

《刑事事宜相互法律協助 (菲律賓) 令》  
(第 525 章，附屬法例 K)

**Mutual Legal Assistance in Criminal Matters (Philippines) Order**  
(Cap. 525 sub. leg. K)

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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	23.4.2020
附表 1 Schedule 1	S1-1—S1-38	23.4.2020
附表 2 Schedule 2	S2-1—S2-4	23.4.2020

**尚未實施的條文 / 修訂** —

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

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

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**制定史**

本為 2001 年第 292 號法律公告 —— 2020 年第 3 號編輯修訂紀錄

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## 《刑事事宜相互法律協助 (菲律賓) 令》

## (第 525 章，附屬法例 K)

## 目錄

條次		頁次
1.	(已失時效而略去)	1
2.	條例適用於香港與菲律賓共和國之間	1
附表 1	中華人民共和國香港特別行政區政府與菲律賓共和國政府關於刑事事宜相互司法協助的協定	S1-1
附表 2	對本條例作出的變通	S2-1

Mutual Legal Assistance in Criminal Matters  
(Philippines) Order

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

## Contents

Section		Page
1.	(Omitted as spent)	2
2.	Ordinance to apply between Hong Kong and Republic of the Philippines	2
Schedule 1	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 the Philippines Concerning Mutual Legal Assistance in Criminal Matters	S1-2
Schedule 2	Modifications to the Ordinance	S2-2

## 《刑事事宜相互法律協助 (菲律賓) 令》

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

(第 525 章第 4 條)

(Cap. 525, section 4)

(略去制定語式條文——2020 年第 3 號編輯修訂紀錄)

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[24 March 2004] *L.N. 41 of 2004*

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1. (已失時效而略去——2020 年第 3 號編輯修訂紀錄)

1. (*Omitted as spent—E.R. 3 of 2020*)

2. 條例適用於香港與菲律賓共和國之間

2. **Ordinance to apply between Hong Kong and Republic of the Philippines**

現就——

In relation to the arrangements for mutual legal assistance—

(a) 適用於特區政府與菲律賓共和國政府；及

(a) which are applicable to the Government and the Government of the Republic of the Philippines; and

(b) 副本附錄於附表 1，

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

的相互法律協助的安排，指示本條例在撮錄於附表 2 的變通的規限下，適用於香港與菲律賓共和國之間。

it is directed that the Ordinance shall, subject to the modifications summarized in Schedule 2, apply as between Hong Kong and the Republic of the Philippines.

**附表 1**

[ 第 2 條 ]

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

中華人民共和國香港特別行政區(“香港特別行政區”)政府經中華人民共和國中央人民政府正式授權，與菲律賓共和國政府，為加強締約雙方在偵查、檢控和遏止罪案(例如貪污及販毒等)方面的執法效能，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 Republic of the Philippines  
Concerning  
Mutual Legal Assistance in Criminal Matters**

The Government of the Hong Kong Special Administrative Region of the People's Republic of China (“the Hong Kong Special Administrative Region”), having been duly authorized by the Central People's Government of the People's Republic of China, and the Government of the Republic of the Philippines;

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and suppression of crimes such as public corruption and narcotics trafficking;

Have agreed as follows:

S1-3  
第 525K 章

附表 1

Schedule 1

S1-4  
Cap. 525K

## 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；
  - (b) 送達文件；
  - (c) 取得證據、物品或文件；
  - (d) 執行搜查和檢取物品的要求；
  - (e) 就證人親自出庭提供方便；
  - (f) 暫時移交被羈押的人以便出庭作證；
  - (g) 獲取司法或官方紀錄；
  - (h) 追查、限制、沒收和充公犯罪活動得益和工具，以及就有關罪行追討罰款，包括限制處理被指稱與刑事事宜有關的財產，或凍結被指稱與刑事事宜有關的資產；
  - (i) 提供資料、文件和紀錄；
  - (j) 交付財產，包括借出證物；及
  - (k) 任何與本協定宗旨一致而又與被要求方的法律並無不一致的其他協助。
- (3) 就本協定而言，刑事事宜包括：
  - (a) 有關政府收入(包括稅項及關稅)的刑事事宜；
  - (b) 有關貪污受賄、非法取得或求取財產、賄賂、對公庫作出的欺詐行為、或挪用公帑或公產、或欺詐性侵佔公帑或公產的刑事事宜；
  - (c) 有關就某一罪行而沒收或充公財產的事宜；

## 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) Assistance shall include:
  - (a) identifying and locating persons;
  - (b) serving of documents;
  - (c) the obtaining of evidence, articles or documents;
  - (d) executing requests for search and seizure;
  - (e) facilitating the personal appearance of witnesses;
  - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
  - (g) obtaining production of judicial or official records;
  - (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities and recovering pecuniary penalties in respect of offences including restraining of dealings in property or the freezing of assets alleged to be related to a criminal matter;
  - (i) providing information, documents and records;
  - (j) delivery of property, including lending of exhibits; and
  - (k) other assistance consistent with the objects of this Agreement which is not inconsistent with the law of the Requested Party.
- (3) For the purposes of this Agreement, criminal matter includes:

S1-5  
第 525K 章

附表 1

Schedule 1

S1-6  
Cap. 525K

- (d) 有關就某一罪行而徵收或追討罰款的事宜；及
- (e) 有關限制財產處理、或凍結就某一罪行而可能被沒收、充公、或用以償付罰款的資產的事宜。

(4) 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。

(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。

- (a) a criminal matter relating to revenue (including taxation and customs duties);
- (b) a criminal matter relating to graft and corruption, unlawfully acquired or acquiring property, bribery, frauds against the public treasury, or misappropriation or fraudulent conversion of public funds or property;
- (c) a matter relating to the forfeiture or confiscation of property in respect of an offence;
- (d) a matter relating to the imposition or recovery of a pecuniary penalty in respect of an offence; and
- (e) a matter relating to the restraining of dealings in property, or the freezing of assets that may be forfeited, confiscated or used to satisfy a pecuniary penalty imposed in respect of an offence.

(4) 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.

(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.

## 第二條

### 中心機關

- (1) 締約雙方須各自設立一個中心機關。

## ARTICLE II

### CENTRAL AUTHORITY

- (1) Each Party shall establish a Central Authority.

S1-7  
第 525K 章

附表 1

Schedule 1

S1-8  
Cap. 525K

- (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。菲律賓共和國的中心機關為司法部部長。
- (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。

(2) The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or his duly authorized officer. The Central Authority of the Republic of the Philippines shall be the Secretary of Justice or his duly authorized officer.

(3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

### 第三條

### ARTICLE III

#### 其他協助

#### OTHER ASSISTANCE

本協定不得影響締約雙方根據其他協定、安排、慣例或別的方式而存續的義務，亦不得妨礙締約雙方根據該等協定、安排或慣例提供協助。

This Agreement shall not affect subsisting obligations between the Parties pursuant to other agreements, arrangements or practices or otherwise nor prevent the Parties from providing assistance pursuant to such agreements, arrangements, or practices.

### 第四條

### ARTICLE IV

#### 順應協定的限制

#### LIMITATIONS ON COMPLIANCE

- (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菲律賓共和國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) 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、宗教、性別、國籍或政治見解而蒙受不利；

- (1) The Requested Party shall refuse assistance if:
- (a) the request for assistance impairs the sovereignty, security or public order of the Republic of the Philippines 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;



S1-9  
第 525K 章

附表 1

- (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裁定無罪、或已服刑或被赦免；
- (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；
- (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) 如出現以下情況，被要求方可拒絕提供協助：
- (a) 有關的協助要求關乎對某人的檢控，而假使有關罪行是在被要求方的管轄區所觸犯的，該人亦會由於時效消失或任何其他理由而不能再被檢控；
- (b) 要求方不能遵守任何有關保密或限制使用獲提供物料的條件；
- (c) 有關的協助要求關乎就某一罪行而對某人進行的檢控或處罰，而該罪行是在要求方管轄區以外的地區所觸犯的，而被要求方的法律沒有就在類似情況下犯罪作出處罰的規定；或
- (d) 提供所尋求的協助會不利於在被要求方管轄區內進行的偵查或法律程序，或危害任何人的安全或對被要求方的資源造成過分的負擔。

Schedule 1

S1-10  
Cap. 525K

- (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, religion, sex, 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 acquitted or has served the sentence imposed or has been pardoned in the Requested Party;
- (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
- (g) 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) The Requested Party may refuse assistance if:
- (a) the request for assistance relates to the prosecution of a person who could no longer be prosecuted by reason of lapse of time or for any other reason if the offence had been committed within the jurisdiction of the Requested Party;
- (b) the Requesting Party cannot comply with any conditions relating to confidentiality or limitation as to the use of material provided;
- (c) the request for assistance relates to the prosecution or punishment of a person for an offence which is committed outside the area under the jurisdiction of the Requesting Party and the law of the Requested Party does not provide for the punishment of an offence committed in similar circumstances; or

S1-11  
第 525K 章

附表 1

Schedule 1

S1-12  
Cap. 525K

## 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，但必須在切實可行的範圍內盡快以書面確認。
- (2) 協助要求須包括以下內容：
  - (a) 要求方代其提出要求的機關的名稱；
  - (b) 對該項要求的目的及所要求的協助的性質的描述；
  - (c) 對該項偵查、檢控、罪行或刑事事宜的性質的描述，及說明法律程序是否已提起；
  - (d) 尋求作出強制執行的法庭命令(如有的話)，或命令的經核證副本，以及就有關命令乃最終命令的陳述；
  - (e) 如法律程序已提起，則說明法律程序的細節；
  - (f) 有關事實及法律的撮要；
  - (g) 有關保密的要求；
  - (h) 要求方冀望被要求方遵循的任何特別程序的細節；及
  - (i) 順應該項要求的期限的細節。
- (3) 在有必要及可能的範圍內，協助要求還須包括以下內容：
  - (a) 屬偵查或法律程序的標的的人，其身分、國籍及下落；
  - (b) 對是否需要經宣誓(宗教式或非宗教式)的證據或陳述的陳述；

## ARTICLE V

### REQUESTS

- (d) the provision of the assistance sought could prejudice an investigation or proceeding in the Requested Party, or endanger the safety of any person or impose an excessive burden on the resources of that Party.
- (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 as soon as practicable.
  - (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) the court order, if any, or a certified copy thereof, sought to be enforced and a statement to the effect that it is a final order;
    - (e) where proceedings have been instituted, details of the proceedings;
    - (f) a summary of the relevant facts and laws;
    - (g) any requirements for confidentiality;
    - (h) details of any particular procedure the Requesting Party wishes to be followed; and

S1-13  
第 525K 章

附表 1

- (c) 對須交出的資料、文件、紀錄或證物的描述，及對被要求交出上述資料、文件、紀錄或證物的適當人士的描述，以及(在沒有其他規定的範圍內)對顯示或複製和認證上述資料、文件、紀錄或證物的形式的描述；
  - (d) 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
  - (e) 對尋求作出限制、凍結或沒收的任何財產的描述。
- (4) 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附有被要求方法定語文的譯本。

Schedule 1

S1-14  
Cap. 525K

- (i) details of the period within which the request should be complied with.
- (3) Requests for assistance, to the extent necessary and insofar as possible, shall also include:
- (a) the identity, nationality and whereabouts of the person or persons who are the subject of the investigation or proceedings;
  - (b) a statement as to whether sworn or affirmed evidence or statements are required;
  - (c) a description of the information, documents, records or articles of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;
  - (d) information as the allowances and expenses to which a person appearing in the Requesting Party will be entitled; and
  - (e) a description of any property sought to be restrained, frozen or forfeited.
- (4) All documents submitted in support of a request shall be in, or accompanied by a translation into, an official language of the Requested Party.

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，在切實可行的情況下按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。
- (5) 如執行要求會妨礙被要求方正在進行與刑事事宜或相關的民事事宜有關的偵查或檢控或法律程序，被要求方可暫緩執行要求。如要求與交付文件有關，被要求方須應對方要求提供有關文件的經核證副本。
- (6) 在根據本條拒絕或暫緩提供協助前，被要求方須通過其中心機關：
  - (a) 迅速將其就拒絕或暫緩提供協助所考慮的理由知會要求方；及
  - (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。

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 shall promptly inform the Requested 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 Requested Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.
- (5) The Requested Party may postpone execution of the request if it would interfere with an ongoing investigation or prosecution or proceeding in relation to a criminal matter or a related civil matter in the Requested Party. Where the request relates to the delivery of documents, the Requested Party shall upon request provide certified copies of those documents.
- (6) Before denying or postponing assistance pursuant to this Article, the Requested Party, through its Central Authority:

S1-17  
第 525K 章

附表 1

Schedule 1

S1-18  
Cap. 525K

(7) 要求方如接受在本條第 (6)(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。

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

(7) If the Requested 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.

## 第七條

### 使用限制

- (1) 如被要求方提出要求，要求方須將前者提供的證據和資料保密，但就協助要求內述的偵查及法律程序所需的範圍內除外。
- (2) 如要求方提出要求，被要求方須將協助要求、要求的內容和作支持用的文件，以及提供協助的事實保密。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。
- (3) 未經被要求方事先同意，要求方不得把從被要求方處取得的證據或從該等證據所得的資料，用於不屬要求內所述的用途。

## ARTICLE VII

### LIMITATIONS OF USE

- (1) The Requesting Party, if so requested, shall protect the confidentiality of the evidence and information provided by the Requested Party, except to the extent required for the investigation and proceeding described in the request.
- (2) The Requested Party, if so requested, shall keep the requested for assistance, its contents and supporting documents, and the fact of granting of such assistance, confidential. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requested Party which shall then determine whether the request should nevertheless be executed.
- (3) The Requesting Party shall not use evidence obtained, nor information derived therefrom, for purposes other than those stated in a request without the prior consent of the Requested Party.

S1-19  
第 525K 章

附表 1

Schedule 1

S1-20  
Cap. 525K

## 第八條

### 取得證據、物品或文件

- (1) 要求方如就在其管轄區內的偵查、刑事罪行檢控或有關刑事事宜的法律程序提出取證要求，被要求方須在不抵觸其法律下安排錄取有關證據。
- (2) 就本協定而言，提供或錄取證據包括交出文件、紀錄或其他物料。
- (3) 就根據本條所提出的要求而言，要求方須指明擬向證人提出的問題或擬向證人訊問的事項。
- (4) 如依據某項協助要求，某人須為在要求方管轄區內進行的法律程序而作證，要求方內有關法律程序的各方，他們的法律代表，或要求方的代表，可在不抵觸被要求方的法律下出庭及向該證人發問。
- (5) 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。
- (6) 如任何人宣稱有權根據要求方的法律拒絕作證，被要求方須就此依據要求方中心機關所發的證明書，作為是項權利存在的表面證據。

## ARTICLE VIII

### OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken for the purpose of an investigation, a prosecution of a criminal offence or a proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party the Requested Party shall, subject to its laws, arrange to take such evidence.
- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
- (3) For the purposes of requests under this Article the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.
- (4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the parties to the relevant proceedings in the Requesting Party, their legal representatives or representatives of the Requesting Party may, subject to the laws 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 that witness to decline to give evidence in similar circumstances in proceedings which originated in the Requested Party; or

S1-21  
第 525K 章

附表 1

Schedule 1

S1-22  
Cap. 525K

### 第九條

#### 錄取有關人士的陳述

如要求方要求取得某人的陳述，供其管轄區內有關刑事事宜的偵查或法律程序之用，被要求方須盡力取得有關陳述。

### 第十條

#### 有關人士的所在及身分

如要求方提出要求，被要求方須盡力查明要求內所指的任何人的所在或身分。

(b) where the law of the Requesting Party would permit him to decline to give evidence in such proceedings in the Requesting Party.

(6) If any person claims that there is a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall, with respect thereto, rely on a certificate of the Central Authority of the Requesting Party as prima facie evidence of the existence of that right.

### ARTICLE IX

#### OBTAINING STATEMENTS OF PERSONS

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 to obtain such statement.

### ARTICLE X

#### LOCATION OR IDENTITY OF PERSONS

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

S1-23  
第 525K 章

附表 1

Schedule 1

S1-24  
Cap. 525K

## 第十一條

### 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前的一段合理時間內，向被要求方提出送達該等文件的要求。
- (3) 如要求送達的文件需要被送達人在要求方管轄區內出庭，該要求須包括在刑事事宜中針對被送達人的待執行的拘捕令或其他法庭命令的通知，而該等通知是要求方的中心機關可合理地能夠提供的。
- (4) 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。
- (5) 被送達人不得因其沒有遵從送達給他的法律程序文件的規定而根據要求方的法律遭受懲罰或處以強制措施。

## 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，被要求方須提供可向公眾提供的文件的文本。

## ARTICLE XI

### SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve documents transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response 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.
- (5) A person who fails to comply with any process served on him shall not thereby be liable to any penalty or coercive measure pursuant to the law of the Requesting Party.

## ARTICLE XII

### PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

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



S1-25  
第 525K 章

附表 1

Schedule 1

S1-26  
Cap. 525K

(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及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。

(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 documents, record or information would be available to its own law enforcement and judicial authorities.

### 第十三條

### ARTICLE XIII

#### 簽署核證和蓋章

#### SIGNING CERTIFICATION AND SEALING

相互協助要求及作支持用的文件，以及應該項要求而提供的文件或其他資料須：

A request for mutual assistance and the supporting documents thereto, as well as documents or other material supplied in response to such a request shall:

- (a) 由法官、裁判官或由有關的締約方所授權的其他官員簽署或核證；及
- (b) 蓋上有關的締約方或該締約方人員的正式印章或公印。

- (a) be signed or certified by a Judge, magistrate or other official authorized by the relevant Party; and
- (b) be sealed with an official or public seal of the relevant Party, or of an officer of the relevant Party.

### 第十四條

### ARTICLE XIV

#### 移交被羈押的人

#### TRANSFER OF PERSONS IN CUSTODY

(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，該人須就此目的從被要求方移交給要求方，但須得該人同意，而要求方並須保證把該人繼續羈押及在事後將該人送回被要求方。

(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 from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

S1-27  
第 525K 章

附表 1

Schedule 1

S1-28  
Cap. 525K

(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，而要求方須確保該人獲釋。該人隨後須被視為本協定第十五條所指的人。

(2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires while 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. Such person shall thereafter be treated as a person referred to in Article XV of this Agreement.

### 第十五條

### ARTICLE XV

#### 移交其他人

#### TRANSFER OF OTHER PERSONS

- (1) 要求方可要求被要求方協助安排任何人根據本協定提供協助。
- (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。

(1) The Requesting Party may request the assistance of the Requested Party in making a person available for the purpose of providing assistance pursuant to this Agreement.

(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.

### 第十六條

### ARTICLE XVI

#### 安全通行

#### SAFE CONDUCT

(1) 同意根據第十四或十五條提供協助的人，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的民事事宜而在要求方被檢控、拘留或被限制人身自由。

(1) A person who consents to provide assistance pursuant to Articles XIV or XV 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) 如有關的人並非為根據第十五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。

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article XV, and being free to leave, has not left

S1-29  
第 525K 章

附表 1

Schedule 1

S1-30  
Cap. 525K

- (3) 同意根據第十四或十五條作證的人，不得基於其所作的證供而遭受檢控，但偽證罪或藐視法庭罪則不在此限。
- (4) 同意根據第十四或十五條提供協助的人，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十四或十五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。

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 Articles XIV or XV shall not be subject to prosecution based on his testimony, except for perjury or contempt.
- (4) A person who consents to provide assistance pursuant to Articles XIV or XV 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 provide evidence pursuant to Articles XIV or XV shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting or Requested Party.

## 第十七條

## ARTICLE XVII

### 搜查及檢取

### SEARCH AND SEIZURE

- (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，但是項要求須載有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，以及財產檢取後的保管的資料。
- (3) 被要求方把檢取到的財產交付予要求方，要求方須遵守被要求方就該等財產施加的任何條件。

- (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 provided the request contains information that would justify such action under the law 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 property seized.

S1-31  
第 525K 章

附表 1

Schedule 1

S1-32  
Cap. 525K

## 第十八條

### 限制、沒收及充公財產

- (1) 如要求方提出要求，被要求方須盡力查明是否有任何可能成為沒收令或充公令標的的財產，或須用以償付罰款的財產位於其管轄區內，並須把調查結果通知要求方。
- (2) 如根據第(1)款找到有關財產，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財產作出處理、轉讓或處置，以待要求方的法院就這些財產作出最終裁定。
- (3) 除非締約雙方另行商定，否則被要求方須執行要求方法院所作的施加罰款或下令將財產充公或沒收的最終決定，並須把財產交還或交付要求方。
- (4) 如本條第(3)款提述的財產為土地財產，被要求方須將土地財產變賣，並將變賣得益交付要求方。
- (5) 就本條而言，“財產”包括：
  - (a) 與犯罪有關連的財產；
  - (b) 直接或間接從犯罪得來的財產或從犯罪變現的財產；
  - (c) 代表從犯罪得來的利益價值的財產。

## ARTICLE XVIII

### RESTRAINT, FORFEITURE AND CONFISCATION OF PROPERTY

- (1) The Requested Party shall, upon request, endeavour to ascertain whether property which may become the subject of a forfeiture or confiscation order or which may be required to satisfy a pecuniary penalty is located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries.
- (2) Where pursuant to paragraph (1) such property is found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of that property pending a final determination in respect of that property by a Court of the Requesting Party.
- (3) The Requested Party shall give effect to a final decision by a court of the Requesting Party imposing a pecuniary penalty or ordering confiscation or forfeiture and shall return or deliver the property to the Requesting Party unless otherwise agreed between the Parties.
- (4) Where the property referred to in paragraph (3) of this Article is real property the Requested Party shall sell that property and deliver the proceeds of the sale to the Requesting Party.
- (5) In this Article “property” includes:

S1-33  
第 525K 章

附表 1

Schedule 1

S1-34  
Cap. 525K

### 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) 應要求方要求而聘請的律師的費用；
  - (b) 聘請專家的費用；
  - (c) 翻譯費用；
  - (d) 與運送任何人往返被要求方有關的開支，以及當有關的人因根據本協定作出的要求而留在要求方境內時須支付給該人的任何費用、津貼或開支；及
  - (e) 與運送羈押人員或押送人員有關的開支。
- (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。

### ARTICLE XIX

#### REPRESENTATION AND EXPENSES

- (a) property used in connection with the commission of an offence;
  - (b) property derived or realized, directly or indirectly, from the commission of an offence;
  - (c) property which represents the value of benefits derived from the commission of an offence.
- (1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.
  - (2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries except:
    - (a) fees of counsel retained at the request of the Requesting Party;
    - (b) fees of experts;
    - (c) expenses of translation;
    - (d) the expenses associated with conveying any person to or from the Requested Party, and any fees, allowances or expenses payable to that person while in the Requesting Party pursuant to a request under this Agreement; and
    - (e) the expenses associated with conveying custodial or escorting officers.

S1-35  
第 525K 章

附表 1

Schedule 1

S1-36  
Cap. 525K

## 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。

## 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) 本協定適用於根據本協定提出的要求，不論有關的作為或不作為是否在本協定生效前發生。
- (3) 締約任何一方可隨時以書面通知締約另一方終止本協定，而本協定於發出通知之日後的第九十日失效。

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

## ARTICLE XX

### 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 XXI

### 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 shall apply to requests made pursuant to it whether or not the relevant acts or omissions occurred prior to this Agreement entering into force.
- (3) Either Party may terminate this Agreement by notice in writing at any time and it shall cease to be in force on the ninetieth day after the day on which notice is given.

S1-37  
第 525K 章

附表 1

Schedule 1

S1-38  
Cap. 525K

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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。

本協定於二零零一年二月二十三日在香港特別行政區簽訂。每份均用中、英文寫成，各文本同等真確。

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

DONE at the Hong Kong Special Administrative Region on the twenty-third day of February Two Thousand and One in Chinese and English, both texts being equally authentic.

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## 附表 2

[ 第 2 條 ]

### 對本條例作出的變通

1. 本條例第 5(1)(e) 條須予變通而以下文代替 ——  
“(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→\*\*\_\_\_\_\_”  
(i)\* 被有關地方或香港\*的管轄法院或其他當局定罪、裁定無罪或赦免→\*\*;\* 或  
(ii)\* 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 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。”。

## Schedule 2

[s. 2]

### Modifications to the Ordinance

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



S2-3  
第 525K 章

附表 2

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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)。

Schedule 2

S2-4  
Cap. 525K

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- \* 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).