

《刑事事宜相互法律協助(南韓)令》
(第 525 章, 附屬法例 H)

Mutual Legal Assistance in Criminal Matters (South Korea) Order
(Cap. 525 sub. leg. H)

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附表 2 Schedule 2	S2-1—S2-4	21.11.2019

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

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《刑事事宜相互法律協助(南韓)令》

(第 525 章, 附屬法例 H)

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《刑事事宜相互法律協助(南韓)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)

[2000 年 2 月 25 日] 2000 年第 49 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大韓民國之間適用

現就——

(a) 適用於香港特別行政區政府與大韓民國政府，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大韓民國之間適用。

Mutual Legal Assistance in Criminal Matters (South Korea) Order

(Cap. 525, section 4)

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

[25 February 2000] L.N. 49 of 2000

(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 Republic of Korea**

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 Republic of Korea; 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 Republic of Korea.

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[第 2 條]

中華人民共和國香港特別行政區政府
與
大韓民國政府
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政府(經中華人民共和國中央人民政府正式授權)與大韓民國政府(以下稱為“締約雙方”),為加強締約雙方在偵查、檢控、防止罪案及其他形式的刑事事宜相互協助方面的執法效能,

達成協議如下:

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 Republic of Korea
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 Republic of Korea (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 other forms of mutual assistance in criminal matters,

Have agreed as follows:

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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協助。
2. 提供的協助，包括以下各項：
 - (a) 辨認和追尋有關的人或品目；
 - (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) 就有關的人親自出庭作證或協助偵查提供方便；
 - (f) 暫時移交被羈押的人以便作證；
 - (g) 追查、限制、沒收和充公犯罪活動得益和工具；
 - (h) 提供資料、文件和紀錄，包括司法或官方紀錄；
 - (i) 交付財產，包括借出已提交作為證據的品目；及
 - (j) 被要求方的法律所不禁止的其他形式的協助。
3. 根據本協定可就與違反稅項、關稅、外匯管制或其他稅務法律有關的罪行提供協助，但不可就與上述罪行有關的非刑事法律程序提供協助。
4. 本協定不適用於以下情況：
 - (a) 將任何人移交；
 - (b) 在被要求方執行要求方所施加的刑事判決，但在被要求方的法律及本協定所容許的範圍內除外；
 - (c) 將囚犯移交以便服刑；或
 - (d) 將刑事事宜的法律程序移交。

Article 1
Scope of Assistance

1. The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
2. Assistance shall include:
 - (a) identifying and locating persons or items;
 - (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 persons to give testimony or to assist in investigations;
 - (f) effecting the temporary transfer of persons in custody to give testimony;
 - (g) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
 - (h) providing information, documents and records, including judicial or official records;
 - (i) delivery of property, including lending of items which have been produced in evidence; and
 - (j) other form of assistance not prohibited by the laws of the Requested Party.
3. Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters, but not in connection with non-criminal proceedings relating thereto.
4. The present Agreement does not apply to:

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5. 本協定純為締約雙方互相提供協助而設。本協定的條文並不給予任何私人取得、隱藏、或排除證據的權利，或阻礙執行協助要求的權利。

第二條 其他安排

本協定不得影響締約雙方根據其他協定、安排或別的方式而存續的義務，亦不得妨礙締約一方根據其他協定、安排或別的方式向締約另一方提供或繼續提供協助。

第三條 中心機關

1. 締約雙方須各自指定一個中心機關。
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。大韓民國的中心機關為法務部長官或法務部長官指定的官員。
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。要求可直接提出，或通過雙方法律所規定的其他途徑提出。

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- (a) the surrender of any person;
- (b) the execution in the Requested Party of criminal judgments imposed in the Requesting Party except to the extent permitted by the law of the Requested Party and this Agreement;
- (c) the transfer of prisoners to serve sentences; or
- (d) the transfer of proceedings in criminal matters.

5. This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

Article 2 Other Arrangements

This Agreement shall not affect obligations subsisting between the Parties whether pursuant to other agreements, arrangements or otherwise, or prevent the Parties from providing or continuing to provide assistance to each other pursuant to other agreements, arrangements or otherwise.

Article 3 Central Authority

1. Each Party shall designate 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 authorised officer. The Central Authority for the Republic of Korea shall be the Minister of Justice or an official designated by that Minister.
3. Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party, either directly or through such other channel as their law may require.

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第四條
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：
 - (a) 有關的協助要求會損害大韓民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) 有關的協助要求關乎屬政治性質的罪行；
 - (c) 有關的協助要求關乎只在軍法下才構成的罪行；
 - (d) 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；
 - (e) 有關的協助要求關乎就某一罪行而對某人進行檢控，而該人已因同一罪行在被要求方管轄區被定罪、裁定無罪或赦免；或該罪行假使是在被要求方的管轄區觸犯，亦會由於時效消失而不能再進行檢控；
 - (f) 被要求方認為批准有關要求將會嚴重損害其本身的基要利益；及
 - (g) 被指稱構成罪行的作為或不作為假使在被要求方的管轄區發生，亦不構成罪行。
2. 就第 1(f) 款而言，被要求方在考慮其基要利益時，可包括考慮提供協助會否令任何人的安全蒙受不當的損害。
3. 如有關要求關乎在要求方屬可判死刑的罪行，但被要求方就該罪行並無判處死刑的規定，或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即要求方不會判處死刑，或即使判處死刑亦不會執行，否則被要求方可拒絕提供協助。
4. 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。
5. 在根據本條拒絕或暫緩提供協助前，被要求方須通過其中心機關：

Article 4
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 Korea or, in the case of the Government of the Hong Kong Special Administrative Region, of the People's Republic of China;
 - (b) the request for assistance relates to an offence of a political character;
 - (c) the request for assistance relates to an offence only under military law;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, sex, religion, nationality or political opinions;
 - (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party;
 - (f) if it is of the opinion that the granting of the request would seriously impair its essential interests; or
 - (g) if 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.
2. For the purpose of paragraph 1(f) the Requested Party may include in its consideration of essential interests whether the provision of assistance could unduly prejudice the safety of any person.

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- (a) 迅速將其就拒絕或暫緩提供協助所考慮的理由知會要求方；及
 - (b) 與要求方磋商，以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。
6. 要求方如接受在第 5(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。

3. The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.

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

5. Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:

- (a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and
- (b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

6. If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph 5(b), it shall comply with those terms and conditions.

第五條 要求

1. 要求必須以書面提出，但在緊急情況下除外。在緊急情況下，可提出口頭要求，但必須在提出要求後的 14 天內以書面確認。
2. 協助要求須包括以下內容：
 - (a) 進行與該項要求有關的偵查或法律程序的機關名稱；
 - (b) 對該項要求的目的及所要求的協助的性質的描述；
 - (c) 對該項偵查、檢控、罪行或刑事事宜的性質的描述，以及有關事實及法律的撮要，包括與所要求的協助有關的罪行的最高刑罰；

Article 5 Requests

1. Requests shall be made in writing except in urgent cases. In urgent cases, requests may be made orally, but shall be confirmed in writing within 14 days thereafter.
2. Requests for assistance shall include:
 - (a) the name of the authority conducting the investigation or proceedings to which the request relates;
 - (b) a description of the purpose of the request and the nature of the assistance requested;

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- (d) 說明法律程序是否已提起，如法律程序已提起，則說明法律程序的細節；
- (e) 有關保密的要求及提出保密要求的理由；
- (f) 如要求方冀望被要求方遵循任何特別程序，則說明有關程序的細節；及
- (g) 順應該項要求的期限的細節。
3. 在有必要及可能的範圍內，提出協助的要求還須包括以下內容：
- (a) 關於任何被尋求提供證據的人的身分、國籍及其所在的資料；
- (b) 關於被送達人的身分及所在，該人與有關法律程序的關係，以及送達方式的資料；
- (c) 關於被追尋的人的身分和下落的資料；
- (d) 須搜查的地方或人，及須檢取的品目的描述；
- (e) 被要求在要求方管轄區內出庭的人有權獲得的津貼和費用的資料；及
- (f) 為妥善執行該項要求而必需的其他資料。
4. 被要求方如認為要求所載的資料不足以讓其處理該項要求，可要求提供額外資料。
5. 為支持要求而提交的所有文件，須採用被要求方的法定語文，或翻譯成被要求方的法定語文，除非被要求方免除這項規定。

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- (c) a description of the nature of the investigation, prosecution, offence or criminal matter and a summary of the relevant fact and laws, including the maximum penalty for the offence in relation to which the assistance is requested;
- (d) whether or not proceedings have been instituted, and where proceedings have been instituted, details of the proceedings;
- (e) any requirement for confidentiality and the reasons therefor;
- (f) where the Requesting Party wishes a particular procedure to be followed, details of that procedure; and
- (g) details of the period within which the request should be complied with.
3. Requests for assistance, to the extent necessary and possible, shall also include:
- (a) information on the identity, nationality and location of any person from whom evidence is sought;
- (b) 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;
- (c) information on the identity and whereabouts of a person to be located;
- (d) a description of the place or person to be searched and of the items to be seized;
- (e) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled; and
- (f) such other information as is necessary for the proper execution of the request.
4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

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第六條 執行要求

1. 協助要求須通過被要求方的中心機關迅速執行。
2. 協助要求須按照被要求方的法律予以執行，並須在被要求方的法律所不禁止的範圍內，在切實可行的情況下依照要求內所述的指示予以執行。
3. 被要求方須迅速將任何可能導致顯著延遲回應該項要求的情況通知要求方。
4. 被要求方須迅速就全部或部分不順應協助要求的決定及作出該決定的理由通知要求方。

第七條 使用限制

1. 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。
2. 被要求方在與要求方磋商後，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。
3. 如要求方不能遵守有關保密或限制使用獲提供物料的條件，被要求方須拒絕提供協助。
4. 按照第 1 或 2 款在要求方已公開的資料及證據，其後可作任何用途。

Article 6 Execution of Requests

5. All documents submitted in support of a request shall be in or translated into an official language of the Requested Party, unless the Requested Party dispenses with this requirement.

1. Requests for assistance shall be executed promptly through the Central Authority of the Requested Party.
2. 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 directions stated in the request so far as practicable.
3. The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.
4. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

Article 7 Limitations of Use

1. 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.
2. 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.
3. The assistance shall be refused if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided.

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第八條 保密

如要求方提出要求，被要求方須盡其所能將協助要求、要求的內容和作支持用的文件，以及依據該項要求所採取的任何行動保密。如某項要求無法在不違反保密的情況下執行，被要求方須通知要求方，由要求方決定是否仍然需要繼續執行該要求。

第九條 取得證據、物品或文件

1. 如要求方提出要求，被要求方須在遵循本身法律的情況下，錄取有關人士的證供或取得他們的陳述，或要求他們交出證據品目或其他物料，以供轉傳要求方。
2. 就根據本條提出的要求而言，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。
3. 被要求方須容許在要求內所指明的人在執行要求期間在場，並且須在其法律容許的範圍內，准許該等人士向提供證供或證據的人進行訊問，或提交擬向該人提出的問題。
4. 依據某項協助要求而被要求在被要求方管轄區內作證的人，可在以下情況下拒絕作證：
 - (a) 如在被要求方管轄區內提起的法律程序中出現類似情況，被要求方的法律會容許該證人拒絕作證；或
 - (b) 如在要求方管轄區內進行該類法律程序，要求方的法律會容許該證人拒絕作證。
5. 如任何人宣稱有權根據要求方的法律拒絕作證，被要求方須就此以要求方中心機關所發的證明書為依據。

Article 8

Protection of Confidentiality

The Requested Party, if so requested, shall use its best efforts to keep confidential a request, its contents, supporting documents and any action taken pursuant to the request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be pursued.

Article 9

Obtaining of Evidence, Articles or Documents

1. The Requested Party shall, in conformity with its law and upon request, take testimony, or otherwise obtain statements of persons or require them to produce items of evidence or other material for transmission to the Requesting Party.
2. For the purpose 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.
3. The Requested Party shall permit such persons as are specified in the request to be present during the execution of the request and, to the extent permitted by its law, shall allow such persons to question the person giving the testimony or evidence or to submit the questions to be posed to that person.
4. 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:

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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，或需要被送達人在要求方管轄區內出庭，要求方須於預定回應或出庭的日期不少於 30 天前，向被要求方提出送達該等文件的要求。在緊急情況下，被要求方可免除這項規定。
3. 在符合其法律的規定下，被要求方須按要求方指定的形式，交回送達證明。如未能送達有關文件，被要求方須通知要求方，並解釋有關原因。
4. 被送達人不得因其沒有遵從送達給他的法律程序文件的規定而根據要求方或被要求方的法律遭受處罰或處以強制措施。

第十一條 送回物料予被要求方

如被要求方提出要求，要求方須盡快把依據本協定所提供的任何物料交還。

Article 10 Service of Documents

1. The Requested Party shall serve any document transmitted to it for this purpose.
2. The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party not less than thirty days before the scheduled response or appearance. In urgent cases, the Requested Party may waive this requirement.
3. The Requested Party shall, subject to its law, return a proof of service in the manner required by the Requesting Party. If service cannot be effected, the Requesting Party shall be so informed and advised of the reasons.
4. 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 11 Return of Material to the Requested Party

Where required by the Requested Party, the Requesting Party shall return as soon as possible any material provided under this Agreement.

第十二條
可向公眾提供的文件和官方文件

1. 在符合其法律的規定下，被要求方須提供任何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。

第十三條
安排被羈押的人作證或協助偵查

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提供協助，則在被要求方的同意下該人須就此目的被移交給要求方，但須得該人同意，而要求方並須保證把該人繼續羈押及在事後將該人送回被要求方。
2. 如根據本條被移交的人的監禁刑期於該人身在要求方管轄區時屆滿，被要求方須就此事通知要求方，而要求方須確保把該人釋放。
3. 就本條而言，被移交的人在被要求方管轄區被施加的刑期，須扣除他被羈押在要求方管轄區期間內所服的刑期。

第十四條
安排其他人
作證或協助偵查

1. 要求方可要求被要求方協助邀請任何人在法律程序中出庭作

Article 12
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 law enforcement and judicial authorities.

Article 13
Availability of Persons in Custody to Give Evidence or
Assist Investigations

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 if the Requested Party consents be transferred to the Requesting Party for that purpose, provided that the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.
2. Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.
3. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

Article 14
Availability of other Persons to Give Evidence or
Assist Investigations

1. The Requesting Party may request the assistance of the Requested

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證人或協助偵查。該人須獲通知可獲支付的任何費用和津貼。

2. 被要求方如信納要求方會就該人的安全作出令人滿意的安排，則須要求該人前往要求方以提供協助。
3. 被要求方須將該人的回覆迅速通知要求方。

第十五條 安全通行

1. 同意根據第十三或十四條提供協助的人，不得因其在離開被要求方之前所犯的任何刑事罪行或所涉及的民事事宜而在要求方被檢控、拘留或被限制人身自由。
2. 如有關的人並非為根據第十三條移交的被羈押的人，而他本可自由離去，但在該人接獲通知毋須再逗留後的 15 天內仍未離開要求方，或在離開要求方後返回者，則第 1 款不適用。
3. 同意根據第十三或十四條作證的人，不得基於其所作的證供而遭受檢控，但偽証罪或藐視法庭罪則不在此限。
4. 同意根據第十三或十四條提供協助的人，除與該項要求有關的法律程序外，不得被要求在任何其他法律程序中作證。
5. 任何人不得因其不同意根據第十三或十四條作證而遭受要求方或被要求方的法院的處罰或處以強制措施。

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Party in inviting a person to appear as a witness in the proceedings or assist in the investigations. That person shall be informed of any expenses and allowances payable.

2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's security will be made by the Requesting Party, request the person to travel to the Requesting Party to provide assistance.
3. The Requested Party shall promptly inform the Requesting Party of the person's response.

Article 15 Safe Conduct

1. A person who consents to provide assistance pursuant to Articles 13 or 14 shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or civil matter which preceded his departure from the Requested Party.
2. Paragraph 1 shall not apply if the person, not being a person in custody transferred under Article 13, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.
3. A person who consents to give evidence under Article 13 or 14 shall not be subject to prosecution based on his testimony, except for perjury or contempt of court.
4. A person who consents to provide assistance pursuant to Article 13 or 14 shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.
5. A person who does not consent to give evidence pursuant to Article 13 or 14 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

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第十六條 搜查及檢取

1. 被要求方在本身法律許可的範圍內，須執行搜查、檢取及交付任何物料予要求方的要求，但是項要求須包括根據被要求方的法律有充分理由支持該行動的資料。
2. 被要求方在要求方的要求下須提供有關搜查的結果、檢取的地點、檢取的情況，以及物料檢取後的保管的資料。
3. 被要求方把檢取到的物品交付予要求方，要求方須遵守被要求方就該等物料施加的任何條件，包括保障第三者就該等物料所享有的權益的任何條款及條件。

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。
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，被要求方須在其法律容許的範圍內，以任何適當方法提供協助。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。

Article 16 Search and Seizure

1. The Requested Party shall, in so far as its law permits, carry out a request for search, seizure and delivery of any material to the Requesting Party provided that the request includes the information justifying such action under the laws of the Requested 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 material seized.
3. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized material which is delivered to the Requesting Party, including any terms and conditions to protect third party interests in the material.

Article 17 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.
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

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4. 保管所沒收的犯罪得益的被要求方須按照本身的法律處置該等得益。被要求方可在其法律容許的範圍內，以及按照其認為適當的條款，把所沒收的得益移交要求方。

第十八條 核證和認證

轉傳至要求方的文件、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。

第十九條 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) 與應要求方要求運送任何人往返被要求方領域範圍有關的開支，以及當有關的人因根據第十三或十四條作出的要求而留在要求方境內時須支付給該人的任何津貼或費用；
- (b) 聘請專家的費用及開支；
- (c) 應要求方要求而在外間聘請律師的費用；及
- (d) 翻譯費用。

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appropriate within the limits 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. The Requested Party in control of forfeited proceeds shall dispose of them in accordance with its law. To the extent permitted by its laws and upon such terms as it deems appropriate, the Requested Party may transfer forfeited proceeds to the Requesting Party.

Article 18 Certification and Authentication

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

Article 19 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) the expenses associated with conveying any person to or from the territory of the Requested Party at the request of the Requesting Party, and any allowances or expenses payable to that person while in the Requesting Party pursuant to a request under Article 13 or 14;
- (b) fees and expenses of experts;

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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，或應否中止提供協助。

- (c) fees of outside counsel retained at the request of the Requesting Party; and
- (d) expenses of translation.

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 or whether assistance shall be discontinued.

第二十條 解決爭議

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

Article 20 Settlement of Disputes

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

第二十一條 生效及終止

1. 本協定將於締約雙方以書面通知對方已履行各自為使本協定生效的規定之日後 30 天開始生效。
2. 本協定適用於在本協定生效後提出的任何要求，即使有關的作為或不作為是在本協定生效前發生。
3. 締約一方可隨時以書面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的三個月後失效。但在本協定終止前已接獲的協助要求，則仍須按照本協定的條款處理，猶如本協定仍然生效一樣。

Article 21 Entry into Force and Termination

1. This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
2. This Agreement applies to any requests presented after its entry into force even if the relevant acts or omissions occurred prior to this Agreement entering into force.
3. Each of the Parties may terminate this Agreement at any time by giving notice in writing to the other. In that event the Agreement shall cease to have effect three months after 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.

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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十一月十七日在香港特別行政區簽訂，
每份均用中文、韓文及英文寫成，各文本均同等真確。

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

Done in duplicate at the Hong Kong Special Administrative Region, this
Seventeenth day of November One Thousand Nine Hundred and Ninety
Eight in the Chinese, Korean and English languages, each text being
equally authentic.

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) 是就某一作為或不作為而進行的，且假使該作為或不作為是在香港發生，該檢控便會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, if it had occurred in Hong Kong, could no longer be prosecuted in Hong Kong by reason of lapse of time;*”.
2. Section 17(3)(b) of the Ordinance shall be modified to read as follows—
- “(b) the person has had an opportunity of leaving Hong Kong, 15 days have expired since that opportunity* and the person* has remained in Hong Kong otherwise than for—
- (i) the purpose to which the request relates; or
- (ii) the purpose of giving assistance in relation to a criminal matter in Hong Kong certified in writing by the Attorney General** Secretary for Justice* to be a criminal matter

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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).