

《刑事事宜相互法律協助(葡萄牙)令》
(第 525 章, 附屬法例 L)

Mutual Legal Assistance in Criminal Matters (Portugal) Order
(Cap. 525 sub. leg. L)

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經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—2	16.1.2020
附表 1 Schedule 1	S1-1—S1-30	16.1.2020
附表 2 Schedule 2	S2-1—S2-4	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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E-1

第 525L 章

制定史

本為 2001 年第 294 號法律公告 —— 2020 年第 1 號編輯修訂紀錄

E-2

Cap. 525L

Enactment History

Originally L.N. 294 of 2001 — E.R. 1 of 2020

《刑事事宜相互法律協助(葡萄牙)令》

(第 525 章, 附屬法例 L)

目錄

條次		頁次
1.	(已失時效而略去)	1
2.	條例適用於香港與葡萄牙之間	1
附表 1	中華人民共和國香港特別行政區政府與葡萄牙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 (Portugal)
Order

(Cap. 525 sub. leg. L)

Contents

Section		Page
1.	(Omitted as spent)	2
2.	Ordinance to apply between Hong Kong and Portugal	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 Portuguese Republic 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(葡萄牙)令》

(第 525 章第 4 條)

(略去制定語式條文——2020 年第 1 號編輯修訂紀錄)

[2004 年 11 月 7 日] 2004 年第 169 號法律公告

(格式變更——2020 年第 1 號編輯修訂紀錄)

1. (已失時效而略去——2020 年第 1 號編輯修訂紀錄)

2. 條例適用於香港與葡萄牙之間

現就——

- (a) 適用於特區政府與葡萄牙共和國政府；及
- (b) 副本附錄於附表 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，適用於香港與葡萄牙共和國之間。

Mutual Legal Assistance in Criminal Matters (Portugal) Order

(Cap. 525, section 4)

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

[7 November 2004] L.N. 169 of 2004

(Format changes—E.R. 1 of 2020)

1. (Omitted as spent—E.R. 1 of 2020)

2. Ordinance to apply between Hong Kong and Portugal

In relation to the arrangements for mutual legal assistance—

- (a) which are applicable to the Government and the Government of the Portuguese Republic; and
- (b) a copy of which is annexed at Schedule 1,

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

S1-1
第 525L 章

附表 1

Schedule 1

S1-2
Cap. 525L

附表 1

[第 2 條]

中華人民共和國香港特別行政區政府
與
葡萄牙共和國政府
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，與葡萄牙共和國政府，

為加強締約雙方在偵查、檢控、防止罪案及充公犯罪得益方面的執法效能，

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 Portuguese Republic
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 Portuguese Republic,

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution and prevention of crime and the confiscation of criminal proceeds;

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的條文，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) 取得資料、陳述、證據、物品或文件，包括執行調查委託書；
 - (d) 執行搜查和檢取物品的要求；
 - (e) 就親自出現以提供協助的人給予便利；
 - (f) 暫時移交被羈押的人以提供協助；
 - (g) 取得司法或官方記錄；
 - (h) 追查、限制、沒收和充公犯罪活動得益和工具；
 - (i) 提供資料、文件和記錄；及
 - (j) 交付財產，包括借出證物。
- (3) 根據本協定提供協助的範圍包括與違反稅項、關稅、外匯管制或其他稅務法律有關的罪行，但不包括與該等罪行有關的非刑事法律程序。
- (4) 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。

ARTICLE 1

SCOPE OF ASSISTANCE

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of criminal offences and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of information, statements, evidence, articles or documents, including the execution of letters rogatory;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to provide assistance;
 - (f) effecting the temporary transfer of persons in custody to provide assistance;
 - (g) obtaining production of judicial or official records;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities;
 - (i) providing information, documents and records; and
 - (j) delivery of property, including lending of exhibits.
- (3) Assistance under this Agreement may be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters but not in connection with non-criminal proceedings related thereto.
- (4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement shall not give rise to any

S1-5
第 525L 章

附表 1

Schedule 1

S1-6
Cap. 525L

第二條

中心機關

- (1) 締約雙方的中心機關須按照本協定的條文處理協助要求。
- (2) 葡萄牙共和國的中心機關為 *Procuradoria-Geral da Republica*。香港特別行政區的中心機關為律政司司長或律政司司長授權的人員。締約任何一方均可更改其中心機關。在這種情況下，締約一方須將有關更改通知締約另一方。
- (3) 中心機關可就本協定的事宜互相直接聯絡。

第三條

其他協助

締約雙方可根據其他協定、安排或慣例提供協助。

第四條

順應協定的限制

- (1) 如出現以下情況，被要求方須拒絕提供協助：
 - (a) 有關的協助要求會損害葡萄牙共和國或就香港特別行政區政府而言，中華人民共和國的主權、安全或公共秩序；

right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

ARTICLE 2

CENTRAL AUTHORITIES

- (1) The Central Authorities of the Parties shall process requests for assistance in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Portuguese Republic is the Procuradoria-Geral da Republica. The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or an officer authorized by the Secretary for Justice. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

ARTICLE 3

OTHER ASSISTANCE

The Parties may provide assistance pursuant to other agreements, arrangements or practices.

ARTICLE 4

LIMITATIONS ON COMPLIANCE

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

S1-7
第 525L 章

附表 1

Schedule 1

S1-8
Cap. 525L

- (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、國籍或政治見解而蒙受不利；
- (e) 有關的協助要求關乎就某一罪行而對某人進行檢控，而該人已因同一罪行在被要求方管轄區被定罪、裁定無罪或赦免；或該罪行假使是在被要求方的管轄區觸犯，亦會由於時效消失而不能再進行檢控；
- (f) 被要求方認為批准有關要求將會嚴重損害其本身的基要利益；
- (g) 要求方不能遵守任何有關保密或限制使用獲提供的物料的條件；及
- (h) 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，並不構成罪行。
- (2) 就第(1)(f)款而言，被要求方在考慮其基要利益時，可包括考慮提供協助會否令任何人的安全蒙受損害或會否對被要求方的資源造成過大的負擔。
- (3) 如有關要求關乎在要求方屬可判死刑的罪行，或關乎在要求方的法律下屬可判終身監禁或無確定期限監禁的罪行，則除非要求方作出被要求方認為充分的保證，即要求方不會判處該等刑罰，或即使判處該等刑罰亦不會執行，否則被要求方須拒絕提供協助。
- (4) 如執行要求會妨礙正在被要求方進行的偵查或檢控，被要求方可暫緩提供協助。
- (5) 在根據本條拒絕或暫緩提供協助前，被要求方須通過其中心機關：
- (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，以決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。

- the Government 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 his race, religion, nationality or political opinions;
- (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the Requested Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the Requested Party;
- (f) if it is of the opinion that the granting of the request would seriously impair its essential interests;
- (g) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided; and
- (h) if the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence.
- (2) For the purpose of paragraph (1)(f) the Requested Party may include in its consideration of essential interests whether the provision of assistance could prejudice the safety of any person or impose an excessive burden on the resources of the Requested Party.
- (3) The Requested Party shall refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party or if the request relates to an offence which is punishable, according to the law of the Requesting Party, with life imprisonment or a prison sentence of

S1-9
第 525L 章

附表 1

Schedule 1

S1-10
Cap. 525L

(6) 要求方如接受在第 (5)(b) 款所述的條款及條件的規限下所提供的協助，則必須遵守該等條款及條件。

undetermined duration, unless the Requesting Party gives such assurances as the Requested Party considers sufficient that these penalties will not be imposed, or if imposed, will not be carried out.

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

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

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

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

第五條

要求

- (1) 要求必須以書面提出。
- (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以及說明法律程序是否已提起；
 - (d) 如法律程序已提起，則說明法律程序的細節；
 - (e) 有關事實及法律的撮要；

ARTICLE 5

REQUESTS

- (1) Requests shall be made in writing.
- (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;

S1-11
第 525L 章

附表 1

- (f) 有關保密的要求；
 - (g) 要求方冀望被要求方遵循的任何特別程序的細節；及
 - (h) 順應該項要求的期限的細節。
- (3) 除非獲得要求方的授權，否則被要求方須盡其所能將要求及其內容保密。
- (4) 要求須採用被要求方的法定語文或翻譯成被要求方的法定語文。為支持要求而提交的所有文件，在被要求方的要求下，亦須連同被要求方的法定語文的譯本一併提交。

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嚴重延遲回應該項要求的情況通知要求方。
- (4) 被要求方須迅速將不順應整個或部分協助要求的決定及作出該決定的理由通知要求方。

Schedule 1

S1-12
Cap. 525L

- (d) where proceedings have been instituted, details of the proceedings;
 - (e) a summary of the relevant fact and laws;
 - (f) any requirements for confidentiality;
 - (g) details of any particular procedure the Requesting Party wishes to be followed; and
 - (h) details of the period within which the request should be complied with.
- (3) The Requested Party shall use its best efforts to keep confidential a request and its contents except when otherwise authorized by the Requesting Party.
- (4) Requests shall be in, or translated into, an official language of the Requested Party. All documents submitted in support of a request shall be accompanied, if so required by the Requested Party, by a translation into an official language of the Requested Party.

ARTICLE 6

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 Requesting Party of any circumstances which are likely to cause a significant delay in responding to the request.

S1-13
第 525L 章

附表 1

Schedule 1

S1-14
Cap. 525L

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；及
 - (d) 應要求方的要求而前往他處的人的交通費用及津貼。
- (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 7

REPRESENTATION AND EXPENSES

(4) The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request for assistance and the reason for that decision.

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

使用限制

- (1) 被要求方在與要求方磋商後，可要求將被要求方提供的資料或證據(包括文件、物品或記錄)保密，或只限在被要求方所指定的條款及條件下方可透露或使用該等資料或證據。
- (2) 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(包括文件、物品或記錄)作不屬於要求內所述的用途。

第九條

取得證據、物品或文件

- (1) 要求方如就偵查、檢控或與刑事事宜有關的法律程序提出取證要求，被要求方須在符合其本身的法律的規定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、記錄或其他物資。
- (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) 如根據協助要求，某人須為在被要求方管轄區內進行的法律程序而作證，在要求方管轄區內進行的有關法律程序的各方，他們的法律代表或要求方的代表，可在符合被要求方的法律的規限下出庭及向該證人發問。
- (5) 根據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：

ARTICLE 8

LIMITATIONS OF USE

- (1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished by the Requested Party including documents, articles or records be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
- (2) The Requesting Party shall not disclose or use information or evidence furnished by the Requested Party including documents, articles or records for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

ARTICLE 9

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) Where a request is made that evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter the Requested Party shall, subject to its laws, arrange to have such evidence taken.
- (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

S1-17
第 525L 章

附表 1

- (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，被要求方須就此以要求方中心機關所發的證明書為依據。

第十條

取得有關人士的陳述

要求方如就與其管轄區內的刑事事宜有關的偵查、檢控或法律程序提出取得某人的陳述，被要求方須盡力取得有關陳述。

Schedule 1

S1-18
Cap. 525L

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
- (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 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.

ARTICLE 10

OBTAINING STATEMENTS OF PERSONS

Where a request is made to obtain the statement of a person for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the Requesting Party, the Requested Party shall endeavour to obtain such statement.

第十一條

有關人士的所在或身分

如要求方提出要求，被要求方須盡力查明要求內所指的人的所在或身分。

第十二條

送達文件

- (1) 要求方轉傳作送達之用的與刑事事宜有關的任何法律程序文件，被要求方須予以送達。
- (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) 如要求方要求送達的文件需要被送達人在要求方管轄區內出庭，則要求方的中心機關須在合理的情況下，盡可能在要求內提供關於在刑事案件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。
- (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或被要求方的法律遭受處罰或處以強制措施。

ARTICLE 11

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.

ARTICLE 12

SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any process relating to a criminal matter which has been transmitted to it for the purposes 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 or Requested Party.

第十三條

可向公眾提供的文件和官方文件

- (1) 在符合其法律的規定下，被要求方須提供任何可向公眾提供的文件的文本。
- (2) 就政府部門或機構所管有但並非可向公眾提供的任何文件、記錄或資料的文本，被要求方可按照其向本身的執法或司法機關提供該類文件、記錄或資料的相同範圍和條件，向要求方提供。

第十四條

核證和認證

轉傳至要求方的文件、抄件、記錄、陳述或其他物料，只有在要求方提出要求的情況下，才須予以核證或認證。有關的物料只有在要求方的法律明確規定的情況下，才須由領事人員或外交人員核證或認證。

第十五條

移交被羈押的人

- (1) 任何被羈押在被要求方的人如獲要求他到要求方以便根據本協定提供協助，則在被要求方和該人同意，而要求方又保證把該人繼續羈押及在事後將該人送回被要求方的情況下，該人須從被要求方移交到要求方。

ARTICLE 13

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

- (1) Subject to its law the Requested Party shall provide copies of publicly available documents.
- (2) The Requested Party may provide copies of any document, record or information in the possession of a government department or agency, but not publicly available, to the same extent and under the same conditions as such document, record or information would be available to its own law enforcement and judicial authorities.

ARTICLE 14

CERTIFICATION AND AUTHENTICATION

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

ARTICLE 15

TRANSFER OF PERSONS IN CUSTODY

- (1) A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purpose of providing assistance pursuant to this Agreement shall be transferred from the Requested Party to the Requesting Party, provided the Requested Party and the person consent

S1-23
第 525L 章

附表 1

Schedule 1

S1-24
Cap. 525L

(2) 如根據本條被移交的人的監禁刑期於該人身在要求方管轄區時屆滿，被要求方須就此事通知要求方，而要求方須確保把該人釋放。

and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party.

(2) Where the sentence of imprisonment of a person transferred pursuant to this Article expires whilst the person is in the Requesting Party the Requested Party shall so advise the Requesting Party which shall ensure the person's release from custody.

第十六條

ARTICLE 16

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，並須將該人的回覆通知要求方。

(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 and shall inform the Requesting Party of the response of that person.

第十七條

ARTICLE 17

安全通行

SAFE CONDUCT

- (1) 同意根據第十五或十六條提供協助的人，不得因其在離開被要求方之前所犯的任何刑事罪行或所涉及的民事事宜而在要求方被檢控、拘留或被限制人身自由。
- (2) 如有關的人並非為根據第十五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 45 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。

(1) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence or civil matter which preceded his departure from the Requested Party.

(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 15, and being free to leave, has not left the Requesting Party within a period of 45 days after being notified that

S1-25
第 525L 章

附表 1

Schedule 1

S1-26
Cap. 525L

- (3) 同意根據第十五或十六條作證的人，不得基於其所作的證供而遭受檢控，但偽証罪則不在此限。
- (4) 同意根據第十五或十六條提供協助的人，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提供協助。
- (5) 任何人不得因其不同意根據第十五或十六條提供協助，而遭受要求方或被要求方的法院的處罰或處以強制措施。

第十八條

搜查及檢取

- (1) 被要求方在本身法律許可的範圍內，須執行搜查、檢取及交付予要求方與關乎刑事事宜的法律程序或調查有關的物料。
- (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而施加的任何條件。

his presence is no longer required, or having left the Requesting Party, has returned.

- (3) A person who consents to give evidence under Articles 15 or 16 shall not be subject to prosecution based on his testimony, except for perjury.
- (4) A person who consents to provide assistance pursuant to Articles 15 or 16 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.
- (5) A person who does not consent to provide assistance pursuant to Articles 15 or 16 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

ARTICLE 18

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

犯罪得益

- (1) 如要求方提出要求，被要求方須盡力查明是否有任何因觸犯要求方的法律而得來的犯罪得益位於其管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把其相信該等得益可能位於被要求方管轄區內的理由通知被要求方。
- (2) 如根據第(1)款找到懷疑為犯罪得益之物，被要求方須採取本身法律容許的措施，以防止任何人處理、轉讓或處置這些懷疑為犯罪得益之物，以待要求方的法院就這些懷疑為犯罪得益之物作出最終裁定。
- (3) 要求方如要求協助把犯罪得益充公，被要求方須以任何適當方法提供協助。協助的方法可包括強制執行要求方法院的命令，以及就要求涉及的犯罪得益提起法律程序，或就該等法律程序提供協助。
- (4) 除非締約雙方另行商定，否則根據本協定充公的犯罪得益須由被要求方保留。
- (5) 犯罪得益包括在犯罪時使用的工具。

第二十條

解決爭議

ARTICLE 19

PROCEEDS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime against the law of the Requesting Party are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds of crime are found the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds of crime, pending a final determination in respect of those proceeds by a Court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation of proceeds such assistance shall be given by whatever means are appropriate. This may include enforcing an order made by a court in the Requesting Party and initiating or assisting in proceedings in relation to the proceeds to which the request relates.
- (4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) Proceeds of crime include instruments used in connection with the commission of an offence.

ARTICLE 20

SETTLEMENT OF DISPUTES

S1-29
第 525L 章

附表 1

Schedule 1

S1-30
Cap. 525L

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。

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

第二十一條

ARTICLE 21

生效及終止

ENTRY INTO FORCE AND TERMINATION

- (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) 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後失效。但在本協定終止前已接獲的協助要求，則仍須按照本協定的條款處理，猶如本協定仍然生效一樣。

- (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) 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 on 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.

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。

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

本協定於二零零一年五月二十四日在香港特別行政區簽訂，一式兩份，每份均用中文、葡萄牙文及英文寫成，各文本同等真確。

Done at the Hong Kong Special Administrative Region, this twenty-fourth day of May Two Thousand and One in duplicate in the Chinese, Portuguese and English languages, each text being equally authentic.

S2-1
第 525L 章

附表 2

Schedule 2

S2-2
Cap. 525L

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 ——*
(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→** ——*
(A)* 被有關地方或香港*的管轄法院或其他當局定罪、裁定無罪或赦免→**；* 或
(B)* 已** 接受該地方或香港的* 法律所規定的懲罰；
(ii) 是就某一作為或不作為而進行的，且假使該作為或不作為是在香港發生，該檢控便會因時效消失而不再能夠在香港進行；**”。
2. 本條例第 17(3)(b) 條須予變通而以下文代替 ——
“(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 45 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—*
(A)* has been convicted, acquitted or pardoned by a competent court or other authority in the place; ** or Hong Kong;* or
(B)* has undergone the punishment provided by the law of that place or Hong Kong*,
(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, 45 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 525L 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. 525L

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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).