

《刑事事宜相互法律協助（新西蘭）令》  
（第 525 章，附屬法例 D）

**Mutual Legal Assistance in Criminal Matters (New Zealand) Order**  
**(Cap. 525 sub. leg. D)**

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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	7.11.2019
附表 1 Schedule 1	S1-1—S1-34	7.11.2019
附表 2 Schedule 2	S2-1—S2-4	7.11.2019

**尚未實施的條文 / 修訂 ——**

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

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

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**制定史**

本為 1998 年第 376 號法律公告 —— 2003 年第 14 號，2019 年第 5 號  
編輯修訂紀錄

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**Enactment History**

Originally L.N. 376 of 1998 — 14 of 2003, E.R. 5 of 2019

## 《刑事事宜相互法律協助 (新西蘭) 令》

## Mutual Legal Assistance in Criminal Matters (New Zealand) Order

## (第 525 章，附屬法例 D)

## (Cap. 525 sub. leg. D)

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## 《刑事事宜相互法律協助(新西蘭)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)

[1999 年 3 月 2 日] 1999 年第 57 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新西蘭之間適用

就——

- (a) 適用於香港特別行政區政府和新西蘭政府，而
- (b) 副本附錄於附表 1，

的相互法律協助的安排，現指示在撮錄於附表 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新西蘭之間適用。

## Mutual Legal Assistance in Criminal Matters (New Zealand) Order

(Cap. 525, section 4)

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

[2 March 1999] L.N. 57 of 1999

(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 New Zealand**

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 New Zealand; 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 New Zealand.

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## 附表 1

[ 第 2 條 ]

### 中華人民共和國香港特別行政區政府 與 新西蘭政府 關於 刑事司法協助的協定

中華人民共和國香港特別行政區(“香港特別行政區”)政府經中華人民共和國中央人民政府正式授權，與新西蘭政府，

為加強雙方在調查、檢控和防止罪案，以及發出和執行有關用於犯罪或從犯罪衍生的財物的命令方面的合作效能，  
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 New Zealand 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 New Zealand,

Desiring to improve the effectiveness of cooperation between the Parties in the investigation, prosecution and prevention of crime and the issuing and enforcement of orders relating to property used in or derived from crime;

HAVE AGREED as follows:

## 第一條

### 提供協助的範圍

- (1) 締約雙方須按照本協定，在調查和檢控刑事罪行及進行刑事訴訟方面互相提供協助。
- (2) 該等協助包括以下各項：
  - (a) 辨認和追尋有關的人；
  - (b) 送達文件；
  - (c) 取得及提供證據、物品或文件；
  - (d) 執行搜查和檢取物品的要求；
  - (e) 安排移交有關的人以便作證或協助調查；
  - (f) 取得及提供司法或官方紀錄，以及其他資料、文件及紀錄；
  - (g) 索究、禁制及充公用於犯罪或從犯罪衍生的財物；
  - (h) 交付物品，包括借出證物；
  - (i) 與本協定目的一致同時又沒有與被要求方的法律不一致的其他協助。
- (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例有關的罪行提供協助，但不可就與上述事項有關的非刑事訴訟提供協助。
- (4) 本協定純為締約雙方互相提供協助而設立，並不給予任何私人根據本協定提出要求的權利。
- (5) 除非締約雙方已經外交途徑交換照會，同意本協定適用於托克勞的條款，否則本協定不適用於托克勞。

## ARTICLE I

### 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) Such assistance shall include:
  - (a) identifying and locating persons;
  - (b) serving documents;
  - (c) obtaining and providing evidence, articles or documents;
  - (d) executing requests for search and seizure;
  - (e) making arrangements for the transfer of persons to give evidence or assist investigations;
  - (f) obtaining and providing judicial or official records, and other information, documents and records;
  - (g) tracing, restraining and confiscating property used in or derived from crime;
  - (h) delivery of property, including lending of exhibits;
  - (i) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) Assistance under this Agreement may be granted in connection with offences against a law relating to taxation, customs duties, foreign exchange control or other revenue matters but not in connection with non-criminal proceedings relating thereto.
- (4) This Agreement is intended solely for mutual assistance between the Parties and shall not give rise to any right on the part of any private person to make a request under this Agreement.

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## 第二條

### 中心機關

- (1) 締約雙方須各自設立一個中心機關。
- (2) 新西蘭的中心機關為檢察總長。香港特別行政區的中心機關為律政司司長。任何一方的中心機關有更改時，須通知另一方。
- (3) 協助要求須經中心機關提出，中心機關須根據本協定的條款處理有關要求。

## 第三條

### 其他協助

本協定不得妨礙締約雙方按照其他協定、安排或慣例互相提供協助。

## 第四條

### 履行協定的限制

- (1) 如出現以下情況，被要求方須拒絕提供協助：

## ARTICLE II

### CENTRAL AUTHORITY

- (5) This Agreement shall not apply to Tokelau unless the Parties have exchanged Notes through the diplomatic channel agreeing the terms on which this Agreement shall so apply.

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for New Zealand shall be the Attorney-General. The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice. Each Party shall notify the other of any change of its Central Authority.
- (3) Requests for assistance shall be made through the Central Authority which shall deal with the requests in accordance with the provisions of this Agreement.

## ARTICLE III

### OTHER ASSISTANCE

This Agreement shall not prevent the Parties from providing assistance to each other pursuant to other agreements, arrangements or practices.

## ARTICLE IV

### LIMITATIONS ON COMPLIANCE

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

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- (a) 協助要求會損害新西蘭或就香港特別行政區而言，中華人民共和國的主權、安全或公共秩序；
- (b) 協助要求關乎政治性質的罪行；
- (c) 協助要求關乎只在軍法下才構成的罪行；
- (d) 有充分理由相信協助要求將會引致某人因其種族、膚色、族裔、性別、宗教、國籍或政治意見而受到不利的待遇；
- (e) 協助要求所涉及的被告人，已因同一罪行被一個主管審裁處或當局定罪、無罪釋放或被赦免，或已受到法律所規定的懲罰；
- (f) 被要求方認為應允要求將會嚴重損害其本身的基本利益；
- (g) 要求方不能遵守任何有關保密或限制使用獲提供的資料的條件；或
- (h) 被指稱構成刑事罪行的作為或不作為，如在被要求方的管轄區發生，並不構成刑事罪行。

(2) 就本條第(1)(f)款而言，被要求方在考慮其基本利益時，可一併考慮提供協助會否不利於任何人的安全，或對被要求方的資源造成太重的負擔。

(3) 如有關要求關乎在要求方管轄區屬可判死刑的罪行，但根據被要求方的法律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，即有關的人將不會被判死刑，或即使被判死刑亦不會執行，否則被要求方可拒絕提供協助。

(4) 如該項要求涉及因一項罪行檢控或懲罰某人，而該罪行即使是在被要求方的管轄區觸犯，但已由於時效消失而不能再進行檢控，則被要求方可拒絕提供協助。

(5) 如執行要求會妨礙正在被要求方進行的調查或檢控，被要求方可延期提供協助。

(6) 在根據本條拒絕或延期提供協助前，被要求方須通過中心機關——

- (a) 及早知會要求方考慮拒絕或延期提供協助的理由；及

- (a) the request for assistance impairs the sovereignty, security or public order of New Zealand or, in the case of the Hong Kong Special Administrative Region, 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 race, colour, ethnic origin, 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 that person has been convicted, acquitted or pardoned by a competent tribunal or authority or has undergone punishment provided by law;
- (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
- (g) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided; or
- (h) 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) of this Article the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.

(3) 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



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- (b) 與要求方磋商，以確定可否在合乎被要求方認為必需的條件下提供協助。
- (7) 要求方如在合乎第(6)(b)款所述的條件下接受協助，必須遵守該等條件。
- (8) 被要求方如決定完全或部分拒絕一項協助要求，須及早知會要求方，同時告之作出該項決定的原因。

Requested Party or is 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 refuse assistance if the request relates to the prosecution or punishment of a person for an offence which, had it been committed within the jurisdiction of the Requested Party, could no longer be prosecuted by reason of lapse of time.

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

(6) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority—

(a) shall promptly inform the Requested Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

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

(8) The Requested Party shall promptly inform the Requesting Party of a decision to deny in whole or in part a request for assistance and the reasons for that decision.

## 第五條

### 要求

- (1) 除非在緊急情況下，否則要求必須以書面提出。在緊急情況下，可提出口頭的要求，但必須在 10 天內以書面確認。
- (2) 提出司法協助的要求須包括以下內容：

## ARTICLE V

### 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 10 days thereafter.

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- (a) 要求方代其提出要求的機關的名稱；
  - (b) 說明提出要求的目的及所需協助的性質；
  - (c) 說明調查、檢控、罪行或刑事案件的性質，及說明是否已提起訴訟；
  - (d) 如已提起訴訟，說明訴訟的詳情；
  - (e) 有待執行的法庭判令(如有的話)，並說明有關判令乃最終判令；
  - (f) 案件有關事實及法律的撮要；
  - (g) 任何有關保密的要求及要求保密的理由；
  - (h) 要求方希望被要求方依循的任何特別程序的細節，包括有關任何證據、資料、文件或物品將以何種方式及形式提供予要求方的細節；
  - (i) 履行要求的期間的詳細說明；及
  - (j) 關於前往要求方的人有權領取的津貼及費用的資料。
- (3) 要求方為支持要求而提交的所有文件，必須附有被要求方所用語文的譯本及被要求方所要求的證明和認證。
- (4) 如被要求方認為要求書上所載資料不足，以致不能處理要求，可要求提供進一步的資料。

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- (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 purpose of the request and the nature of the assistance requested;
  - (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
  - (d) where proceedings have been instituted, details of the proceedings;
  - (e) the court order, if any, sought to be enforced and a statement to the effect that it is a final order;
  - (f) a summary of the relevant facts and laws;
  - (g) any requirements for confidentiality and the reasons therefor;
  - (h) details of any particular procedure the Requesting Party wishes to be followed including details of the manner and form in which any evidence, information, document or item is to be supplied to the Requesting Party;
  - (i) details of the period within which the request should be complied with;
  - (j) information as to the allowances and expenses to which a person travelling to the Requesting Party will be entitled.
- (3) All documents submitted in support of a request shall be accompanied by a translation in the language of the Requested Party and by certification or authentication required by the Requested Party.
- (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) 被要求方的中心機關須迅速執行要求，或安排通過其主管機關執行要求。
- (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，盡可能依照要求內所述的指示來執行。
- (3) 如要求交付的資料是被要求方管轄區內的刑事或民事訴訟所需要的，被要求方可延期交付該些資料。如要求方提出要求，被要求方須提供有關文件的經證明副本。
- (4) 被要求方須迅速將任何可能導致嚴重延遲回應該項要求的情況通知要求方。

## 第七條

### 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訴訟中獲得代表，否則被要求方須代表要求方，保障要求方的利益。
- (2) 被要求方須承擔在其管轄區內執行要求的所有一般性開支，但下述項目除外：
  - (a) 應要求方要求而聘請的律師的費用；

## ARTICLE VI

### EXECUTION OF REQUESTS

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (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 may postpone the delivery of material requested if such material is required for criminal or civil proceedings in its jurisdiction. The Requested Party shall, upon request, provide certified copies of relevant documents.
- (4) 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.

## ARTICLE VII

### Representation and expenses

- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceedings 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 jurisdiction, except:

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- (b) 聘請專家的費用；
  - (c) 翻譯費用；及
  - (d) 有關人等的交通及住宿費用及津貼。
- (3) 在執行要求期間，如察覺需有非一般性開支，以履行有關要求，締約雙方須進行磋商，以決定繼續執行要求的條件。

- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;
- (c) expenses of translation; and
- (d) travel and accommodation expenses and allowances of persons.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature are required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

## 第八條

## ARTICLE VIII

### 使用限制

### LIMITATIONS ON USE

- (1) 被要求方必須盡最大的努力把要求和要求的內容保密，但已獲要求方授權透露者則屬例外。如無法在不違反保密要求的情況下執行要求，則被要求方須通知要求方，由要求方決定是否仍應執行要求。
- (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件下透露或使用。
- (3) 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。
- (4) 要求方如接獲要求，必須盡最大的努力確保有關資料或證據受到保護，不會遺失及被人未經許可便取得、使用、改動、透露或以其他方式濫用。

- (1) The Requested Party shall use its best efforts to keep confidential a request and its contents except when otherwise authorised by the Requesting Party. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.
- (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 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.
- (4) The Requesting Party, if so requested, shall use its best efforts to ensure that the information or evidence is protected against loss and unauthorised access, use, modification, disclosure or other misuse.

## 第九條

### 有關人士的所在及身分

被要求方須盡力查明要求內所指的任何人的所在及身分。

## 第十條

### 錄取供詞

- (1) 如要求方要求取得某人的供詞，供與其管轄區內的刑事案件有關的調查或訴訟之用，被要求方須在該人同意下盡力取得供詞。
- (2) 就根據本條提出的要求而言，要求方須說明準備錄取的供詞所涉事項為何，包括任何擬提出的問題。

## 第十一條

### 獲取證據、物品或文件

- (1) 要求方如就在其管轄區內的刑事罪行的檢控或與刑事案件有關的訴訟而提出取證要求，被要求方須在其法律規限下安排錄取有關證據，並把證據交付要求方。
- (2) 就本協定而言，提供或錄取證據須包括出示文件、紀錄或其他資料。

## ARTICLE IX

### LOCATION OR IDENTITY OF PERSONS

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

## ARTICLE X

### OBTAINING STATEMENTS OF PERSONS

- (1) Where a request is made to obtain the statement of a person for the purpose of an investigation or proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour, with the consent of that person, to obtain that statement.
- (2) For the purposes of a request under this Article the Requesting Party shall specify the subject matter about which the statement is to be taken, including any questions it seeks to be put.

## ARTICLE XI

### OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken for the purpose of the prosecution of a criminal offence or proceedings in relation to a criminal matter in the Requesting Party, the Requested Party shall, subject to its law, arrange to have such evidence taken and transmitted to the Requesting Party.

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- (3) 就根據本條提出的要求而言，要求方須列明擬向證人訊問的事項，並可列明擬提出的問題及錄取證據應採用的方式及形式。
- (4) 如因協助要求，某人須為在要求方管轄區內進行的訴訟而作證，則在要求方管轄區內的訴訟當事人、其法律代表，或要求方的代表，可在被要求方的法律規限下出庭及向該作證的人發問。
- (5) 因協助要求而須在被要求方管轄區內作證的人，在以下情況下可拒絕作證：
- (a) 根據被要求方的法律，如在被要求方管轄區內的訴訟中出現類似情況時，該證人可獲准或必須拒絕作證；或
  - (b) 根據要求方的法律，如在要求方管轄區內進行該類訴訟，該證人可獲准或必須拒絕作證。
- (6) 如任何人宣稱有權或有義務根據要求方的法律拒絕作證，被要求方須就此獲得要求方中心機關發出證明書。

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- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
- (3) For the purposes of requests under this Article the Requesting Party shall specify the subject matter about which witnesses are to be examined, and may also specify any questions to be put to them as well as the manner and form in which evidence should be taken.
- (4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, subject to the law of the Requested Party, appear and question the person giving that evidence.
- (5) A person who is required to give evidence in the Requested Party pursuant to a request for assistance may decline to give evidence where either:
- (a) the law of the Requested Party would permit or require that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or
  - (b) where the law of the Requesting Party would permit or require that person to decline to give evidence in such proceedings in the Requesting Party.
- (6) If any person claims that there is a right or obligation to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto obtain a certificate from the Central Authority of the Requesting Party.



## 第十二條

### 送達文件

- (1) 要求方交付送達的任何文件，被要求方須根據本身的法律安排送達。
- (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前的合理時間內，向被要求方提出送達該等文件的要求。
- (3) 如要求方要求送達的文件需要被送達人在要求方管轄區內出庭，要求方的中心機關在提出要求時，須把在刑事案件中關乎被送達人的待執行的拘捕令或其他法庭命令的資料，在合理情況下盡可能在送達文件的要求內說明。
- (4) 在其法律允許的限度內，被要求方須按要求方指定的形式，交回已送達文件的證明。如果未能把文件送達，要求方須獲得通報，並獲告知有關理由。
- (5) 被送達人未有遵照送達給其本人的法律文件的規定而行事，要求方或被要求方均不得因而根據本身的法律對該被送達人施加懲罰、法律責任或強制措施。

## 第十三條

### 可供公眾查閱的文件和官方文件

- (1) 在其法律允許的限度內，被要求方須於接獲要求後，向要求方提供任何可供公眾查閱的文件。

## ARTICLE XII

### SERVICE OF DOCUMENTS

- (1) The Requested Party shall, in accordance with its law, arrange for service of any document transmitted to it for that purpose.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response to or appearance in the Requesting Party within a reasonable time before the scheduled response or appearance.
- (3) A request for the service of a document pertaining to an appearance in the Requesting Party shall include such notice as the Central Authority of the Requesting Party is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.
- (4) 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.
- (5) A person who fails to comply with any process served on that person shall not on that account be subject to any penalty, liability, or coercive measure pursuant to the law of the Requesting Party or Requested Party.

## ARTICLE XIII

### PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law the Requested Party shall on request provide copies of publicly available documents.

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(2) 被要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，被要求方亦可在其法律許可的範圍內向要求方提供。

(2) The Requested Party may also provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the extent its laws permit.

## 第十四條

## ARTICLE XIV

### 證明和認證

### CERTIFICATION AND AUTHENTICATION

轉送往要求方的文件、抄件、紀錄、供詞或其他資料，須在要求方提出要求的情況下予以證明或認證。被要求方須在其法律許可的範圍內，以要求方規定的形式及格式作出證明或認證。有關的資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證明或認證。

Documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall be certified or authenticated if the Requesting Party so requests. The certification or authentication shall be in the manner and form required by the Requesting Party to the extent permitted by the law of the Requested Party. Material shall be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party specifically so requires.

## 第十五條

## ARTICLE XV

### 移交被拘留的人

### TRANSFER OF PERSONS IN CUSTODY

(1) 要求方要求把被拘留在被要求方管轄區內的人移交給要求方，以按照本協定的規定於刑事訴訟程序中作證時，如被要求方同意，則可把該人移交給要求方以便作證。除非該人同意而要求方又同意遵守被要求方就該人的拘留或安全規定的條件，否則不得根據本條給予協助。

(1) A person in custody in the Requested Party whose presence is required in the Requesting Party for the purposes of giving evidence in criminal proceedings pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose. No assistance shall be given under this Article unless the person consents and the Requesting Party has agreed to comply with any conditions required by the Requested Party as to the custody or security of such person.

(2) 如根據本條被移交的人毋須再被拘留，被要求方須就此事通知要求方。要求方須確保把該人釋放。

(2) Where a person transferred pursuant to this Article is no longer required to be held in custody, the Requested Party shall so advise the Requesting Party which shall ensure that person's release from custody.

(3) 任何人如因犯罪而受到非屬金錢性質的刑罰，則即使於有關時間並非被拘留，本條的條文亦適用於該人。



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## 第十六條

### 移交其他人

- (1) 要求方可要求被要求方向其移交本協定第十五條所適用人士以外的人，以根據本協定提供協助。
- (2) 如該人同意，而被要求方又信納要求方會為該人的安全作出適當的安排，被要求方須要求該人前往要求方提供協助。

## 第十七條

### 安全通行

- (1) 同意根據本協定第十五或十六條提供協助的人，不得因其在離開被要求方的管轄區之前所犯的任何刑事罪行或民事案件而在要求方的管轄區被檢控、處罰、拘留或被限制人身自由。
- (2) 如有關的人本可自由離去並有能力離去，但在接獲通知毋須再逗留後 21 天內仍未離開要求方的管轄區，或在離開要求方的管轄區後返回者，則本條第 (1) 款不適用。
- (3) 任何人同意根據本協定第十五或十六條作證，不得根據該人所作證供而對其檢控，但作假證供、藐視法庭或作出虛假聲明的情況則不在此限。
- (4) 任何同意根據本協定第十五或十六條提供協助的人，除與該項要求有關的案件外，不得被要求就任何其他案件作證或提供協助。

- (3) The provisions of this Article shall also apply to persons who, although not at the material time in custody, are subject to a sentence imposed for an offence other than a sentence of a monetary nature.

## ARTICLE XVI

### TRANSFER OF OTHER PERSONS

- (1) The Requesting Party may request the transfer of persons other than those to whom Article XV of this Agreement applies to the Requesting Party for the purpose of providing assistance pursuant to this Agreement.
- (2) The Requested Party shall, if the person has consented and if satisfied that adequate 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.

## ARTICLE XVII

### SAFE CONDUCT

- (1) A person who consents to provide assistance pursuant to Article XV or XVI of this Agreement shall not be prosecuted, punished, detained, or restricted in personal liberty in the Requesting Party for any criminal offence or civil matter which preceded that person's departure from the Requested Party.
- (2) Paragraph (1) of this Article shall cease to apply if the person being free and able to leave, has not left the Requesting Party within a period of 21 days after being notified that such person's presence is no longer required, or having left the Requesting Party, has returned.
- (3) A person who consents to give evidence pursuant to Article XV or XVI of this Agreement shall not be subject to prosecution based on that

(5) 即使在要求或隨要求送來的任何文件內另有說明，任何人如不同意根據本協定第十五或十六條提供協助，也不得因此而對其施加懲罰、法律責任或強制措施。

(6) 任何根據本協定第十五或十六條作證或提供協助的人，須按照被要求方同意的安排，於作證或提供協助後盡快送返被要求方。

## 第十八條

### 搜查及檢取

(1) 要求方要求搜查、檢取及移交與刑事案件的訴訟或調查有關的物品，被要求方在本身法律許可的範圍內，須執行要求方的要求。

(2) 要求方如要求提供有關搜查的結果、檢取物品的地點、檢取物品的情況，以及物品檢取後的保管情況等資料，被要求方須予提供。

(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品提出的任何條件。

person's testimony, except for perjury, contempt or the making of false declarations.

(4) A person who consents to provide assistance pursuant to Article XV or XVI of this Agreement shall not be required to give evidence or assist in any matter other than the matter to which the request relates.

(5) A person who does not consent to provide assistance pursuant to Article XV or XVI of this Agreement shall not by reason thereof be subject to any penalty, liability or coercive measure, notwithstanding any contrary statement in the request or in any document accompanying the request.

(6) A person who gives evidence or assistance pursuant to Article XV or XVI of this Agreement shall be returned to the Requested Party, in accordance with arrangements agreed by the Requested Party, as soon as practicable after the evidence or assistance has been given.

## ARTICLE XVIII

### SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter.

(2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.

(3) The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

## 第十九條

### 用於犯罪或從犯罪衍生的財物

- (1) 如要求方提出要求，被要求方須盡力查明是否有任何用於犯罪或從犯罪衍生的財物存放於其管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把何以相信這些財物可能存放於被要求方管轄區內的理由通知被要求方。
- (2) 如要求方提出要求，被要求方須採取本身法律容許的措施：
  - (a) 以防止任何人就這些財物進行交易、或予以轉讓或處置，以待要求方的法庭就這些財物作出最後裁定；
  - (b) 以監察懷疑被人用以進行非法交易的帳目或其他機制；
  - (c) 以獲取可能有助於找出有關財物所在的任何文件或其他資料。
- (3) 如要求方提出要求，被要求方在本身法律許可的範圍內，須執行要求方法庭對充公或沒收有關財物的最後判令。
- (4) 除非雙方另有協議，否則根據本協定沒收的財物須由被要求方保留。
- (5) 在引用此條時，必須在被要求方法律許可的範圍內，體現真誠第三者的權利。
- (6) 就本條而言，“財物”包括任何類型的財物，而該等財物曾用於犯罪行為，或實為或代表犯罪得益。

## ARTICLE XIX

### PROPERTY USED IN OR DERIVED FROM CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any property used in or derived from crime is 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 property may be located in the latter's jurisdiction.
- (2) Where the Requesting Party so requests, the Requested Party shall take such measures as are permitted by its law to:
  - (a) prevent any dealing in, transfer or disposal of property, pending a final determination as to that property by a court of the Requesting Party;
  - (b) monitor accounts or other mechanisms through which illegal transactions are suspected of being carried out;
  - (c) obtain production of any documents or other materials which may enable property to be located.
- (3) Upon request, the Requested Party shall, to the extent its laws permit, give effect to a final order forfeiting or confiscating property made by a court of the Requesting Party.
- (4) Property confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) In the application of this Article, the rights of bona fide third parties shall be given effect to the extent permitted by the laws of the Requested Party.

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## 第二十條

### 磋商

如締約一方提出要求，締約雙方須就解釋、適用或執行本協定的一般情況或個別個案立即進行磋商。

## 第二十一條

### 解決爭議

任何因本協定的條文的解釋、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。

## 第二十二條

### 生效及終止

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日後 30 天開始生效。
- (2) 無論有關的作為或不作為是否在本協定生效之前發生，本協定都適用於有關的要求。

- (6) For the purposes of this Article, “property” includes property of any description which has been used for the commission of an offence or which is, or represents, the proceeds of an offence.

## ARTICLE XX

### CONSULTATION

The Parties shall consult promptly, at the request of either of them, concerning any issue relating to the interpretation, application or implementation of this Agreement either generally or in relation to a particular case.

## ARTICLE XXI

### 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.

## ARTICLE XXII

### 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.

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(3) 締約一方可隨時通知締約另一方終止本協定。在此情況下，本協定於締約另一方接獲通知三個月後失效。但在協定終止前已接獲的提供協助要求，則仍須按照協定的條款處理，如同協定仍然有效。

下列簽署人，經其各自政府正式授權，已在本協定上簽字為證。

本協定於一九九八年四月三日在香港特別行政區簽訂，每份均用中文及英文寫成，兩種文本均同樣作準。

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(2) This Agreement shall apply to requests whether or not 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 to the other. In that event the Agreement shall cease to have effect three months after the date of receipt of that notice. Requests for assistance which have been received prior to termination of the Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement was still in force.

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

DONE at the Hong Kong Special Administrative Region this third day of April One thousand nine hundred and ninety eight in the Chinese and English languages, both texts equally authentic.

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## 附表 2

[ 第 2 條 ]

### 對本條例作出的變通

1. 本條例第 5(1)(e) 條須加以變通而以下文代替 ——

“(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，被有關地方、香港以外另一地方或香港\*的管轄法院或其他當局定罪、裁定無罪或赦免，或已接受該\*\*有關\*地方或香港以外另一地方或香港的\*法律所規定的懲罰；(2003 年第 14 號第 24 條)

(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在香港發生，便會因時效消失而不再能夠就該作為或不作為在香港進行檢控；\*”。

2. 本條例第 17(3)(b) 條須加以變通而以下文代替 ——

“(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 21 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。”

## 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 has been convicted, acquitted or pardoned by a competent court or other authority in the place, another place outside Hong Kong or Hong Kong, or has undergone the punishment provided by the law of ~~that~~\*\* the\* place, another place outside Hong Kong 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, 21 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

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- \* 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)。

- (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 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).