

《刑事事宜相互法律協助(荷蘭)令》
(第 525 章, 附屬法例 N)

Mutual Legal Assistance in Criminal Matters (Netherlands) Order
(Cap. 525 sub. leg. N)

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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	16.1.2020
附表 1 Schedule 1	S1-1—S1-38	16.1.2020
附表 2 Schedule 2	S2-1—S2-2	16.1.2020
附表 3 Schedule 3	S3-1—S3-2	16.1.2020

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

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《刑事事宜相互法律協助(荷蘭)令》

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(Netherlands) Order

(第 525 章, 附屬法例 N)

(Cap. 525 sub. leg. N)

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《刑事事宜相互法律協助 (荷蘭) 令》

Mutual Legal Assistance in Criminal Matters (Netherlands) Order

(第 525 章第 4 條)

(Cap. 525, section 4)

(略去制定語式條文——2020 年第 1 號編輯修訂紀錄)

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[2003 年 12 月 1 日] 2003 年第 249 號法律公告

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1. (已失時效而略去——2020 年第 1 號編輯修訂紀錄)

1. (Omitted as spent—E.R. 1 of 2020)

2. 條例適用於香港與荷蘭之間

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

現就——

In relation to the arrangements for mutual legal assistance—

- (a) 適用於特區政府與荷蘭王國政府；及
- (b) 載於兩地政府於 2002 年 8 月 26 日簽訂的協定 (該協定的副本附錄於附表 1，而其第十四條第 (5) 款的中文文本透過兩地政府於 2003 年 7 月 23 日及 2003 年 7 月 24 日所交換的照會更正為附表 2 所示者)，

- (a) which are applicable to the Government and the Government of the Kingdom of the Netherlands; and
- (b) which are contained in the Agreement between the two Governments done on 26 August 2002 (a copy of which is annexed at Schedule 1) of which the Chinese text of Article 14(5) was corrected by an exchange of notes between the two Governments on 23 July 2003 and 24 July 2003 to read as shown in Schedule 2,

的相互法律協助的安排，指示本條例在撮錄於附表 3 的變通的規限下，適用於香港與荷蘭王國 (包括荷屬安的列斯及阿魯巴) 之間。

it is directed that the Ordinance shall, subject to the modifications summarized in Schedule 3, apply as between Hong Kong and the Kingdom of the Netherlands (including the Netherlands Antilles and Aruba).

附表 1

[第 2 條]

**中華人民共和國香港特別行政區政府
與
荷蘭王國政府
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，與荷蘭王國政府(以下簡稱“締約雙方”)，為加強雙方在刑事事宜和沒收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 Kingdom of the
Netherlands
Concerning
Mutual Legal Assistance in Criminal Matters**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region"), having been duly authorised by the Central People's Government of the People's Republic of China, and the Government of the Kingdom of the Netherlands, hereinafter referred to as the Parties;

Desiring to improve the effectiveness of their co-operation in criminal matters and in the confiscation of proceeds of crime;

Have agreed as follows :

第一條

提供協助的範圍

- (1) 如於提出協助請求時，有關罪行的懲罰屬請求方司法管轄範圍之內，締約雙方須按照本協定，在進行有關的偵查、檢控或訴訟時，互相提供最大程度的協助。
- (2) 提供的協助特別包括以下各項：
- (a) 辨認或追尋有關的人；
 - (b) 在被請求方取得證供或其他陳述；
 - (c) 提供資料、物品、文件、紀錄及證據，包括證物；
 - (d) 便利有關人士親自在請求方出席以提供證供或其他協助；
 - (e) 執行搜查和檢取的請求；
 - (f) 辨識、索究、限制和沒收第十六條所界定的犯罪得益；以及
 - (g) 送達文件。
- (3) 根據本協定提供協助的範圍包括與違反稅項、關稅或其他稅務法律有關的罪行，但不可就與上述罪行有關的非刑事偵查或法律程序提供協助。

ARTICLE 1

SCOPE OF ASSISTANCE

- (1) The Parties shall provide each other, in accordance with the provisions of this Agreement, the widest measure of mutual assistance in investigations, prosecutions or proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the Requesting Party.
- (2) Assistance shall include, in particular:
- (a) identifying and locating persons;
 - (b) taking testimony or other statements in the Requested Party;
 - (c) providing information, objects, documents, records and evidence, including exhibits;
 - (d) facilitating the personal appearance of persons in the Requesting Party to give testimony or to provide other assistance;
 - (e) executing requests for search and seizure;
 - (f) identifying, tracing, restraining and confiscating proceeds of crime as defined in Article 16; and
 - (g) serving of documents.
- (3) Assistance under this Agreement shall include assistance in connection with offences against a law relating to taxation, customs duties or other revenue matters, but not in connection with non criminal investigations or proceedings relating thereto.

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第二條

中心機關

- (1) 締約雙方的中心機關負責處理根據本協定提出的協助請求。並處理有關應用、解釋和執行本協定的所有其他通訊。
- (2) 就本協定而言，“中心機關”指：
- (a) 香港特別行政區的律政司司長；
 - (b) 荷蘭王國的荷蘭司法大臣、荷屬安的列斯司法部長或阿魯巴司法部長，視乎情況而定。

第三條

其他協助

本協定不得妨礙締約雙方根據適用於雙方的其他協定或安排提供的協助。

第四條

拒絕提供協助的理由

如出現以下情況，被請求方須拒絕提供協助：

ARTICLE 2

CENTRAL AUTHORITY

- (1) The Central Authorities of the Parties shall process all requests for assistance made in accordance with the provisions of this Agreement and handle all other communications concerning the application, interpretation and implementation of the Agreement.
- (2) For the purposes of this Agreement, “Central Authority” means :
- (a) for the Hong Kong Special Administrative Region : the Secretary for Justice;
 - (b) for the Kingdom of the Netherlands : the Minister of Justice of the Netherlands, the Minister of Justice of the Netherlands Antilles, or the Minister of Justice of Aruba, as the case may be.

ARTICLE 3

OTHER ASSISTANCE

This Agreement shall not preclude assistance being provided pursuant to other agreements or arrangements that are applicable to the Parties.

ARTICLE 4

GROUND OF REFUSAL

The Requested Party shall refuse assistance if :

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附表 1

- (a) 協助請求涉及的作為或不作為，如在被請求方的管轄區發生，根據被請求方的法律並不構成罪行；
- (b) 如被請求方為荷蘭王國政府，執行請求會損害荷蘭王國政府的主權、安全、公共秩序或基要利益；
- (c) 如被請求方為香港特別行政區政府，執行請求會損害：
 - (i) 中華人民共和國的主權、安全或公共秩序；或
 - (ii) 香港特別行政區的基要利益；
- (d) 協助請求關乎政治性質的罪行；
- (e) 協助請求關乎的罪行，乃在軍法下構成的罪行，而在一般刑法下不構成罪行；
- (f) 被請求方有充分理由相信，協助請求提出的目的是基於某人的種族、宗教、國籍或政治見解而對該人進行檢控；
- (g) 協助所涉的被告人，其被控的罪行可因或已因被請求方法律所訂明的任何理由而獲豁免檢控；
- (h) 要求方不能遵守任何有關保密或限制使用將獲提供的資料或證據的條件。

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- (a) the request relates to acts or omissions which would not have constituted an offence under the law of the Requested Party, if they had taken place within its jurisdiction;
- (b) the Requested Party being the Government of the Kingdom of the Netherlands, the execution of the request would impair the sovereignty, security, public order, or essential interests of the Kingdom of the Netherlands;
- (c) the Requested Party being the Government of the Hong Kong Special Administrative Region, the execution of the request would impair:
 - (i) the sovereignty, security or public order of the People's Republic of China; or
 - (ii) the essential interests of the Hong Kong Special Administrative Region;
- (d) the request relates to an offence of a political character;
- (e) the request relates to an offence under military law which is not an offence under ordinary criminal law;
- (f) the Requested Party has substantial grounds for believing that the request has been made for the purpose of prosecuting a person on account of his race, religion, nationality or political opinions;
- (g) the request relates to the prosecution of a person who is or who has become, for any reasons provided under the law of the Requested Party, immune from prosecution for the offence that underlies the request;
- (h) the Requesting Party cannot comply with conditions in relation to confidentiality or limitation as to the use of information or evidence to be provided.

第五條

請求

- (1) 請求必須以書面提出，或如適用的話，通過可以留下書面紀錄的電子媒介提出。
- (2) 協助請求須包括以下內容：
 - (a) 請求方代其提出請求的有關當局的名稱；
 - (b) 對該偵查、檢控或訴訟的性質和構成協助請求所犯罪行的作為或不作為的描述，以及各有關法律或適用條文(包括該罪行的訂明最高刑罰)的撮要；
 - (c) 提出請求的目的、所尋求協助的性質，以及所尋求協助與偵查、檢控或訴訟的關係；
 - (d) 如適用的話，說明被請求方在執行請求時須遵循的手續或程序和所據的理由的描述；
 - (e) 有關保密的任何請求和所據的理由；以及
 - (f) 有關履行請求的時間限制的具體說明和所據理由。
- (3) 請求方可提供任何其認為有助執行請求的其他資料，包括就所需證據或資料的描述。
- (4) 請求方可請求被請求方將有關請求的事實和要旨保密，但在執行請求時必須披露者則不受此限。如被請求方不能遵守保密請求，必須盡快與請求方磋商。
- (5) 被請求方可請求請求方提供執行請求所需的額外資料。

ARTICLE 5

REQUESTS

- (1) Requests shall be made in writing or, where appropriate, through electronic means that are capable of leaving a written record.
- (2) Requests for assistance shall include :
 - (a) the name of the authority on behalf of which the request is made;
 - (b) a description of the nature of the investigation, prosecution or proceeding and of the acts or omissions which constitute the offence underlying the request, as well as a summary of the relevant laws or the text of the applicable provisions, including the maximum penalty prescribed for the offence;
 - (c) the purpose of the request, the nature of the assistance being sought and its relevance to the investigation, prosecution or proceeding;
 - (d) where appropriate, a description of the formalities or procedures to be followed by the Requested Party in executing the request and the reasons therefor;
 - (e) any requirements for confidentiality and the reasons therefor; and
 - (f) a specification of any time limit within which compliance with the request is required and the reasons therefor.
- (3) The Requesting Party may provide any other information it deems helpful for the execution of the request, including a description of the evidence or the information sought.

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(6) 協助請求和為支持請求而提交的所有文件，如非以英語擬備，必須附有英譯本。

(4) The Requesting Party may require that the Requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the Requested Party cannot comply with the required confidentiality, it shall promptly consult with the Requesting Party.

(5) The Requested Party may request additional information considered necessary to execute the request.

(6) A request and documents submitted in support of the request shall, if they are not in English, be accompanied by translation into English.

第六條

執行請求

(1) 協助請求必須根據請求所訂明的時間限制迅速執行。不過，如出現妨礙被請求方遵守所訂時間限制或可能導致嚴重延遲回應該項請求的情況，被請求方須迅速知會請求方。

(2) 協助請求須按照本協定的條文和被請求方的法律以及按照請求所訂手續和程序予以執行(但有關手續和程序不得與該方的法律有所牴觸)。

(3) 如請求方明確請求，被請求方的中心機關必須把執行請求的日期和地點告知請求方。

(4) 在不違反第十條第(3)款的情況下，被請求方應在請求方提出請求時盡量考慮讓所涉機關、有關人士以及其法律代表在執行請求時出席。

ARTICLE 6

EXECUTION OF REQUESTS

(1) A request shall be promptly executed and in accordance with time limits set out in the request. However, if there are circumstances which prevent compliance within the time limits or which are likely to cause a significant delay in executing the request, the Requested Party shall promptly inform the Requesting Party.

(2) A request shall be executed in accordance with the provisions of this Agreement, the law of the Requested Party and, provided that they are not contrary to that Party's law, with any formalities and procedures expressly set out in the request.

(3) If the Requesting Party expressly requests, the Central Authority of the Requested Party shall inform it of the date and place of the execution of the request.

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- (5) 如執行請求會妨礙正在被請求方進行的偵查或檢控，被請求方可延期提供協助。
- (6) 在拒絕或延期提供協助前，被請求方須及早知會請求方考慮拒絕或延期提供協助的理由，以及與請求方磋商，以確定可否在合乎被請求方認為必需的條件下提供協助。
- (7) 被請求方須就拒絕提供協助的決定及所據的理由以書面通知請求方。

- (4) Without prejudice to Article 10, paragraph (3), the Requested Party shall give favourable consideration to a request by the Requesting Party that the authorities involved and interested persons, and their legal representatives be present at the execution of a request.
- (5) The Requested Party may postpone assistance if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested Party.
- (6) Before refusing or postponing assistance, the Requested Party shall promptly inform the Requesting Party of the reasons for considering refusal or postponement and consult with that Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.
- (7) The Requested Party shall inform the Requesting Party in writing of a decision to refuse assistance and the reasons therefor.

第七條

代表及開支

- (1) 被請求方須在因協助請求而引起的任何訴訟中代表請求方，保障請求方的利益。
- (2) 被請求方須承擔執行請求的費用，但以下費用則由請求方負責：
- (a) 把任何人送往或送離被請求方所涉的費用，以及在該人按請求逗留在請求方期間須付給他的任何費用、津貼或開支；以及
 - (b) 運送羈管人員或押送人員所涉及的開支。

ARTICLE 7

REPRESENTATION AND EXPENSES

- (1) The Requested Party shall represent the interests of the Requesting Party in any proceedings arising out of a request for assistance.
- (2) The Requested Party shall meet the costs of executing the request except that the Requesting Party shall bear :
- (a) the expenses associated with conveying any person to or from the Requested Party, and any fees, allowances or expenses payable to that person whilst in the Requesting Party pursuant to a request; and

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(3) 在執行請求之前或期間，如察覺執行請求會對被請求方的資源造成過大負擔，或涉及非一般性開支，締約雙方須進行磋商，以決定開始或繼續執行請求的條件。

(b) the expenses associated with conveying custodial or escorting officers.

(3) If before or during the execution of the request it becomes apparent that execution of the request would impose an excessive burden on the Requested Party's resources or involve expenses of an extraordinary nature, the Parties shall consult to determine the terms and conditions under which the execution of the request may proceed or continue.

第八條

使用限制

(1) 被請求方可要求請求方在不經被請求方的中心機關事先同意之前，不得在不屬於請求內所述的偵查、檢控或訴訟中，使用根據本協定所獲得的任何資料或證據。在該等情況下，請求方須遵守該項規定。

(2) 被請求方可請求將根據本協定提供的資料或證據保密，或只限在被請求方所指定的條件下方可使用。請求方的中心機關如在該等條件下接納該等資料或證據，請求方便須遵守該等條件。

第九條

獲取證據

請求方如提出取證請求，被請求方須安排獲取該等證據。獲取證據包括出示物件、文件、紀錄及證物。

ARTICLE 8

LIMITATIONS ON USE

(1) The Requested Party may require that the Requesting Party not use any information or evidence obtained under this Agreement in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested Party. In such a situation, the Requesting Party shall comply with the requirement.

(2) The Requested Party may require that information or evidence furnished under this Agreement be kept confidential or be used only subject to terms and conditions it may specify. If the Central Authority of the Requesting Party accepts the information or evidence subject to such conditions, the Requesting Party shall comply with the conditions.

ARTICLE 9

TAKING OF EVIDENCE

Where a request is made that evidence be taken, the Requested Party shall arrange to have such evidence taken. The taking of evidence shall include the production of objects, documents, records and exhibits.

第十條

在被請求方管轄區內獲取證供

- (1) 請求方如請求在被請求方獲取證供，被請求方須安排獲取該等證供。
- (2) 除第五條第(2)款所指的資料外，請求方須在請求內訂明擬向作證人士提出的問題或擬向他們訊問的事項。
- (3) 請求方管轄區內的所涉機關和有關人士，以及其法律代表，可在被請求方的法律規限下出席及向該證人發問。
- (4) 被請求作證的人，可在以下情況拒絕作證：
 - (a) 根據被請求方的法律，如在被請求方管轄區內的訴訟中出現類似情況時，該證人可拒絕作證；或
 - (b) 根據請求方的法律，如在請求方管轄區內進行該類訴訟，該證人可拒絕作證。
- (5) 如任何人宣稱有權根據請求方的法律拒絕作證，被請求方的中心機關須在適當時諮詢請求方的中心機關，並以該機關所發的聲明為憑據。

ARTICLE 10

TAKING OF TESTIMONY IN THE REQUESTED PARTY

- (1) Where a request is made that testimony be taken in the Requested Party, that Party shall arrange to have such testimony taken.
- (2) In addition to the information referred to in Article 5, paragraph (2), the Requesting Party shall specify in its request the questions to be put to the person who is required to give testimony or the subject matter about which he or she is to be examined.
- (3) The authorities involved in the Requesting Party and interested persons, and their legal representatives, may, subject to the law of the Requested Party, be present and question the person giving the testimony.
- (4) A person who is required to give testimony may decline to do so where either:
 - (a) the law of the Requested Party would permit him or her to decline to give testimony in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) the law of the Requesting Party would permit him or her to decline to give testimony in such proceedings in the Requesting Party.
- (5) If a person claims that there is a right to decline to give testimony under the law of the Requesting Party, the Central Authority of the Requested Party shall, where appropriate, consult with the Central Authority of the Requesting Party and rely on a declaration provided by that Authority.

第十一條

視像會議

如屬可行和符合雙方的法律，締約雙方可因應每宗個案的情況，同意在特定條件下透過視像會議方式獲取證供。

第十二條

在請求方管轄區內錄取證供和提供協助

- (1) 如請求方認為需要某人到請求方管轄區提供證供或提供其他協助，可請求被請求方邀請該人出席。
- (2) 除第五條第(2)款所述的資料外，根據本條提出的請求必須包含以下資料：
 - (a) 認為該人必須在請求方出席的理由；
 - (b) 該人須出席的預計日期；
 - (c) 根據請求方的法律，該人享有的權利和保障以及應盡的義務；
 - (d) 有關該人的保安安排(如適用的話)；
 - (e) 有關該人前赴請求方和在該處逗留及其回程的安排；以及
 - (f) 發給該人的津貼額，包括交通和住宿費用。
- (3) 被請求方如信納請求方會為該人的安全作出適當安排，須邀請該人前往請求方出席並徵詢該人是否同意有關安排。

ARTICLE 11

VIDEO CONFERENCE

Where possible and consistent with their laws, the Parties may agree on a case by case basis that the taking of testimony takes place by means of video conference under specified conditions.

ARTICLE 12

TAKING OF TESTIMONY AND PROVIDING ASSISTANCE
IN THE REQUESTING PARTY

- (1) If the Requesting Party considers the appearance of a person in the Requesting Party necessary for the purpose of giving testimony or providing other assistance, it may ask the Requested Party to invite that person to appear.
- (2) In addition to the information referred to in Article 5, paragraph (2), a request pursuant to this Article shall contain information as to :
 - (a) the reason why the person's appearance in the Requesting Party is considered necessary;
 - (b) the approximate dates on which the person is required to appear;
 - (c) the person's rights, protections and obligations under the law of the Requesting Party;
 - (d) where appropriate, arrangements for the person's security;
 - (e) arrangements for the person's travel to and stay in the Requesting Party as well as his return; and

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(4) 任何人不得因其拒絕出席而根據任何一方的法律遭受處罰或被處以強制措施。

(f) the amount of allowances payable to the person, including travel and accommodation expenses.

(3) The Requested Party shall, if satisfied that appropriate arrangements for that person's safety will be made by the Requesting Party, invite the person to appear in the Requesting Party and seek that person's concurrence thereto.

(4) A person who declines to appear shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

第十三條

ARTICLE 13

移交被羈押的人給請求方

TRANSFER OF PERSONS IN CUSTODY TO THE REQUESTING PARTY

(1) 請求方請求把被羈押在被請求方管轄區內的人移交給請求方以提供證供或提供其他協助時，如被請求方同意，而請求方又保證把該人繼續羈押及在無需其協助後盡快(不遲於被請求方指定的時限)把該人送還給被請求方，則被請求方可就所指目的把該人移交給請求方。

(1) A person in custody in the Requested Party whose appearance is requested in the Requesting Party for the purpose of giving testimony or providing other assistance shall, if the Requested Party consents, be transferred to the Requesting Party for that purpose, provided that the Requesting Party has guaranteed maintaining the person in custody and his or her subsequent return as soon as the person's presence is no longer required, but no later than the time specified by the Requested Party.

(2) 在以下情況，被請求方可拒絕移交有關人士：

(2) Transfer may be refused if :

- (a) 該人不同意出席；
- (b) 被請求方因為一未決的偵查或訴訟的關係須將該人留下；或
- (c) 有其他至為重要的理由拒絕移交。

- (a) the person concerned does not consent to appear;
- (b) his or her presence is required for an investigation or proceeding pending in the Requested Party; or
- (c) there are other overriding grounds against transfer.

(3) 被移交給請求方的被羈押的人，如在請求方逗留期間可根據被請求方的法律獲得釋放，被請求方須知會請求方，而請求方須確保該人獲得釋放，並把該人視為第十二條所指的人士般對待。

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(4) 任何人不得因不同意被移交而根據任何一方的法律遭受處罰或被處以強制措施。

(3) Where a person in custody who is transferred, becomes entitled under the law of the Requested Party to be released from custody whilst he or she is in the Requesting Party, the Requested Party shall inform the Requesting Party which shall ensure the person's release and thereafter treat the person as a person referred to in Article 12.

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

第十四條

ARTICLE 14

安全通行

SAFE CONDUCT

(1) 同意根據第十二或十三條在請求方管轄區出席的人，不得因其在離開被請求方之前的任何作為或不作為而犯的任何刑事罪行而在請求方遭檢控、拘留、限制人身自由及民事起訴或如該人不在請求方便不須承受的任何訴訟。

(1) A person who consents to appear in the Requesting Party pursuant to Articles 12 or 13 shall not be prosecuted, detained, or restricted in his or her personal liberty in the Requesting Party for any criminal offence or be subject to any civil suit or any proceeding to which the person could not be subjected if he or she were not in the Requesting Party, in respect of any act or omission which preceded the person's departure from the Requested Party.

(2) 如有關的人本可自由離去，但在接獲正式通知毋須再逗留後 15 天內仍未離開請求方，或在離開請求方後返回者，則第 (1) 款不適用。

(2) Paragraph (1) shall cease to apply if the person, being free to leave, has not left the Requesting Party within a period of 15 days after having been officially notified that his or her presence is no longer required, or having left the Requesting Party, has returned.

(3) 同意根據第十二或十三條在請求方作證的人，不得基於所作證供而遭受檢控，但作假證供的情況則不在此限。

(3) A person who consents to give testimony in the Requesting Party pursuant to Articles 12 or 13 shall not be subject to prosecution based on the testimony given, except in relation to perjury.

(4) 同意根據第十二或十三條在請求方作證的人，可以在以下情況拒絕作證：

(4) A person who consents to give testimony in the Requesting Party pursuant to Articles 12 or 13 may decline to give testimony where either :

- (a) 根據被請求方的法律，如在被請求方管轄區內的訴訟中出現類似情況時，該證人可拒絕作證；或
- (b) 根據請求方的法律，如在請求方管轄區內進行該類似訴訟，該證人可拒絕作證。

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(5) 如任何人宣稱有權根據請求方的法律拒絕作證，被請求方的中心機關須在適當時諮詢請求方的中心機關，並以該機關所發的聲明為憑證。

(6) 同意根據第十二或十三條到請求方管轄區出席的人，不得被請求在協助請求未提及的法律程序作證或提供協助。

- (a) the law of the Requested Party would permit him or her to decline to give testimony in similar circumstances in proceedings which originated in the Requested Party; or
- (b) the law of the Requesting Party would permit him or her to decline to give testimony.

(5) If a person claims that there is a right to decline to give testimony under the law of the Requested Party, the Central Authority of the Requesting Party shall, where appropriate, consult with the Central Authority of the Requested Party and rely on a declaration provided by that Authority.

(6) A person who consents to appear in the Requesting Party pursuant to Articles 12 or 13 shall not be required to give testimony or to provide assistance in any proceedings other than those mentioned in the request.

第十五條

搜查及檢取

- (1) 被請求方在本身法律許可的範圍內，須執行搜查、檢取或出示文件、紀錄或物品的請求，並移交任何所獲得的物料或其副本到請求方。
- (2) 被請求方在請求方的請求下須提供有關搜查的結果、檢取的地點、檢取的情況，以及財產在檢取後的保管的資料。
- (3) 如被請求方把檢取到的物料交付予請求方，請求方須遵守被請求方就該等物料提出的任何條件。

ARTICLE 15

SEARCH AND SEIZURE

- (1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure or the production of documents, records or articles and transfer any material thus obtained, or copies thereof, to the Requesting Party.
- (2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of a search, the place and circumstances of seizure and the subsequent custody of the material seized.

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第十六條

沒收

- (1) 就本協定而言，“犯罪得益”指：
 - (a) 因犯罪而直接或間接獲得的任何類型資產，包括有體資產、無體資產、可動資產、不可動資產、有形資產、無形資產，以及證明具有該等資產的享有權或權益的法律文件或工具，或與這些資產相對應的價值；以及
 - (b) 用以或意圖用以犯罪的財物、器材或其他工具。
- (2) 如請求方提出請求，被請求方須致力：
 - (a) 辨識和索究存放於其管轄區內的任何犯罪得益；以及
 - (b) 加以限制，以防有人就該犯罪等得益進行交易、轉讓或處置。
- (3) 被請求方必須根據其法律執行第(2)款所指的請求，以待請求方的法院就該等得益作出最後裁定。被請求方在執行請求後，須立刻把結果告知請求方。
- (4) 如請求方提出請求，被請求方須根據其法律，沒收犯罪得益。
- (5) 除第五條第(2)款所指的資料外，根據本條提出的請求必須：
 - (a) 盡量清晰地描述犯罪得益和其所在地點，以及該等得益與可疑人士、被控人士或被定罪人士的關係；以及

- (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.

ARTICLE 16

CONFISCATION

- (1) For the purpose of this Agreement, “proceeds of crime” shall mean :
 - (a) assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets derived from or obtained, directly or indirectly, through the commission of an offence or the value which corresponds to such assets; and
 - (b) property, equipment or other instrumentalities used in or destined for use in the commission of an offence.
- (2) The Requested Party shall, upon request, endeavour to :
 - (a) identify and trace any proceeds of crime located within its jurisdiction; and
 - (b) restrain with a view to preventing any dealing in, transfer or disposal of such proceeds of crime.
- (3) The Requested Party shall execute requests referred to in paragraph (2) in accordance with its law, pending a final determination in respect of those proceeds by a court of the Requesting Party. The Requested Party shall notify the Requesting Party immediately of the result of the execution of the request.

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- (b) 如根據第(4)款提出請求，則須隨請求附上由請求方的司法機關發出的沒收令副本及由請求方中心機關作出的聲明，證明該沒收令為最終沒收令和可予執行。
- (6) 根據本條沒收的犯罪得益須由被請求方保留。不過，締約一方可在該方法律容許的範圍內，及按照雙方商定的條件，把該等犯罪得益的全部或部分，轉讓給締約另一方。
- (7) 在引用此條時，真誠第三方的權利必須受到尊重。

- (4) The Requested Party shall, upon request, confiscate proceeds of crime in accordance with its law.
- (5) In addition to the information referred to in Article 5, paragraph (2), requests made under this Article shall :
- (a) indicate, as precisely as possible, the description and the location of the proceeds of crime and their connection with the person suspected of, charged with or convicted of the offence; and
- (b) where the request is made under paragraph (4), be accompanied by a copy of any order of confiscation made by a judicial authority of the Requesting Party and a declaration by the Central Authority of the Requesting Party that the order is final and enforceable.
- (6) Proceeds of crime confiscated pursuant to this Article shall be retained by the Requested Party. However, a Party may, to the extent permitted by its law, offer to transfer the proceeds of crime, or part thereof, to the other Party upon such terms as may be agreed.
- (7) In the application of this Article, the rights of bona fide third parties shall be respected.

第十七條

ARTICLE 17

送達文件

SERVICE OF DOCUMENTS

- (1) 請求方交付送達與刑事事宜有關的文件，如附有屬被請求方法定語言的譯文或至少附有主要內容的譯文，被請求方須予以送達。
- (2) 如有關文件需要被送達人作出回應，請求方須於預定回應日期前的一段合理時間內，向被請求方提出送達該等文件的請求。

- (1) The Requested Party shall serve any document relating to a criminal matter transmitted to it for the purpose of service, provided that the document is accompanied by a translation into an official language of the Requested Party or at the minimum, a translation of the essential passages thereof.

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- (3) 如有關文件需要被送達人在請求方管轄區內出席，請求方須於預定出席日期最少 30 天前，向被請求方提出送達該等文件的請求。
- (4) 被請求方須藉以下方法，證明已送達文件：
- (a) 得到被送達人註明日期及簽署的收條；或
 - (b) 得到被請求方根據其法律作出的聲明，表明文件已經送達，並載明送達的方式及日期。
- (5) 任何人不得因未有遵照根據本條送達給他的文件的規定行事，而遭受締約雙方的法律處罰或被處以強制措施。

第十八條

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，被請求方須應請求向請求方提供任何可向公眾提供的文件的副本。
- (2) 就被請求方的政府部門或機構所管有但不供公眾查閱的任何文件、紀錄或資料，被請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，向請求方提供。

- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response 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 thirty days before the scheduled appearance.
- (4) The Requested Party shall give proof of service :
- (a) by means of a receipt dated and signed by the person served; or
 - (b) by means of a declaration made by the Requested Party consistent with its domestic law that service has been effected and stating the form and date of such service.
- (5) A person who fails to comply with a document served on him or her pursuant to this Article shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 18

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law the Requested Party shall, upon request, 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.

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第十九條

核證

轉送往請求方的證據、文件、抄件、紀錄、陳述或其他物料，只有在請求方提出請求的情況下，才須予以核證。就該目的而言，由被請求方的中心機關提出證明已經足夠。

第二十條

提供與訴訟有關的資料

在締約一方觸犯的罪行如可在締約另一方予以檢控，發生罪行的一方可在決定不提出檢控後通知締約另一方。如締約另一方提出請求，發生罪行的一方可提供協助，特別是有關罪行的資料和證據，以便締約另一方提出檢控。

第二十一條

解決爭議

任何因本協定的解釋、適用或執行而產生的爭議，如雙方的中心機關無法自行達成協議，須通過外交途徑解決。

ARTICLE 19

CERTIFICATION

Evidence, documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified if the Requesting Party so requests. For that purpose certification by the Central Authority of the Requested Party shall be sufficient.

ARTICLE 20

PROVISION OF INFORMATION IN CONNECTION WITH
PROCEEDINGS

Where an offence has been committed in one of the Parties and that offence may also be prosecuted by the other Party, the Party where the offence was committed may, if it decides not to prosecute the offence, inform the other Party. Upon request, the Party where the offence was committed, may assist the other Party, in particular by providing information and evidence in relation to that offence, with a view to prosecution of the offence in the latter Party.

ARTICLE 21

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 themselves are unable to reach agreement.

第二十二條

在屬土的適用範圍

* 就荷蘭王國而言，本協定僅適用於該王國位於歐洲的部分。如荷蘭王國提出請求，也可擴大至適用於荷屬安的列斯及／或阿魯巴。

第二十三條

生效

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定後的翌月首日開始生效。
- (2) 本協定適用於生效日期之後提出的請求，而不論有關的作為或不作為是否在本協定生效之前發生。

第二十四條

終止

締約一方可隨時以書面通知另一方終止本協定。本協定會於締約另一方接獲通知六個月後失效。如本協定的適用範圍擴大至適用於荷屬安的列斯及／或阿魯巴，荷蘭王國有權把協定終止適用於荷蘭王國的任何組成部分。

ARTICLE 22

TERRITORIAL APPLICATION

*As regards the Kingdom of the Netherlands this Agreement shall apply to the part of the Kingdom in Europe only and may be extended to the Netherlands Antilles and/or to Aruba at the request of the Kingdom of the Netherlands.

ARTICLE 23

ENTRY INTO FORCE

- (1) This Agreement shall enter into force on the first day of the second month following the date on which the Parties have notified each other in writing that their respective legal requirements have been complied with.
- (2) This Agreement shall apply to any requests presented after its entry into force even if the relevant acts and omissions occurred before that date.

ARTICLE 24

TERMINATION

Either Party may terminate this Agreement at any time by written notification. Termination shall become effective six months after the date of the receipt of such notification. In case of extension of the applicability of this Agreement to the Netherlands Antilles and/or Aruba, the Kingdom of the Netherlands shall be entitled to terminate the application of this Agreement in respect of any of the constituent parts of the Kingdom of the Netherlands.

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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。

本協定於二零零二年八月二十六日在香港特別行政區簽訂，每份均用中文、英文及荷蘭文寫成，三種文本均同樣作準。

編輯附註：

* 透過特區政府與荷蘭王國政府於 2003 年 7 月 22 日及 2003 年 7 月 25 日所交換的照會，本協定擴大至適用於荷屬安的列斯及阿魯巴。

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

Done at the Hong Kong Special Administrative Region this twenty-sixth day of August Two Thousand and Two in duplicate in the Chinese, English and Dutch languages, each version being equally authentic.

Editorial Note:

* By an exchange of notes between the Government of the HKSAR and the Government of the Kingdom of the Netherlands on 22 July 2003 and 25 July 2003, the application of this Agreement has been extended to the Netherlands Antilles and Aruba.

附表 2

[第 2 條]

協定第十四條第 (5) 款經更正後的中文文本

“(5) 如任何人宣稱有權根據被請求方的法律拒絕作證，請求方的中心機關須在適當時諮詢被請求方的中心機關，並以該機關所發的聲明為憑證。”

Schedule 2

[s. 2]

**The Corrected Chinese Text of Article 14(5)
of the Agreement**

“(5) 如任何人宣稱有權根據被請求方的法律拒絕作證，請求方的中心機關須在適當時諮詢被請求方的中心機關，並以該機關所發的聲明為憑證。”

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附表 3

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附表 3

[第 2 條]

對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通至如下所示 ——
“(e) 該項請求關乎因外地罪行而對某人進行的檢控，而該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，或已接受該地方或香港的* 法律所規定的懲罰；”。
2. 本條例第 17(3)(b) 條須予變通至如下所示 ——
“(b) 該人在有機會離開香港的情況下** 有機會離開香港而在自他有該機會起計的 15 天屆滿後* 仍留在香港，但並非為下述目的而留在香港 ——
(i) 該項請求所關乎的目的；或
(ii) 為給予香港刑事事宜方面的協助的目的，而該刑事事宜屬律政司司長以書面證明適宜由該人就該事宜給予協助的。”。

* 劃上底線的字句屬增訂部分。(劃上底線是為了使該項變通易於識別)。

** 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)。

Schedule 3

[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 has been convicted, acquitted or pardoned by a competent court or other authority in the place or Hong Kong*, or 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(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 Secretary for Justice to be a criminal matter 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).