據。
- (2) 就本協定而言，作證或取證包括交出文件、紀錄或其他物料。

ARTICLE VIII

LIMITATIONS OF USE

- (1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
- (2) The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

ARTICLE IX

ATTENDANCE OF PERSONS

For the purposes of requests under this Agreement, the Requested Party may, subject to its law, authorise persons affected by the relevant proceedings in the Requesting Party, their legal representatives and representatives of the Requesting Party to be present at the execution of the request.

ARTICLE X

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken, 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.

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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或作證的人提出的問題以及訊問的事項。
- (4) 如有需要，被請求方的主管機關可自發地，或在第九條所述任何人的請求下，向證人或作證的人提出根據本條第(3)款指明的問題以外的問題。
- (5) 根據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) 假如在被請求方提起的法律程序中出現類似情況，被請求方的法律容許該人拒絕作證；或
 - (b) 假如在請求方進行該等法律程序，請求方的法律容許該人拒絕作證。
- (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中心機關的證明書為憑據。

第十一條

送達文件

- (1) 請求方交付送達的司法程序文件及其他文件，被請求方須予以送達。
- (2) 如送達文件的請求與被送達人在請求方作出回應有關，請求方須於預定回應的日期前一段合理時間內交付該請求。

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- (3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witness or person giving evidence and the subject matter about which they are to be examined.
- (4) If necessary, any questions additional to those specified in paragraph (3) of this Article, may be put to the witness or person giving evidence by the competent authority of the Requested Party, either of its own volition or if requested by any of the persons referred to in Article IX.
- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence where either:
- (a) the law of the Requested Party would permit that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) where the law of the Requesting Party would permit him to decline to give evidence in such 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 of the Central Authority of the Requesting Party.

ARTICLE XI

SERVICE OF DOCUMENTS

- (1) The Requested Party shall effect service of judicial process and other documents which are transmitted to it for this purpose by the Requesting Party.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response in the Requesting Party within a reasonable time before the scheduled response.

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- (3) 如送達文件的請求與被送達人在請求方出席有關，請求方須於預定出席的日期前一段合理時間內(如有可能，在該日期之前最少 40 天)交付該請求。
- (4) 送達文件可採用郵遞。如請求方明確要求，被請求方須按本身法律所規定的送達類似文件的方式，或按符合該等法律的特別方式，把文件送達。
- (5) 被請求方須在其法律容許的範圍內，按請求方要求的方式，交回送達證明。
- (6) 如被送達人沒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

可供公眾取閱的文件和官方文件

- (1) 被請求方須在其法律的規限下，提供可供公眾取閱的文件的副本。
- (2) 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，被請求方可按照其向本身的主管機關提供該類文件、紀錄或資料的相同範圍和條件，提供副本。

第十三條

核證和認證

除非請求方的中心機關明確要求，否則根據本協定交付的證據、文件、紀錄或其他物料均無須作任何形式的核證或認證。有關的

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- (3) The Requesting Party shall transmit a request for the service of a document pertaining to an appearance in the Requesting Party within a reasonable time, and if possible at least 40 days, before the scheduled appearance.
- (4) Service may be effected by mail. If the Requesting Party expressly so requests, service shall be effected by the Requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
- (5) The Requested Party shall, insofar as its law permits, return a proof of service in the manner required by the Requesting Party.
- (6) 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 Requested Party.

ARTICLE XII

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 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 competent authorities.

ARTICLE XIII

CERTIFICATION AND AUTHENTICATION

Evidence, documents, records or other material transmitted pursuant to this Agreement shall not require any form of certification or

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物料只有在請求方的法律有特別規定的情況下，才會由領事或外交人員核證或認證。

authentication unless expressly requested by the Central Authority of the Requesting Party. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

第十四條

ARTICLE XIV

移交被羈押的人

TRANSFER OF PERSONS IN CUSTODY

(1) 如請求方請求把羈押在被請求方的人移交給請求方，以根據本協定提供協助，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，則須把該人由被請求方移交到請求方。

(1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall be transferred from the Requested Party to the Requesting Party, provided the Requested Party and the person consent and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

(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。

(2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires while the person is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.

第十五條

ARTICLE XV

移交其他人

TRANSFER OF OTHER PERSONS

(1) 請求方如認為有需要由某人親身出席以提供協助，則須知會被請求方。被請求方須邀請該人出席，並把該人的回覆告知請求方。

(1) If the Requesting Party considers the personal appearance of a person for the purpose of providing assistance necessary it shall so inform the Requested Party. The Requested Party shall invite that person to appear and advise the Requesting Party of the reply from that person.

(2) 請求方如根據本條提出請求，則須把會支付的津貼(包括交通及住宿開支)的大約數目告知被請求方。

(2) Where a request is made pursuant to this Article, the Requesting Party shall advise the approximate amount of allowances payable, including travelling and accommodation expenses.

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ARTICLE XVI

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安全通行

- (1) 同意根據第十四或十五條被移交的人，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；亦不得因其在離開被請求方之前的任何作為或不作為而遭受民事起訴(上文所指的民事起訴只限於假如該人不在請求方便不須遭受的民事起訴)。
- (2) 同意根據第十四或十五條被移交的人，不得因其所作證供而遭受檢控，但犯偽證罪則不在此限。
- (3) 同意根據第十四或十五條被移交的人，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作證。
- (4) 任何人如不同意根據第十四或十五條被移交，請求方或被請求方的法院不得因此而處罰該人或向其施加強制措施。
- (5) 任何人如回應請求方的傳票，以便就構成向他提起法律程序的主題的作為進行答辯，則該人不得因他在離開被請求方之前而又沒有在該傳票中指明的作為或不作為而在請求方被檢控、拘留或被限制人身自由。
- (6) 如有關的人可自由離開請求方的司法管轄區，而他沒有在接獲通知已無須逗留後的 30 天內離開，或在離開請求方的司法管轄區後返回，則第(1)及(5)款不適用。

第十七條搜查及檢取SAFE CONDUCT

- (1) A person who consents to transfer pursuant to Articles XIV or XV shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or be subject to civil suit, being a civil suit to which the person could not be subjected if the person were not in the Requesting Party for any act or omission which preceded his departure from the Requested Party.
- (2) A person who consents to transfer pursuant to Articles XIV or XV shall not be subject to prosecution based on his testimony, except for perjury.
- (3) A person who consents to transfer pursuant to Articles XIV or XV shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
- (4) A person who does not consent to transfer pursuant to Articles XIV or XV shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.
- (5) A person who responds to a summons from the Requesting Party to answer for acts forming the subject of proceedings against him shall not be prosecuted or detained or restricted in his personal liberty in the Requesting Party for acts or omissions which preceded his departure from the Requested Party and which are not specified in the summons.
- (6) Paragraphs (1) and (5) shall not apply if the person, being free to leave, has not left the jurisdiction of the Requesting Party within a period of 30 days after being notified that his presence is no longer required, or having left the jurisdiction of the Requesting Party, has returned.

ARTICLE XVIISEARCH AND SEIZURE

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- (1) 如請求方請求搜查、檢取及交付與刑事事宜的法律程序或偵查有關的物料，被請求方在其法律容許的範圍內，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、檢取的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合理條件。

- (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 a proceeding or investigation 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 reasonable conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

第十八條

ARTICLE XVIII

犯罪得益及犯罪工具

PROCEEDS AND INSTRUMENTS OF CRIME

- (1) 如請求方提出請求，被請求方須盡力查明是否有任何涉及觸犯請求方法律的犯罪得益或犯罪工具處於其司法管轄區，並須把調查結果通知請求方。請求方在提出請求時，須把相信這些得益或工具可能處於被請求方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、轉讓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。

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instruments may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds or instruments 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 instruments of crime, pending a final determination in respect of those proceeds or instruments by a Court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation of proceeds or instruments of crime such request shall be executed pursuant to the laws of the Requested Party.

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

(5) 凡因應根據本條第(1)或(3)款提出的協助請求而已在被請求方採取行動，並有受法庭命令影響的人向締約任何一方提出申述，則接獲該申述的一方須盡早將該申述知會另一方，亦須迅速將該申述的結果知會另一方。

(6) 就本協定而言：

- (a) “沒收”指引致財產遭剝奪的任何措施；
- (b) “犯罪工具”指任何用於或擬用於與犯罪有關的用途的財產；
- (c) “犯罪得益”包括任何人從罪行直接或間接所得，或將從罪行所得變現而直接或間接所得的任何財產或任何該等財產的價值；及
- (d) “財產”包括金錢及所有類別的動產、不動產、有形財產或無形財產，亦包括該等財產的任何權益。

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

(5) Where action has been taken in the Requested Party pursuant to a request for assistance under paragraph (1) or (3) of this Article, and there is a representation to either of the Parties by a person affected by a court order, the Party receiving that representation shall inform the other Party of it as soon as possible and shall also inform the other Party promptly of the outcome of that representation.

(6) For the purposes of this Agreement:

- (a) “confiscation” means any measure resulting in the deprivation of property;
- (b) “instruments of crime” means any property which is, or is intended to be, used in connection with the commission of an offence;
- (c) “proceeds of crime” includes any property that is derived or realised directly or indirectly by any person from an offence or offences or the value of any such property; and
- (d) “property” includes money and all kinds of movable or immovable, tangible or intangible property, and includes any interest in such property.

第十九條

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。

第二十條

ARTICLE XIX

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.

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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三十 (30) 天後生效。
- (2) 無論有關的作為或不作為是否在本協定生效之前發生，本協定須適用於有關請求。
- (3) 締約任何一方可藉事先給予另一方書面通知而終止本協定。在此情況下，本協定將於該另一方接獲通知的日期起計六 (6) 個月後失效。但在本協定終止前已接獲的協助請求，則仍須按照本協定的條款處理，如同本協定仍然生效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

本協定於二零零九年九月十四日在新德里簽訂，一式兩份正本，每份均用中文、印地語及英文寫成，各文本均具同等效力。

ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force thirty (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) This Agreement shall apply to requests whether or not the relevant acts or omissions occurred prior to its entering into force.
- (3) Either Party may terminate this Agreement by giving prior notice to the other in writing. In that event, the Agreement shall cease to have effect six (6) months after the date of the receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

DONE at New Delhi, this 14th day of September 2009 in two originals, each in Chinese, Hindi and English languages, all texts being equally authentic.

附表 2

[第 2 條]

指明對本條例作出的變通

1. 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；”。
2. 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；**”。
3. 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他已無須為下述任何
目的逗留，但他沒有在接獲該通知後的 30 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**

Schedule 2

[s. 2]

Specifications of Modifications to the Ordinance

1. 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;”.
2. 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;*”。
3. 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 30 days after being
notified that the person's presence is no longer required
for any of the following purposes* has had an opportunity

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(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)。

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~~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]

對本條例作出的變通的撮錄

1. 附表 2 第 1 及 2 條指明對本條例第 5(1) 條作出的變通，以令律政司司長如認為有以下情況，對於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，亦須予以拒絕——
 - (a) 該項請求關乎因外地罪行而對某人進行的檢控，而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；
 - (b) 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。
2. 附表 2 第 3 條指明對本條例第 17(3)(b) 條作出的變通，以更準確地解釋在甚麼情況下，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 and 2 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) 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;
 - (b) 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 3 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.