

《刑事事宜相互法律協助(意大利)令》  
(第 525 章, 附屬法例 G)

**Mutual Legal Assistance in Criminal Matters (Italy) Order**  
(Cap. 525 sub. leg. G)

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經核證文本  
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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	14.11.2019
附表 1 Schedule 1	S1-1—S1-32	14.11.2019
附表 2 Schedule 2	S2-1—S2-4	14.11.2019

**尚未實施的條文 / 修訂** —

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<https://www.elegislation.gov.hk>) 閱覽。

**Provisions / Amendments not yet in operation** —

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**制定史**

本為 2000 年第 21 號法律公告——2000 年第 32 號，2019 年第 5 號  
編輯修訂紀錄

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Originally L.N. 21 of 2000 — 32 of 2000, E.R. 5 of 2019

《刑事事宜相互法律協助(意大利)令》

(第 525 章, 附屬法例 G)

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Mutual Legal Assistance in Criminal Matters (Italy)  
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## 《刑事事宜相互法律協助(意大利)令》

(第 525 章第 4 條)

(略去制定語式條文——2019 年第 5 號編輯修訂紀錄)

[2010 年 8 月 14 日] 2010 年第 108 號法律公告

(格式變更——2019 年第 5 號編輯修訂紀錄)

1. (已失時效而略去——2019 年第 5 號編輯修訂紀錄)

2. 條例在香港特別行政區與意大利共和國之間適用

現就——

(a) 適用於香港特別行政區政府與意大利共和國政府，  
而

(b) 副本附錄於附表 1

的相互法律協助的安排，指示在撮錄於附表 2 的對本條例作出的變通的規限下，本條例在香港特別行政區與意大利共和國之間適用。

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

(Cap. 525, section 4)

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

[14 August 2010] L.N. 108 of 2010

(Format changes—E.R. 5 of 2019)

1. (Omitted as spent—E.R. 5 of 2019)

2. **Ordinance to apply between Hong Kong Special Administrative Region and Italian Republic**

In relation to the arrangements for mutual legal assistance—

(a) which are applicable to the Government of the Hong Kong Special Administrative Region and the Government of the Italian Republic; and

(b) a copy of which is annexed at Schedule 1,

it is hereby directed that the Ordinance shall, subject to the modifications to the Ordinance summarized in Schedule 2, apply as between the Hong Kong Special Administrative Region and the Italian Republic.

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## 附表 1

[ 第 2 條 ]

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

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，與意大利共和國政府，

為加強雙方在刑事偵查及法律程序和充公犯罪得益方面的合作效能，

協議如下：

## 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 Italian Republic  
Concerning  
Mutual Legal Assistance in  
Criminal Matters**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised by the Central People's Government of the People's Republic of China, and the Government of the Italian Republic,

Desiring to improve the effectiveness of their co-operation in criminal investigations and proceedings, and in the confiscation of criminal proceeds,

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，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司法協助。
- (2) 提供的協助，包括以下各項：
  - (a) 辨認和追尋有關的人；
  - (b) 送達文件；
  - (c) 取得證據、物品或文件；
  - (d) 執行搜查和檢取物品的要求；
  - (e) 就證人及專家親自出庭提供方便；
  - (f) 暫時移交被羈押的人出庭作證；
  - (g) 獲取司法或官方紀錄；
  - (h) 追查、限制和沒收或充公犯罪活動得益和工具；
  - (i) 提供資料、文件和紀錄；
  - (j) 交付財產，包括借出證物；及
  - (k) 任何與本協定宗旨一致而又與被要求方法律並無不一致的其他相互司法協助。
- (3) 根據本協定提供協助的範圍包括與違返稅項、關稅、外匯管制或其他稅務法律有關的罪行，但不包括與該等罪行有關的非刑事法律程序。
- (4) 提供的協助不包括以下各項：
  - (a) 移交任何逃犯；
  - (b) 在被要求方執行要求方所施加的刑事判決，但以不影響第十七條的規定為原則；

ARTICLE I

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, articles or documents;
  - (d) executing requests for search and seizure;
  - (e) facilitating the personal appearance of witnesses and experts;
  - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
  - (g) obtaining production of judicial or official records;
  - (h) tracing, restraining, and forfeiting or confiscating the proceeds and instrumentalities of criminal activities;
  - (i) providing information, documents and records;
  - (j) delivery of property, including lending of exhibits; and
  - (k) other mutual legal assistance consistent with the objects of this Agreement, which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement shall include assistance in connection with offences against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.

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- (c) 移交被羈押的人以便服刑。
- (5) 本協定純為締約雙方互相提供司法協助而設立，而為免生疑問，任何私人均無權根據本協定提出或反對任何協助要求。

- (4) Assistance shall not include:
- (a) the surrender of any fugitive offender;
  - (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party, without prejudice to the provisions of Article XVII;
  - (c) the transfer of persons in custody to serve sentences.
- (5) This Agreement is intended solely for mutual legal assistance between the Parties and, for the avoidance of doubt, no private person is entitled under this Agreement to make or oppose any request for assistance.

## 第二條

### 中心機關

- (1) 締約雙方須各自設立一個中心機關。
- (2) 香港特別行政區政府的中心機關為律政司司長或經其正式授權的人員。意大利共和國政府的中心機關為司法部。
- (3) 根據本協定所作的要求須由要求方的中心機關向被要求方的中心機關提出。

## ARTICLE II

### CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for the Government of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorised officer. The Central Authority for the Government of the Italian Republic shall be the Ministero di Grazia e Giustizia.
- (3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

## 第三條

### 順應協定的限制

- (1) 如出現以下情況，被要求方須拒絕提供協助：

## ARTICLE III

### LIMITATIONS ON COMPLIANCE

- (1) The Requested Party shall refuse assistance if:

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- (a) 有關的協助要求會損害意大利共和國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) 有關的協助要求會嚴重損害其本身的基要利益；
  - (c) 有關的協助要求關乎屬政治性質的罪行；
  - (d) 有關的協助要求關乎只在軍法下才構成的罪行，而該罪行在普通刑事法律下並不構成罪行；
  - (e) 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、性別、宗教、國籍或政治見解而蒙受不利；
  - (f) 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；
  - (g) 有關的協助要求關乎就某一罪行而對某人進行檢控，而該罪行是在被要求方管轄區所觸犯的，而根據被要求方的法律，該人會由於時效消失而不能被檢控；
  - (h) 要求方不能遵守任何有關保密或限制使用獲提供物料的條件；
  - (i) 就涉及強制措施的要求，被指稱構成罪行的作為或不作為，如在被要求方的管轄區發生，並不構成罪行；
  - (j) 如就有關的協助要求所涉及的罪行在被要求方管轄區進行刑事法律程序，則該要求所包括的行動會違反被要求方的法律；惟被要求方不得單以其法律不容許在有關罪行的偵查階段作出行動為由，拒絕協助；
  - (k) 有關的協助要求涉及根據要求方法律屬可判死刑的罪行。
- (2) 如執行要求會妨礙被要求方正在進行的偵查或檢控，被要求方可暫緩提供協助。
- (3) 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

- (a) the request for assistance impairs the sovereignty, security or public order of the Italian Republic or, in the case of the Government of the Hong Kong Special Administrative Region, the People's Republic of China;
- (b) the request for assistance would seriously impair its essential interests;
- (c) the request for assistance relates to an offence of a political character;
- (d) the request for assistance relates to an offence only under military law, which is not an offence under the ordinary criminal law;
- (e) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of race, sex, religion, nationality or political opinions;
- (f) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party;
- (g) the request for assistance relates to the prosecution of a person for an offence which was committed within the jurisdiction of the Requested Party and is an offence for which, under the law of that Party, the person cannot be prosecuted by reason of lapse of time;
- (h) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;
- (i) in the case of requests involving compulsory measures, the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence;
- (j) the assistance requested consists of actions that would be contrary to the Requested Party's law had the offence to

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- (b) 與要求方磋商，以確定可否在被要求方認為必需的條款及條件的規限下提供協助。
- (4) 要求方如接受在第 (3)(b) 款所述的條款及條件的規限下所提供的協助，則必須遵守該等條款及條件。

#### 第四條

##### 要求

- (1) 要求必須以書面提出。在緊急情況下，可以傳真方式或通過國際刑警提出要求，但不影響被要求方索取該項要求的正本的權利。
- (2) 協助要求須包括以下內容：
- (a) 要求方代其提出要求的機關的名稱；
- (b) 對該項要求的目的及所要求的協助的性質的描述；

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- which it relates been the subject of criminal proceedings under its own jurisdiction, except that assistance shall not be refused on the sole ground that the actions would not be permitted at the investigation stage of such an offence under the Requested Party's law;
- (k) the request for assistance relates to an offence which carries the death penalty under the law of the Requesting Party.
- (2) The Requested Party may postpone assistance if execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (3) 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.
- (4) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (3)(b), it shall comply with those terms and conditions.

#### ARTICLE IV

##### REQUESTS

- (1) Requests shall be in writing. In urgent cases, requests may be transmitted by fax or through Interpol, without prejudice to the right of the Requested Party to seek the original of the request.
- (2) Requests for assistance shall include:

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- (c) 可能的話，提供關於為執行要求而辨認或追尋有關人士的資料；
  - (d) 對該項偵查、檢控、罪行或刑事事宜的性質的描述；
  - (e) 有關事實及法律的撮要；
  - (f) 有關保密的要求；
  - (g) 要求方冀望被要求方遵循的任何特別程序的細節；及
  - (h) 順應該項要求的期限的細節。
- (3) 除非獲得要求方的授權，否則被要求方須盡其所能將要求及其內容保密。
- (4) 除非被要求方免除本規定，否則要求方提出的要求及為支持要求而提交的所有文件，必須附有被要求方法定語文的譯本。

- (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) where possible, information which is relevant to the identification or location of persons for the purpose of executing the request;
  - (d) a description of the nature of the investigation, prosecution, offence or criminal matter;
  - (e) a summary of the relevant facts and laws;
  - (f) any requirements for confidentiality;
  - (g) details of any particular procedure the Requesting Party wishes to be followed; and
  - (h) 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 and its contents except when otherwise authorised by the Requesting Party.
- (4) A request and all documents submitted in support of it shall be accompanied by a translation in an official language of the Requested Party, unless the Requested Party dispenses with this requirement.

## 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。

## ARTICLE V

### 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.

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- (2) 協助要求須按照被要求方的法律予以執行，並須在不違反被要求方法律的範圍內，按照要求內所表明的任何可行程序予以執行。
- (3) 如要求方明確提出要求，被要求方的中心機關須通知要求方有關執行要求的日期及地點。
- (4) 如要求方明確提出要求，協助要求所涉及的有關當局及受影響的人士，以及有關當局及該等人士的法律代表，可在徵得被要求方同意的情况下，於執行要求時在場。
- (5) 被要求方須迅速將任何可能導致顯著延遲回應該項要求的情況通知要求方。
- (6) 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

### 代表及開支

- (1) 被要求方須作出一切必要安排，使要求方在因提出協助要求而引起的任何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境內執行要求的所有一般性開支，但下述項目除外：
  - (a) 應要求方要求而聘請的律師的費用；
  - (b) 聘請專家的費用；
  - (c) 翻譯費用；及

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- (2) A request shall be executed in accordance with the law of the Requested Party and, to the extent not contrary to the law of the Requested Party, in accordance with any feasible procedures indicated in the request.
- (3) If the Requesting Party expressly so requests, the Central Authority of the Requested Party shall inform it of the date when and the place where the request will be executed.
- (4) If the Requesting Party expressly so requests, the authorities involved in, and persons affected by, the request for assistance and their legal representatives may be present at the execution of the request if the Requested Party agrees.
- (5) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
- (6) 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 VI

### 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 counsel retained at the request of the Requesting Party;
  - (b) fees of experts;

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- (d) 證人、專家、在羈押下被移交的人和押送人員的交通費用及津貼。
- (3) 在執行要求期間，如察覺須作特殊性質的開支，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。

- (c) expenses of translation; and
- (d) travel expenses and allowances of witnesses, experts, persons being transferred in custody and escorting officers.
- (3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

### 第七條

#### 使用限制

- (1) 被要求方在與要求方磋商後，可要求在要求方的法律容許的範圍內，將所提供的資料或證據保密，或只限在被要求方所指定的條款及條件下方可透露或使用該等資料或證據。
- (2) 未經被要求方中心機關事先同意，要求方不得透露或使用被要求方提供的資料或證據作不屬於要求內所述的用途。

### ARTICLE VII

#### LIMITATIONS OF USE

- (1) After consultation with the Requesting Party, the Requested Party may require that, insofar as the law of the Requesting Party permits, information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as the Requested Party 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.

### 第八條

#### 取得證據、物品或文件

- (1) 要求方如就在其管轄區內的偵查、刑事罪行檢控或有關刑事事宜的法律訴訟提出取證要求，被要求方須安排錄取有關證據。
- (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。

### ARTICLE VIII

#### OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken for the purpose of an investigation or prosecution of criminal offence or a proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.

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(3) 就根據本條所提出的要求而言，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) 如依據協助要求，某人須為在要求方管轄區內進行的法律程序而作證，要求方內有關法律程序的各方、他們的法律代表或要求方的代表，可在不違反被要求方法律的範圍內，出庭及向該證人發問。

(5) 如須作證的人士根據要求方的法律提出豁免權、無行為能力或特權的請求，被要求方仍須取證，並將請求告知要求方的中心機關，由要求方的有關當局隨後解決。如豁免權、無行為能力或特權的請求是根據被要求方的法律提出的，則須依據被要求方的法律解決。

(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, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, to the extent not contrary to the law of the Requested Party, appear and question the person giving that evidence.

(5) If a person who is required to give evidence asserts a claim of immunity, incapacity, or privilege, which is provided for 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. If a claim is asserted for immunity, incapacity, or privilege, which is provided for under the law of the Requested Party, it shall be resolved pursuant to the Requested Party's law.

## 第九條

### 有關人士的所在及身分

如要求方提出要求，被要求方須盡力查明要求內所指的任何人的所在或身分。

## ARTICLE IX

### LOCATION OR IDENTITY OF PERSONS

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

第十條

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) 如有關文件需要被送達人作出回應，要求方須於預定回應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) 如有關文件需要被送達人在要求方出庭，要求方須於預定出庭的日期前最少 40 天，向被要求方提出送達該等文件的要求。
- (4) 送達證明須以下述方式作出：
  - (a) 提交由被送達人註明日期及簽署的收條；或
  - (b) 由被要求方的有關當局聲明已把文件送達，並載明送達文件的形式及日期；或
  - (c) 要求方要求的任何其他可行方式。

有關文件須立即送交要求方。

- (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任何一方的法律遭受處罰或處以強制措施，除非其後該人自願進入要求方管轄區內，並在該處再次被妥為送達有關文件。

ARTICLE X

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 in the Requesting Party within a reasonable time before the scheduled response.
- (3) The Requesting Party shall transmit a request for the service of a document pertaining to an appearance in the Requesting Party at least forty days before the scheduled appearance.
- (4) Proof of service shall be given :
  - (a) by means of a receipt dated and signed by the person served; or
  - (b) by means of a declaration made by the relevant authority of the Requested Party that service has been effected and stating the form and date of such service; or
  - (c) in any other feasible manner required by the Requesting Party.

The relevant document shall be sent immediately to the Requesting Party.

- (5) 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 either Party, unless subsequently he voluntarily enters the jurisdiction of the Requesting Party and is there again duly served.

### 第十一條

#### 可向公眾提供的文件和官方文件

- (1) 被要求方須提供根據其本身的法律可向公眾提供的文件的文本。
- (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或司法機關提供該類文件、紀錄或資料的相同範圍和條件，向要求方提供。

### 第十二條

#### 核證和認證

轉傳至要求方的證據、文件、抄件、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。有關的物料只有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。

### 第十三條

#### 移交被羈押的人

- (1) 任何被羈押在被要求方的人如獲要求方要求他到要求方以便根據本協定作證，則在被要求方的同意下，該人須就此目的從被移交

### ARTICLE XI

#### PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) The Requested Party shall provide copies of documents which are publicly available under its law.
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

### ARTICLE XII

#### CERTIFICATION AND AUTHENTICATION

Evidence, 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 XIII

#### TRANSFER OF PERSONS IN CUSTODY

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party as a witness pursuant to this Agreement

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方移交給要求方，但須得該人同意，而要求方並須保證把該人繼續羈押及事後在被要求方指定的限期內或當該人無須再留在要求方管轄區內時提早將該人送回被要求方。如要求方提出要求，被要求方可延長送回該名被羈押的人的限期。

(2) 如根據本條被移交的被羈押的人身在要求方管轄區時，根據被要求方的法律可獲得釋放，被要求方須就此事通知要求方，而要求方須確保該人獲得釋放。

(3) 任何人不得因其不同意根據本條被移交而根據任何一方的法律遭受處罰或處以強制措施。

#### 第十四條

##### 移交其他人

(1) 要求方如認為某位證人或專家須在要求方管轄區親身出庭，須通知被要求方。被要求方如信納要求方會為該人的安全作出安排，須要求該位證人或專家出庭，並把該位證人或專家的回覆通知要求方。

(2) 要求方如根據本條提出要求，須把證人或專家可獲的津貼(包括交通及住宿費用)的大約數目通知被要求方。

(3) 任何人不得因其在接獲根據本條提出的要求時拒絕以證人或專家的身分出庭，而根據任何一方的法律遭受處罰或處以強制措施。

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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 within the period indicated by the Requested Party or at any earlier time when his presence in the Requesting Party is no longer required. The Requested Party may, upon the request of the Requesting Party, extend the period for returning the person in custody.

(2) Where a person in custody who is transferred pursuant to this Article becomes entitled under the law of the Requested Party to be released from custody whilst he is in the Requesting Party, the Requested Party shall so advise the Requesting Party which shall ensure the person's release.

(3) A person who does not consent to be transferred under this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

#### ARTICLE XIV

##### TRANSFER OF OTHER PERSONS

(1) If the Requesting Party considers that the personal appearance of a witness or expert in the Requesting Party is necessary it shall so inform the Requested Party. The Requested Party shall, if satisfied that arrangements for that person's security will be made by the Requesting Party, request the witness or expert to appear and advise the Requesting Party of the reply from the witness or expert.

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

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## 第十五條

### 豁免

- (1) 同意根據第十三或十四條被移交的人，不得因其在離開被要求方之前所犯的任何刑事罪行而在要求方被檢控、拘留或被限制人身自由；亦不得遭受民事起訴，而有關的民事起訴屬假如該人不在要求方便不須承受的。
- (2) 如有關的人本可自由離去，但在接獲通知無須再逗留後的 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) 同意根據第十三或十四條作證的人，不得基於其所作的證供而遭受檢控，但偽證罪或根據要求方的法律與作假證供有關的任何類似罪行則不在此限。
- (4) 同意根據第十三或十四條被移交的人，除與該項要求有關的法律程序外，不得被要求就任何其他法律程序中作證。

## ARTICLE XV

### IMMUNITY

- (3) A person who declines to appear as witness or expert, when requested under this Article, shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

- (1) A person who consents to transfer pursuant to Article XIII or XIV 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, nor be subject to civil suit to which the person could not be subjected if he were not in the Requesting Party.
- (2) Paragraph (1) shall not apply if the person, being free to leave, has not left the Requesting Party within a period of fifteen days after being notified that his presence is no longer required or, having left the Requesting Party, has returned.
- (3) A person who consents to give evidence under Article XIII or XIV shall not be subject to prosecution based on his testimony, except for perjury or any comparable offence related to the giving of false evidence under the law of the Requesting Party.
- (4) A person who consents to transfer pursuant to Article XIII or XIV shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

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## 第十六條

### 搜查及檢取

- (1) 被要求方須執行要求方就搜查、檢取及交付下述物料所提出的要求：
  - (a) 有合理理由相信該物料是在被要求方管轄區內；及
  - (b) 該物料是與關乎根據要求方的法律可判處最高刑罰為最少監禁兩年的罪行所進行的法律程序或偵查有關的。
- (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該等財產施加的任何條件。

## 第十七條

### 犯罪得益

- (1) 如要求方提出要求，被要求方須盡力查明是否有任何因觸犯要求方的法律而得來的得益位於其管轄區內，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可能位於被要求方管轄區內的理由通知被要求方。

## ARTICLE XVI

### SEARCH AND SEIZURE

- (1) The Requested Party shall carry out requests from the Requesting Party for search, seizure and delivery of any material which:
  - (a) there are reasonable grounds to believe is in the Requested Party; and
  - (b) is relevant to a proceeding or investigation relating to an offence the maximum penalty for which is at least two years' imprisonment under the law of the Requesting Party.
- (2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.
- (3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

## ARTICLE XVII

### PROCEEDS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.

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- (2) 如根據第(1)款找到懷疑為犯罪得益之物，被要求方須採取本身法律容許的措施，以防止任何人就這些懷疑為犯罪得益之物作出處理、轉讓或處置，以待要求方的法院就這些得益作出最終裁定。
- (3) 要求方如要求協助把犯罪得益充公，被要求方須以其法律容許的任何方法提供協助。協助的方法可包括強制執行要求方法院的命令，以及就要求涉及的犯罪得益提起法律程序，或就該等法律程序提供協助。
- (4) 除非締約雙方另行商定，否則根據本協定充公的犯罪得益須由被要求方保留。
- (5) 就本條而提出的要求必須：
- (a) 盡可能提供有關犯罪得益以及須採取預防措施及予以充公的任何其他財產的描述及所在地點，以及這些財產與被檢控或被判有罪的人的關係；
- (b) 附上要求方法機關就採取預防措施所作出的命令的文本，或要求方法院作出的沒收令的文本，以及證明這是最終命令的文件(視何者適用而定)。

- (2) Where pursuant to paragraph (1) suspected proceeds 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 of crime, pending a final determination in respect of those proceeds by a court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation of proceeds such assistance shall be given by whatever means are permitted by 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 to which the request relates.
- (4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) Requests made for the purpose of this Article shall:
- (a) indicate, as much as possible, the description and location of the proceeds of crime and of any other property liable to preventive measures and confiscation, and their connection with the person charged with, or convicted of, the offence;
- (b) be accompanied, where appropriate, by a copy of any order for preventive measures made by the judicial authorities of the Requesting Party, or of the order of confiscation made by a court of the Requesting Party and the certification that it is final.

## 第十八條

### 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。

## ARTICLE XVIII

### 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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第十九條

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。

本協定一式兩份於一九九八年十月二十八日在意大利羅馬簽訂，每份均用中文、英文及意大利文寫成，各文本同等真確。

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ARTICLE XIX

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) Each of the Parties may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect on receipt of 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 in duplicate at Rome, Italy this twenty-eighth day of October 1998 in the Chinese, English and Italian languages, each text being equally authentic.

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## 附表 2

[ 第 2 條 ]

### 對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通至如下文所示 ——
    - “(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→\*\*——\* (2000 年第 32 號第 48 條)
      - (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) 是就在香港發生某一作為或不作為而進行的，並因時效消失而不再能夠在香港進行；\*\*”。
  2. 本條例第 17(3)(b) 條須予變通至如下文所示 ——
    - “(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 had occurred in Hong Kong and 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 Attorney General\*\* Secretary for Justice\* to be a criminal matter

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附表 2

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\*\* 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)。

in relation to which it is desirable that the person give 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).