

《刑事事宜相互法律協助(日本)令》
(第 525 章，附屬法例 AA)

Mutual Legal Assistance in Criminal Matters (Japan) Order
(Cap. 525 sub. leg. AA)

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經核證文本
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(《法例發布條例》(第 614 章)第 5 條)
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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	23.1.2020
附表 1 Schedule 1	S1-1—S1-34	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 —

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制定史

本為 2009 年第 43 號法律公告 —— 2020 年第 1 號編輯修訂紀錄

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《刑事事宜相互法律協助(日本)令》

**Mutual Legal Assistance in Criminal Matters (Japan)
Order**

(第 525 章, 附屬法例 AA)

(Cap. 525 sub. leg. AA)

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《刑事事宜相互法律協助(日本)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)

[2009 年 9 月 24 日] 2009 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. 本條例在香港與日本國之間適用

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，在香港與日本國之間適用。

Mutual Legal Assistance in Criminal Matters (Japan) Order

(Cap. 525, section 4)

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

[24 September 2009] L.N.176 of 2009

(Format changes—E.R. 1 of 2020)

1. (Omitted as spent—E.R. 1 of 2020)

2. Ordinance to apply between Hong Kong and Japan

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

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[第 2 條]

《中華人民共和國香港特別行政區與日本國 關於刑事事宜相互法律協助的協定》#

經中華人民共和國中央人民政府正式授權的中華人民共和國香港特別行政區(以下提述為“香港特別行政區”)與日本國,

為使締約雙方在刑事事宜相互法律協助方面建立更有效的合作,

並為使上述合作可有助打擊罪行,

協議如下:

第一條

1. 在締約一方提出要求下,締約另一方須按照本協定的條文,就刑事事宜的偵查、檢控和其他法律程序提供相互法律協助(以下提述為“協助”)。

註: # 《中華人民共和國香港特別行政區與日本國關於刑事事宜相互法律協助的協定》以中文、英文及日文簽訂,各文本均同等真確。特區政府保安局備有該協定的日文本供參閱。

Schedule 1

[s. 2]

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

The Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as “Hong Kong Special Administrative Region”), having been duly authorized by the Central People's Government of the People's Republic of China, and Japan,

Desiring to establish more effective cooperation between both Parties in the area of mutual legal assistance in criminal matters,

Desiring that such cooperation will contribute to combating crime,

Have agreed as follows:

Article 1

1. Each Party shall, upon request by the other Party, provide mutual legal assistance (hereinafter referred to as “assistance”) in connection with investigations, prosecutions and other proceedings in criminal matters in accordance with the provisions of this Agreement.

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

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2. 提供的協助包括：
- (1) 取得證供、陳述或物品；
 - (2) 訊問有關的人，檢查有關的物品或查看有關的地方；
 - (3) 追尋或辨認有關的人、物品或地方；
 - (4) 提供由被請求方的有關機關管有的物品；
 - (5) 向被要求在請求方的適當機關出席的人提出邀請；
 - (6) 移交被羈押的人以提供證供或以其他方式協助進行偵查、檢控或其他法律程序；
 - (7) 送達司法文件；
 - (8) 協助進行關乎沒收和凍結刑事罪行得益或刑事罪行工具的法律程序；及
 - (9) 被請求方的法律所容許並經締約雙方的中心機關協議的其他協助。
3. 在本協定中使用的“物品”一詞，指作為證據的文件、紀錄和物件。
4. 就關乎違反有關課稅的法律的罪行的協助請求而言，提出該請求的主要目的不得是對稅項的評估或徵收。

2. Assistance shall include the following:
- (1) obtaining testimony, statements or items;
 - (2) examining persons, items or places;
 - (3) locating or identifying persons, items or places;
 - (4) providing items in the possession of the authorities of the requested Party;
 - (5) presenting an invitation to a person whose appearance before an appropriate authority in the requesting Party is sought;
 - (6) transfer of a person in custody for giving testimony or otherwise assisting in investigations, prosecutions or other proceedings;
 - (7) serving judicial documents;
 - (8) assisting in proceedings related to confiscation and immobilization of proceeds or instrumentalities of criminal offences; and
 - (9) any other assistance permitted under the laws of the requested Party and agreed upon between the Central Authorities of the Parties.
3. The term “items” as used in this Agreement means documents, records and articles of evidence.
4. With regard to a request for assistance in connection with an offence against a law related to taxation, the primary purpose of the request shall not be the assessment or collection of tax.

第二條

1. 締約每一方須指定中心機關，以便履行本協定所規定的職能。就香港特別行政區而言，有關的中心機關為律政司司長或由律政司司長指定的人。就日本國而言，有關的中心機關為法務大臣或國家公安委員會或由其指定的人。
2. 根據本協定提出的協助請求，須由請求方的中心機關向被請求方的中心機關提出。
3. 締約雙方的中心機關須就本協定的事宜彼此直接通訊。

第三條

1. 如被請求方認為有以下情況，被請求方的中心機關可拒絕提供協助：
 - (1) 請求關乎政治罪行；
 - (2) 執行請求會損害其基要利益；
 - (3) 執行請求會損害日本國的主權、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；
 - (4) 請求不符合本協定的規定；

Article 2

1. Each Party shall designate the Central Authority that is to perform the functions provided for in this Agreement. For the Hong Kong Special Administrative Region, the Central Authority shall be the Secretary for Justice or a person designated by the Secretary for Justice. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them.
2. Requests for assistance under this Agreement shall be made by the Central Authority of the requesting Party to the Central Authority of the requested Party.
3. The Central Authorities of the Parties shall communicate directly with one another for the purposes of this Agreement.

Article 3

1. The Central Authority of the requested Party may refuse assistance if the requested Party considers that:
 - (1) the request relates to a political offence;
 - (2) the execution of the request would impair its essential interests;
 - (3) the execution of the request would impair the sovereignty, security or public order of Japan or, in the case of the Hong Kong Special Administrative Region, of the People's Republic of China;

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(5) 有充分理由假設，協助請求的提出旨在因種族、宗教、國籍、族裔、政治見解或性別的理由而檢控或懲罰某人，或該人的處境可能因任何該等原因而蒙受不利；

(6) 屬請求方的偵查、檢控或其他法律程序的標的之行為，在被請求方的法律下並不構成刑事罪行；或

(7) 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或由同一行為構成的另一罪行在被請求方被定罪或裁定無罪。

2. 在根據第 1 款拒絕提供協助前，被請求方的中心機關須與請求方的中心機關磋商，以考慮能否在被請求方認為必需的條件的規限下提供協助。如請求方接受該等條件，則須遵守該等條件。

3. 如拒絕提供協助，被請求方的中心機關須將拒絕的理由知會請求方的中心機關。

4. 如締約任何一方因其法律規定須基於第 1 款指明的任何理由拒絕提供協助，則本協定的任何條文均不得規定該一方執行請求。

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(4) the request does not conform to the requirements of this Agreement;

(5) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons;

(6) the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would not constitute a criminal offence under the laws of the requested Party; or

(7) the request for assistance relates to the prosecution of a person for an offence where the person has been convicted or acquitted in the requested Party in respect of that offence or another offence constituted by the same conduct.

2. Before refusing assistance pursuant to paragraph 1, the Central Authority of the requested Party shall consult with the Central Authority of the requesting Party to consider whether assistance can be provided subject to such conditions as the requested Party may deem necessary. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

3. If assistance is refused, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons for the refusal.

4. Nothing in this Agreement shall require either Party to execute a request if it is required by its laws to refuse assistance on any of the grounds specified in paragraph 1.

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第四條

Article 4

1. 請求方的中心機關須以書面提出請求。但請求方的中心機關亦可以任何其他可靠的通訊方式提出請求，只要被請求方的中心機關認為以該方式收取其請求屬適宜的。在此情況下，如被請求方的中心機關有所要求，則請求方的中心機關須及早以書面提供該請求的補充確認。請求須附同被請求方的法定語文的譯本；如屬緊急情況，則除非締約雙方的中心機關另有協議，否則須附同英文譯本。

1. The Central Authority of the requesting Party shall make a request in writing. However, the Central Authority of the requesting Party may make a request by any other reliable means of communication if the Central Authority of the requested Party considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requesting Party shall provide supplementary confirmation of the request in writing promptly thereafter, if the Central Authority of the requested Party so requires. A request shall be accompanied by a translation into an official language of the requested Party or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the Parties.

2. 請求須包括：

2. A request shall include the following:

(1) 進行有關偵查、檢控或其他法律程序的機關的名稱；

(1) the name of the authority conducting the investigation, prosecution or other proceeding;

(2) 關於上述偵查、檢控或其他法律程序的標的之事實；該偵查、檢控或其他法律程序的性質和階段；以及請求方的有關法律的文本；

(2) the facts pertaining to the subject of the investigation, prosecution or other proceeding; the nature and the stage of the investigation, prosecution or other proceeding; and the text of the relevant laws of the requesting Party;

(3) 對所需協助的描述；及

(3) a description of the assistance requested; and

(4) 對所需協助的目的之描述。

(4) a description of the purpose of the assistance requested.

3. 在必需及可能的範圍內，請求亦須包括：

3. To the extent necessary and possible, a request shall also include the following:

(1) 關於任何被要求提供證供、陳述或物品的人的身分和下落資料；

(2) 對取得或記錄證供、陳述或物品的方式的描述；

(3) 擬向被要求提供證供、陳述或物品的人提出的問題清單；

(4) 對要搜查的人或地方及要尋求的物品的確切描述；

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- (5) 關於要訊問的人、要檢查的物品或要查看的地方的資料；
- (6) 關於進行和記錄對人的訊問、對物品的檢查或對地方的查看的方式的描述，包括就該訊問、檢查或查看而作出的任何書面紀錄的形式；
- (7) 關於要追尋或辨認的人、物品或地方的資料；
- (8) 關於將被送達文件的人的身分及其所在、該人與有關法律程序的關係，以及送達方式的資料；
- (9) 對執行請求時須遵循的任何特定程序的描述；
- (10) 關於被要求在請求方的適當機關出席的人有權獲得的津貼及開支的資料；
- (11) 對有關請求的保密理由的描述；及
- (12) 有助於執行請求而應提請被請求方注意的任何其他資料。

4. 如被請求方認為協助請求所載的資料，不足以符合本協定中的規定而使該請求得以執行，則被請求方的中心機關可要求提供增補資料。

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- (1) information on the identity and whereabouts of any person from whom testimony, statements or items are sought;
- (2) a description of the manner in which testimony, statements or items are to be obtained or recorded;
- (3) a list of questions to be asked of the person from whom testimony, statements or items are sought;
- (4) a precise description of persons or places to be searched and of items to be sought;
- (5) information regarding persons, items or places to be examined;
- (6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;
- (7) information regarding persons, items or places to be located or identified;
- (8) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (9) a description of any particular procedure to be followed in executing the request;
- (10) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting Party will be entitled;
- (11) a description of the reason for confidentiality concerning the request; and

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第五條

1. 被請求方須迅速按照本協定的有關條文執行請求。被請求方的主管機關須採取在其權力範圍內每項可能的措施，以確保請求得以執行。
2. 請求須按被請求方的法律所規定的方式或程序予以執行。第四條第 3(2)、3(6) 或 3(9) 款所提述的任何請求內所描述的方式或特定程序，須在適當的情況下在被請求方的法律所不禁止的範圍內遵循。
3. 如請求的執行被視為會妨礙正在於被請求方進行的偵查、檢控或其他法律程序，被請求方的中心機關可暫緩執行請求，或在締約雙方的中心機關進行磋商後，在視為屬必需的條件的規限下執行請求。如請求方接受該等條件，則須遵守該等條件。
4. 如請求方的中心機關請求保密，則被請求方須盡其所能將有請求已經提出的事實、請求的內容、執行請求的結果及其他關於執行請求的有關資料保密。倘若無法在不披露該等資料的情況下執行請求，則被請求方的中心機關須將此事知會請求方的中心機關，由請求方的中心機關決定是否仍須執行請求。

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(12) any other information that should be brought to the attention of the requested Party to facilitate the execution of the request.

4. If the requested Party considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Agreement to enable the execution of the request, the Central Authority of the requested Party may request that additional information be provided.

1. The requested Party shall promptly execute a request in accordance with the relevant provisions of this Agreement. The competent authorities of the requested Party shall take every possible measure in their power to ensure the execution of a request.

2. A request shall be executed in the manner or procedure provided for by the laws of the requested Party. The manner or particular procedure described in a request referred to in paragraph 3(2), 3(6) or 3(9) of Article 4 shall be followed, if appropriate, to the extent it is not prohibited by the laws of the requested Party.

3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding in the requested Party, the Central Authority of the requested Party may postpone the execution or make the execution subject to conditions deemed necessary after consultations between the Central Authorities of the Parties. If the requesting Party accepts such conditions, the requesting Party shall comply with them.

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5. 請求方的中心機關如就執行請求的狀況提出合理的查詢，被請求方的中心機關須作出回應。

6. 被請求方的中心機關須將執行請求的結果，迅速知會請求方的中心機關，並向請求方的中心機關提供執行請求所得的證供、陳述或物品。如請求不能全部執行或有部分不能執行，則被請求方的中心機關須將有關的理由知會請求方的中心機關。

4. The requested Party shall make its best efforts to keep confidential the fact that a request has been made, the contents of a request, the outcome of the execution of a request and other relevant information concerning the execution of a request if such confidentiality is requested by the Central Authority of the requesting Party. If a request cannot be executed without disclosure of such information, the Central Authority of the requested Party shall so inform the Central Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

5. The Central Authority of the requested Party shall respond to reasonable inquiries by the Central Authority of the requesting Party concerning the status of the execution of a request.

6. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the result of the execution of a request, and shall provide the Central Authority of the requesting Party with the testimony, statements or items obtained as a result. If a request cannot be executed in whole or in part, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party of the reasons therefor.

第六條

Article 6

1. 除非締約雙方的中心機關另有協議，否則被請求方須支付關乎執行請求的一切費用，但下述項目除外：專家證人的費用；翻譯、傳譯及謄寫的費用；以及根據第十三及十四條將某人運送所涉及的津貼及開支。該等費用、津貼及開支須由請求方支付。

1. Unless otherwise agreed between the Central Authorities of the Parties, the requested Party shall pay all costs related to the execution of a request, except for the fees of an expert witness, the costs of translation, interpretation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 13 and 14. Such fees, costs, allowances and expenses shall be paid by the requesting Party.

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2. 如察覺需支付非一般性開支，以執行請求，締約雙方的中心機關須進行磋商，以決定執行請求的條件。

2. If it becomes apparent that expenses of an extraordinary nature are required to execute a request, the Central Authorities of the Parties shall consult to determine the conditions under which the request will be executed.

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Article 7

1. 未經被請求方的中心機關事先同意，請求方不得將根據本協定提供的任何證供、陳述或物品，作請求所述的偵查、檢控或其他法律程序以外的用途。

1. The requesting Party shall not use any testimony, statements or items provided under this Agreement other than in the investigation, prosecution or other proceeding described in a request without prior consent of the Central Authority of the requested Party.

2. 被請求方的中心機關可請求將根據本協定所提供的證供、陳述或物品保密，或只限在被請求方所指明的其他條件的規限下方可使用該等證供、陳述或物品。如請求方同意保密或接受該等條件，則須予以遵守。

2. The Central Authority of the requested Party may request that testimony, statements or items provided under this Agreement be kept confidential or be used only subject to other conditions it may specify. If the requesting Party agrees to such confidentiality or accepts such conditions, it shall comply with them.

第八條

Article 8

1. 被請求方的中心機關可請求請求方按照被請求方的中心機關指明的條件，包括為保障第三者就被移交物品所享有的權益而視為屬必需的條件，運送和保存根據本協定提供的物品。

1. The Central Authority of the requested Party may request that the requesting Party transport and maintain items provided under this Agreement in accordance with the conditions specified by the Central Authority of the requested Party, including the conditions deemed necessary to protect third-party interests in the items to be transferred.

2. 被請求方的中心機關可請求請求方按照被請求方的中心機關指明的條件，在任何根據本協定提供的物品已為請求內所描述的目的而使用後，將該等物品送回。

2. The Central Authority of the requested Party may request that the requesting Party return any items provided under this Agreement in accordance with the conditions specified by the Central Authority of the

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3. 請求方須遵從根據第 1 或 2 款提出的請求。如已有上述請求提出，而對有關物品的檢查會損害或可能損害該物品，則未經被請求方的中心機關事先同意，請求方不得檢查該物品。

requested Party, after such items have been used for the purpose described in a request.

3. The requesting Party shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting Party shall not examine the items without the prior consent of the Central Authority of the requested Party if the examination impairs or could impair the item.

第九條

Article 9

1. 被請求方須取得證供、陳述或物品。在取得證供或物品時，如採取強制措施實屬必需，並且在請求內包括一些資料，而據該等資料，採取有關措施在被請求方的法律下屬有理可據，則被請求方須採取該等強制措施，包括搜查及檢取。

1. The requested Party shall obtain testimony, statements or items. In obtaining testimony or items, the requested Party shall employ compulsory measures, including search and seizure, if such measures are necessary and the request includes information justifying those measures under the laws of the requested Party.

2. 被請求方須盡其所能安排在請求內所指明的人在執行請求時在場，以便取得證供、陳述或物品，並容許該人向被尋求提供證供、陳述或物品的人發問。如直接發問不獲容許，該人須獲容許提交向被尋求提供證供、陳述或物品的人提出的問題。

2. The requested Party shall make its best efforts to facilitate the presence of such persons as specified in a request for obtaining testimony, statements or items during the execution of the request, and to allow such persons to question the person from whom testimony, statements or items are sought. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony, statements or items are sought.

3. (1) 在根據本條被要求提供證供、陳述或物品的人根據請求方的法律提出豁免、無行為能力或特權的聲稱的情況下，仍須取得證供、陳述或物品。

3. (1) If a person, from whom testimony, statements or items are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting Party, testimony, statements or items shall nevertheless be obtained.

(2) 如按照第 (1) 段取得證供、陳述或物品，該等證供、陳述或物品須連同該段所提述的聲稱，一併提供予請求方的中心機關，由請求方的主管機關解決該聲稱。

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第十條

1. 被請求方須檢視有關的人、物品或地方。如採取強制措施實屬必需，並且在請求內包括一些資料，而據該等資料，採取有關措施屬有理可據，則被請求方須在其法律的規限下採取該等措施，以進行有關的檢視。
2. 被請求方須盡其所能安排在請求內所指明的人在執行請求時在場，以便檢視有關的人、物品或地方。

第十一條

被請求方須盡其所能追尋或辨認有關的人、物品或地方。

第十二條

1. 被請求方須向請求方提供由被請求方的有關機關所管有並可供公眾取閱的物品。

Article 10

(2) In cases where testimony, statements or items are obtained in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting Party for resolution of the claim by the competent authorities of the requesting Party.

1. The requested Party shall examine persons, items or places. The requested Party shall, subject to its laws, employ compulsory measures in order to do so, if such measures are necessary and the request includes information justifying those measures.

2. The requested Party shall make its best efforts to facilitate the presence of such persons as specified in a request for examining persons, items or places during the execution of a request.

Article 11

The requested Party shall make its best efforts to locate or identify persons, items or places.

Article 12

1. The requested Party shall provide the requesting Party with items that are in the possession of the authorities of the requested Party and are available to the general public.

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2. 被請求方須盡力向請求方提供由被請求方的有關機關所管有但不供公眾取閱的物品，提供的範圍和條件與將該等物品提供予被請求方的偵查及檢控機關的範圍和條件相同。

第十三條

被請求方須向身在被請求方而被要求在請求方的適當機關出席的人提出邀請。請求方的中心機關須將請求方將會就該項出席支付的津貼和開支的限額，知會被請求方的中心機關。被請求方的中心機關須迅速將該人的回應知會請求方的中心機關。

第十四條

1. 如羈押在被請求方的人需在請求方的司法管轄區出席，以提供證供或以其他方式協助進行偵查、檢控或其他法律程序，則在該人同意、締約雙方的中心機關取得協議，以及被請求方的法律容許的情況下，須為上述目的將該人移交請求方。

2. (1) 除非另獲被請求方容許，否則請求方須將根據第 1 款移交的人羈押於請求方。

(2) 請求方須按締約雙方中心機關事先的協議或另外作出的協議立即將被移交的人送還被請求方。

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2. The requested Party shall endeavour to provide the requesting Party with items that are in the possession of the authorities of the requested Party and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 13

The requested Party shall present an invitation to a person in the requested Party whose appearance before the appropriate authority in the requesting Party is sought. The Central Authority of the requesting Party shall inform the Central Authority of the requested Party of the extent to which the allowances and expenses for such appearance will be paid by the requesting Party. The Central Authority of the requested Party shall promptly inform the Central Authority of the requesting Party of the response of the person.

Article 14

1. A person in the custody of the requested Party whose presence within the jurisdiction of the requesting Party is necessary for giving testimony or otherwise assisting in investigations, prosecutions or other proceedings shall be transferred for those purposes to the requesting Party, if the person consents and if the Central Authorities of the Parties agree, where permitted under the laws of the requested Party.

2. (1) The requesting Party shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting Party, unless permitted by the requested Party to do otherwise.

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(3) 被移交的人在被請求方被判須服的刑期，須扣除他被羈押在請求方時所服的刑期。

(2) The requesting Party shall immediately return the person transferred to the requested Party, as agreed beforehand, or as otherwise agreed between the Central Authorities of the Parties.

(3) The person transferred shall receive credit for service of the sentence imposed in the requested Party for the time served in the custody of the requesting Party.

第十五條

Article 15

1. 同意根據第十三條在請求方的適當機關出席的人或同意根據第十四條被移交給請求方的人，不得因其在離開被請求方之前的任何行為或定罪而在請求方的司法管轄區被檢控、拘留或被限制人身自由，而且該人除請求內所指明的法律程序或偵查外，無須在其他法律程序中提供證據或在其他偵查中提供協助。

1. A person who consents to appear before the appropriate authority in the requesting Party under Article 13 or a person who consents to be transferred to the requesting Party under Article 14 shall not be subject to prosecution, detention or any restriction of personal liberty within its jurisdiction by reason of any conduct or conviction that precedes the departure from the requested Party of that person, nor shall that person be obliged to give evidence in any proceeding or to assist in any investigation other than the proceeding or investigation which is specified in the request.

2. (1) 根據第 1 款向同意根據第十三條在請求方的適當機關出席的人提供的安全通行，在以下情況即告終止：

2. (1) The safe conduct provided in accordance with paragraph 1 to the person who consents to appear before the appropriate authority in the requesting Party under Article 13 shall cease when:

- (a) 該人已接獲適當機關通知無須再出席，且本有離開的機會，但在該通知日期之後起計連續十五 (15) 天內，仍留在請求方；
- (b) 該人離開請求方後主動返回請求方；或
- (c) 該人沒有在預定出席日期在適當機關出席，但如有令人信服的理由則除外。

- (a) the person, having had an opportunity to leave, has nevertheless remained in the requesting Party for a period of fifteen (15) consecutive days after the date of notification by the appropriate authority that the appearance of that person is no longer necessary;
- (b) the person, having left the requesting Party, voluntarily returns to it; or

(2) 如根據第 (1)(a) 段作出通知或安全通行根據第 (1)(b) 或 (1)(c) 段終止，請求方的中心機關須盡快將此事知會被請求方的中心機關。

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3. 根據第 1 款向同意根據第十四條被移交給請求方的人提供的安全通行，在該人返回被請求方時即告終止。

4. 如有任何人不同意根據第十三條在請求方的適當機關出席或不同意根據第十四條被移交給請求方，即使在請求內另有說明，也不得因此而在請求方對該人施加懲罰或強制措施。

第十六條

1. 請求方交付送達的任何司法文件，被請求方須予以送達。

2. 如請求送達的司法文件規定某人在請求方的適當機關出席，被請求方須在規定出席日期的不少於四十五 (45) 天前收到該請求。在緊急情況下，被請求方可豁免此項要求。

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(c) the person fails to appear before the appropriate authority on the scheduled appearance date unless there are compelling reasons.

(2) When the notification is made pursuant to sub-paragraph (1)(a), or when the safe conduct ceases pursuant to sub-paragraph (1)(b) or (1)(c), the Central Authority of the requesting Party shall so inform the Central Authority of the requested Party without delay.

3. The safe conduct provided in accordance with paragraph 1 to the person who consents to be transferred to the requesting Party under Article 14 shall cease when that person returns to the requested Party.

4. A person who does not consent to appear before the appropriate authority in the requesting Party under Article 13 or a person who does not consent to be transferred to the requesting Party under Article 14 shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in the request.

Article 16

1. The requested Party shall effect service of judicial documents that are transmitted to it for this purpose by the requesting Party.

2. A request for service of a judicial document requiring the appearance of a person before an appropriate authority in the requesting Party shall be received by the requested Party not less than forty-five (45) days before the date on which the appearance is required. In urgent cases, the requested Party may waive this requirement.

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3. 凡根據第五條第 6 款的條文就執行送達司法文件的請求的結果作出知會，被請求方的中心機關須以書面知會請求方的中心機關已完成送達的事實，以及送達的日期、地點及方式。

4. 如有任何人不遵從根據本條送達的、要求該人在請求方適當機關出席的司法文件的規定，即使在司法文件內另有說明，也不得因此而在請求方對該人施加懲罰或強制措施。

3. In informing the result of the execution of a request for service of a judicial document in accordance with the provisions of paragraph 6 of Article 5, the Central Authority of the requested Party shall inform the Central Authority of the requesting Party in writing of the fact that the service was effected, as well as the date, place and manner of the service.

4. A person who does not comply with a judicial document requiring the appearance of the person before an appropriate authority in the requesting Party served pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting Party, notwithstanding any contrary statement in that document.

第十七條

Article 17

1. 被請求方須在其法律容許的範圍內，協助進行關乎沒收刑事罪行得益或刑事罪行工具的法律程序。上述協助可包括採取行動以尋找、追查和暫時凍結有關得益或工具，以待進一步的法律程序。

2. 負責保管刑事罪行得益或刑事罪行工具的被請求方可在被請求方的法律容許的範圍內，並按照該方視為適當的條件，將該等得益或工具全部或部分轉移予請求方。不論保管有關刑事罪行得益或刑事罪行工具是在本協定生效之前、當日或之後發生，有關轉移仍可進行。

1. The requested Party shall assist, to the extent permitted by its laws, in proceedings related to the confiscation of the proceeds or instrumentalities of criminal offences. Such assistance may include action to identify, trace and temporarily immobilize the proceeds or instrumentalities pending further proceedings.

2. The requested Party that has custody over proceeds or instrumentalities of criminal offences may transfer such proceeds or instrumentalities, in whole or in part, to the requesting Party, to the extent permitted by the laws of the requested Party and upon such conditions as it deems appropriate. Such transfer may take place irrespective of whether taking custody over the proceeds or instrumentalities of criminal offences took place before, on or after the entry into force of this Agreement.

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第十八條

本協定的任何條文均不阻止締約任何一方按照其他適用的國際協定或根據其適用的法律，向締約另一方請求協助或提供協助。

Article 18

Nothing in this Agreement shall prevent either Party from requesting assistance from or providing assistance to the other Party in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

第十九條

1. 締約雙方的中心機關須為促使迅速及有效地根據本協定提供協助的目的進行磋商，並可就為此目的而屬必需的措施作出決定。
2. 如有需要，締約雙方須就因本協定的解釋或履行而可能出現的任何事宜進行磋商，並須盡力達成協議。
3. 任何因本協定的解釋或履行而產生的爭議，須通過外交途徑解決。

Article 19

1. The Central Authorities of the Parties shall hold consultations for the purpose of facilitating speedy and effective assistance under this Agreement, and may decide on such measures as may be necessary for this purpose.
2. The Parties shall, if necessary, hold consultations on any matter that may arise in the interpretation or implementation of this Agreement and shall make every effort to reach agreement.
3. Any dispute arising out of the interpretation or implementation of this Agreement shall be resolved through diplomatic channels.

第二十條

1. 本協定將於締約雙方交換照會以通知對方已完成為使本協定生效所需的各自的內部法律程序的日期後的第三十天生效。

Article 20

1. This Agreement shall enter into force on the thirtieth day after the date on which the Parties exchange notes informing each other that their respective internal legal procedures necessary for entry into force of this Agreement have been completed.

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2. 本協定適用於在本協定的生效日期當日或之後提出的任何協助請求，不論攸關請求的作為是在該日期之前、當日或之後作出亦同樣適用。

3. 締約任何一方可隨時藉給予締約另一方六個月的書面通知而終止本協定。

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。

本協定於二零零八年五月二十三日在香港簽訂，一式兩份，每份均用中文、英文及日文寫成，各文本均同等真確。如有釋義上的分歧，則以英文文本為準。

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2. This Agreement shall apply to any request for assistance presented on or after the date upon which this Agreement enters into force, whether the acts relevant to the request were committed before, on or after that date.

3. Either Party may terminate this Agreement at any time by giving six months' written notice to the other Party.

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

DONE at Hong Kong, in duplicate, in the Chinese, English and Japanese languages, all texts being equally authentic, this 23rd day of May, 2008. In case of any divergence of interpretation, the English text shall prevail.

附表 2

[第 2 條]

對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通至如下所示 ——
 - “(e) 該項請求關乎因外地罪行而對某人進行的檢控，而 ——*
 - (i)* 該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，被有關地方或香港* 的管轄法院或其他當局定罪、裁定無罪或赦免 → ** ; * 或
 - (ii)* 該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，* 已 ** 接受該地方或香港的 * 法律所規定的懲罰；”。
2. 本條例第 17(1) 條須予變通，刪去第 (ii) 段。
3. 本條例第 17(3)(a) 條須予變通，刪去“或”。
4. 本條例第 17(3)(b) 條須予變通至如下所示 ——
 - “(b) 該人在** 有機會離開香港的情況下**，並接獲通知他已無須為下述任何目的逗留，但他在接獲通知的日期後連續 15 天內* 仍留在香港，但並非為下述目的而留在香港** ——
 - (i) 該項請求所關乎的目的；或**
 - (ii) 為給予香港刑事事宜方面的協助的目的，而該刑事事宜屬律政司司長以書面證明適宜由該人就該事宜給予協助的 → ** ; 或 *”。

Schedule 2

[s. 2]

Modifications to the Ordinance

1. Section 5(1)(e) of the Ordinance shall be modified to read as follows—
 - “(e) the request relates to the prosecution of a person for an external offence in a case where the person —*
 - (i)* has been convicted, acquitted or pardoned by a competent court or other authority in the place; ** or Hong Kong in respect of that offence or of another external offence constituted by the same act or omission as that offence;* or
 - (ii)* has undergone the punishment provided by the law of that place or Hong Kong; ** in respect of that offence or of another external offence constituted by the same act or omission as that offence;”.
2. Section 17(1) of the Ordinance shall be modified by deleting paragraph (ii).
3. Section 17(3)(a) of the Ordinance shall be modified by deleting “or”.
4. Section 17(3)(b) of the Ordinance shall be modified to read as follows—
 - “(b) the person has had an opportunity of leaving Hong Kong and has remained in Hong Kong for a period of 15 consecutive

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5. 條例第 17(3) 條須予變通，加入 ——
“(c) 該人在沒有令人信服的理由的情況下，沒有在預定的出席日期，在他同意出席的機關出席。*”。
6. 本條例第 23(2)(a) 條須予變通 ——
(a) 在第 (i) 節的末處加入 “或”；
(b) 刪去第 (ii) 節。

* 劃上底線的字句屬增訂部分。(劃上底線是為了使該項變通易於識別)。

** 劃上橫線的字句屬刪除部分。(劃上橫線是為了使該項變通易於識別)。

days after the date of being notified that the appearance of the person is no longer required for any of the following purposes* 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-**, or**”.

5. Section 17(3) of the Ordinance shall be modified by adding—
“(c) in the absence of compelling reasons, the person fails to appear on the scheduled appearance date before the authority before which the person consents to appear.*”.
6. Section 23(2)(a) of the Ordinance shall be modified—
(a) by adding “or” at the end of subparagraph (i);
(b) by deleting subparagraph (ii).

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

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