

《刑事事宜相互法律協助(瑞典)令》
(第 525 章, 附屬法例 AG)

Mutual Legal Assistance in Criminal Matters (Sweden) Order
(Cap. 525 sub. leg. AG)

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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	13.12.2018
附表 1 Schedule 1	S1-1—S1-36	21.11.2018
附表 2 Schedule 2	S2-1—S2-4	21.11.2018
附表 3 Schedule 3	S3-1—S3-4	21.11.2018

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」(<http://www.elegislation.gov.hk>) 閱覽。

Provisions / Amendments not yet in operation —

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制定史

本為 2016 年第 105 號法律公告 —— 2018 年第 5 號編輯修訂紀錄

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Originally L.N. 105 of 2016 — E.R. 5 of 2018

《刑事事宜相互法律協助(瑞典)令》

(第 525 章, 附屬法例 AG)

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Mutual Legal Assistance in Criminal Matters (Sweden) Order

(Cap. 525 sub. leg. AG)

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《刑事事宜相互法律協助(瑞典)令》

(第 525 章第 4 條)

(略去制定語式條文——2018 年第 5 號編輯修訂紀錄)

[2018 年 11 月 21 日] 2018 年第 206 號法律公告

1. (已失時效而略去——2018 年第 5 號編輯修訂紀錄)
2. **本條例在香港與瑞典之間適用**
 - (1) 現就副本附錄於附表 1 的相互法律協助的安排，指示本條例在附表 2 指明的變通的規限下，在香港與瑞典王國之間適用。
 - (2) 第 (1) 款提述的變通撮錄於附表 3。

The Mutual Legal Assistance in Criminal Matters (Sweden) Order

(Cap. 525, section 4)

(Enacting provision omitted—E.R. 5 of 2018)

[21 November 2018] L.N. 206 of 2018

1. (Omitted as spent—E.R. 5 of 2018)
2. **Ordinance applies between Hong Kong and Sweden**
 - (1) In relation to the arrangements for mutual legal assistance a copy of which is annexed at Schedule 1, it is directed that the Ordinance, subject to the modifications specified in Schedule 2, applies as between Hong Kong and the Kingdom of Sweden.
 - (2) The modifications referred to in subsection (1) are summarized in Schedule 3.

附表 1

[第 2 條]

Schedule 1

[s. 2]

《中華人民共和國香港特別行政區政府與瑞典王國政府 關於刑事事宜相互法律協助的協定》[#]

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Sweden Concerning Mutual Legal Assistance in Criminal Matters[#]

中華人民共和國香港特別行政區(“香港特別行政區”)政府在經中華人民共和國中央人民政府正式授權訂立本協議下，與瑞典王國政府(以下稱為“締約雙方”)，

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 to conclude this Agreement, and the Government of the Kingdom of Sweden, hereinafter referred to as the Parties;

為加強締約雙方在刑事事宜及沒收犯罪得益方面的合作效能；
協議如下：

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

Have agreed as follows:

第一條

ARTICLE 1

提供協助的範圍

SCOPE OF ASSISTANCE

註：[#] 《中華人民共和國香港特別行政區政府與瑞典王國政府關於刑事事宜相互法律協助的協定》以中文、英文及瑞典文簽訂，各文本均同等真確。特區政府保安局備有該協定的瑞典文文本供參閱。

Note：[#] The Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Sweden Concerning Mutual Legal Assistance in Criminal Matters was done in the Chinese, English and Swedish languages, each text being equally authentic. The Swedish text of the Agreement is available for inspection at the Security Bureau of the Government of the HKSAR.

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附表 1

Schedule 1

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- (1) 締約雙方須按照本協定的條文，就刑事罪行的偵查和檢控以及刑事事宜的法律程序，提供最大程度的相互協助。
- (2) 提供的協助包括：
- (a) 辨認和追尋有關的人；
 - (b) 送達文件；
 - (c) 從有關的人取得證供或陳述；
 - (d) 執行搜查和檢取的請求；
 - (e) 就有關的人在請求方親自出席提供證供或其他協助給予便利；
 - (f) 安排暫時移交被羈押的人以提供證供或其他協助；
 - (g) 提供資料、文件、物品和紀錄，以及移交證物；
 - (h) 追查、限制、充公和沒收犯罪得益和犯罪活動的工具；
 - (i) 復還財產；及
 - (j) 符合本協定的目的且不抵觸被請求方法律的其他協助。
- (3) 根據本協定提供協助的範圍包括與違反稅項、關稅或海關管制方面的法律有關的罪行，但不可就與上述罪行有關的非刑事偵查或法律程序提供協助。
- (4) 本協定純為締約雙方提供相互協助而設。協定的條文並不給予任何私人取得、隱藏或排除證據或阻礙執行請求的權利。

- (1) The Parties shall provide each other, in accordance with the provisions of this Agreement, the widest measure of 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) service of documents;
 - (c) taking the testimony or statements of persons;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of persons to give testimony or to provide other assistance in the Requesting Party;
 - (f) effecting the temporary transfer of persons in custody to give testimony or to provide other assistance;
 - (g) providing information, documents, objects and records, and transfer of exhibits;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds of crime and instrumentalities of criminal activities;
 - (i) restitution of property; and
 - (j) 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 shall include assistance in connection with offences against a law relating to taxes, duties or customs control, but not in connection with non-criminal investigations or proceedings relating thereto.

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第二條

中心機關

- (1) 締約雙方的中心機關須按照本協定的條文處理相互法律協助的請求。
- (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。瑞典王國的中心機關為司法部。締約任何一方均可更改其中心機關，但須將有關更改以書面通知對方。
- (3) 相互法律協助的請求，須由有關中心機關代表根據法律負責刑事事宜方面的偵查、檢控或法律程序的機關向另一中心機關直接提出。就香港特別行政區而言，這些機關指律政司、香港警務處、入境事務處、香港海關、廉政公署及證券及期貨事務監察委員會。就瑞典而言，這些機關指法院、公職檢控官及執法局。

第三條

其他協助

ARTICLE 2

CENTRAL AUTHORITY

- (1) The Central Authorities of the Parties shall process requests for mutual legal assistance in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Hong Kong Special Administrative Region is the Secretary for Justice or his duly authorised officer. The Central Authority for the Kingdom of Sweden is the Ministry of Justice. Either Party may change its Central Authority in which case it shall notify the other of the change in writing.
- (3) Requests for mutual legal assistance shall be made directly between the Central Authorities on behalf of authorities that by law are responsible for investigations, prosecutions or proceedings relating to criminal matters. For the Hong Kong Special Administrative Region these authorities are the Department of Justice, the Hong Kong Police Force, the Immigration Department, the Customs and Excise Department, the Independent Commission Against Corruption and the Securities and Futures Commission. For Sweden, these authorities are courts, public prosecutors and the Enforcement Authority.

ARTICLE 3

OTHER ASSISTANCE

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締約雙方可按照其他適用於締約雙方的協定、安排或慣例提供協助。

The Parties may provide assistance pursuant to other agreements, arrangements or practices that are applicable to the Parties.

第四條

ARTICLE 4

拒絕提供協助的理由

GROUNDNS FOR REFUSAL

(1) 如有以下情況，被請求方可拒絕提供協助，而如其法律有所規定，則須拒絕提供協助：

(1) The Requested Party may and, if required by its law, shall refuse assistance if:

- (a) 被請求方為香港特別行政區政府，執行請求會損害：
 - (i) 中華人民共和國的主權、安全或公共秩序；或
 - (ii) 香港特別行政區的基要利益；
- (b) 被請求方為瑞典王國政府，執行請求會損害瑞典王國的主權、安全、公共秩序、國內法一般原則或其他基要利益；
- (c) 協助請求關乎屬政治性質的罪行；
- (d) 協助請求關乎在軍法下構成的罪行，而該罪行在被請求方的普通刑事法律下不構成罪行；
- (e) 有充分理由相信，協助請求提出的目的是基於某人的種族、性別、宗教、國籍、族裔或政治見解而對該人進行檢控，或該人的處境可因任何該等理由而蒙受不利；
- (f) 協助請求關乎因某罪行而對某人進行的檢控，而該人已因同一罪行在被請求方被定罪、裁定無罪或赦免，或就有關作為已有一項免除檢控的決定作出，或假使該人是在被請求方的司法管轄區犯該罪行，由於時效消失，不能因此而被檢控；或

- (a) the Requested Party being the Government of the Hong Kong Special Administrative Region, the execution of the request would impair:
 - (i) the sovereignty, security or public order of the People's Republic of China; or
 - (ii) the essential interests of the Hong Kong Special Administrative Region;
- (b) the Requested Party being the Government of the Kingdom of Sweden, the execution of the request would impair the sovereignty, security, public order, general principles of national law or other essential interests of the Kingdom of Sweden;
- (c) the request for assistance relates to an offence of a political character;
- (d) the request for assistance relates to an offence under military law which is not also an offence under ordinary criminal law of the Requested Party;
- (e) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting

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- (g) 被指稱構成罪行的作為或不作為，如在被請求方的司法管轄區發生，並不構成罪行。
- (2) 就第(1)(g)款而言，在關乎稅項、關稅或海關管制的罪行方面，縱然被請求方的法律並無徵收同類的稅項或關稅，或無同類的海關管制，或並無包含與請求方法律同類的稅項、關稅或海關方面的規例，也不具關鍵性。
- (3) 如請求方不能遵守任何有關保密或限制使用獲提供的資料或證據的條件，被請求方可拒絕提供協助。

- a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions or that that person's position may be prejudiced for any of those reasons;
- (f) 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 a decision on waiver of prosecution concerning the act has been issued 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; or
- (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) For the purposes of paragraph (1)(g), for offences relating to taxes, duties or customs control, it shall be immaterial that the law of the Requested Party does not impose the same kind of tax, duty or customs control or does not contain a tax, duty or customs regulation of the same kind as the law of the Requesting Party.

(3) The Requested Party may refuse assistance if the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of information or evidence provided.

第五條

ARTICLE 5

請求

REQUESTS

- (1) 請求必須以書面提出，或如適用的話，通過可以留下書面紀錄的電子媒介提出。
- (2) 協助請求須包括：

- (1) Requests shall be made in writing or, where appropriate, through electronic means that are capable of leaving a written record.
- (2) Requests for assistance shall include:

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- (a) 進行與請求有關的偵查、檢控或法律程序的機關的名稱；
- (b) 對該項偵查、檢控或法律程序的標的事項和性質的描述，包括適用於關乎該事項的具體刑事罪行的有關事實和法律的陳述；
- (c) 對所尋求提供的證據、資料或其他協助的描述；及
- (d) 對尋求提供證據、資料或其他協助的目的的陳述，以及其與有關事實的關連。
- (3) 在有必要及可能的範圍內，請求亦須包括：
- (a) 關於任何被追尋的人的身分及懷疑其所在的資料；
- (b) 關於將被送達文件的人的身分及其所在、該人與有關法律程序的關係以及送達方式的資料；
- (c) 關於被尋求提供證據的人的身分及其所在的資料；
- (d) 要搜查的地方或人及要檢取的物品的確切描述；
- (e) 關於所尋求證供的描述，並可包括擬向證人提出的問題清單；
- (f) 對錄取及記錄任何證供或陳述的方式的描述；
- (g) 對執行請求時須遵循的任何特定程序的描述；
- (h) 有關保密的任何要求，以及保密的理由；
- (i) 關於被要求在請求方境內出席的人有權獲得的津貼及開支的資料；及
- (j) 為便於執行請求而可能要提請被請求方注意的任何其他資料。

- (a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;
- (b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including a statement of the facts and laws applicable to the specific criminal offences that relate to the matter;
- (c) a description of the evidence, information, or other assistance sought; and
- (d) a statement of the purpose for which the evidence, information, or other assistance is sought and its connection to the facts.
- (3) To the extent necessary and possible, a request shall also include:
- (a) information on the identity and suspected location of a person to be located;
- (b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (c) information on the identity and location of any person from whom evidence is sought;
- (d) a precise description of the place or person to be searched and of the items to be seized;
- (e) a description of the testimony sought, which may include a list of questions to be asked of a witness;
- (f) a description of the manner in which any testimony or statement is to be taken and recorded;

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(4) 請求以及支持請求的所有文件，須採用被請求方的法定語文寫成或附有被請求方的法定語文譯本，但如另有協議，則屬例外。

- (g) a description of any particular procedure to be followed in executing the request;
- (h) any requirements for confidentiality and the reasons therefor;
- (i) information as to the allowances and expenses to which a person asked to appear in the territory of the Requesting Party will be entitled; and
- (j) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.

(4) A request and all documents submitted in support of a request shall be in, or accompanied by a translation into, an official language of the Requested Party unless agreed otherwise.

第六條

執行請求

- (1) 被請求方的中心機關須迅速執行請求，或安排通過其主管機關執行請求。
- (2) 請求須按照被請求方的法律和本協定的條文予以執行，並須在被請求方的法律所不禁止的範圍內，在可行的情況下按照請求所述的指示執行。
- (3) 被請求方須迅速將任何可能導致嚴重延遲回應請求的情況知會請求方。
- (4) 如執行請求會妨礙正在被請求方進行的偵查或檢控，被請求方可暫緩提供協助。

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 the provisions of this Agreement 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.

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(5) 在拒絕或暫緩提供協助前，被請求方須迅速將考慮拒絕或暫緩提供協助的理由知會請求方，以及與請求方磋商，以決定可否在被請求方認為必需的條款及條件的規限下提供協助。

(6) 被請求方須將拒絕提供協助的決定及作出該決定的理由以書面知會請求方。

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

(5) Before refusing or postponing assistance, the Requested Party shall promptly inform the Requesting Party of the reasons for considering refusal or postponement and consult with that Party to determine whether assistance may be given subject to such terms and conditions as the Requested Party deems necessary.

(6) The Requested Party shall inform the Requesting Party in writing of a decision to refuse assistance and the reasons therefor.

第七條

代表及開支

(1) 被請求方須作出一切必需安排，使請求方在因協助請求而引起的任何法律程序中獲得代表，並須在其他方面代表請求方的利益。

(2) 被請求方須承擔執行請求的費用，但以下費用則由請求方負責：

- (a) 應請求方要求而聘請的律師的費用；
- (b) 專家的費用；
- (c) 翻譯開支；
- (d) 往來請求方與被請求方的人的交通開支及津貼；及
- (e) 根據第十條在被請求方設立視像會議的費用，包括設置視訊連接的費用、在被請求方的就視訊連接提供服務的費用、被請求方所提供的傳譯員的酬金、支付予證人及專家的津貼，以及他們在被請求方的交通開支。

ARTICLE 7

REPRESENTATION AND EXPENSES

(1) The Requested Party shall make all necessary arrangements for the representation of the Requesting Party in any proceeding arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

(2) The Requested Party shall meet the cost of fulfilling the request for assistance except that the Requesting Party shall bear:

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

(3) 在執行請求期間，如察覺需支付龐大或特殊性質的開支，以履行有關請求，締約雙方須進行磋商，以決定可繼續執行請求的條款及條件。

第八條

保密及使用限制

- (1) 如請求方提出要求，被請求方須在其法律容許的範圍內，將協助請求、請求的內容和支持該請求的文件，以及提供協助一事保密，但在為執行請求而需作披露的範圍內，則屬例外。如某項請求無法在不違反保密的情況下執行，被請求方須如此通知請求方，由請求方決定是否仍然需要執行該項請求。
- (2) 如被請求方提出要求，請求方須在其法律容許的範圍內，將被請求方所提供的證據和資料(包括文件、物品或紀錄)保密，但在為該項請求所述的偵查、檢控或法律程序的目的而需作披露的範圍內，則屬例外。
- (3) 未經被請求方事先同意，請求方不得使用獲提供的資料或證據(包括文件、物品或紀錄)作請求所述以外的用途。

- (e) the cost in setting up a video conference in the Requested Party under Article 10, including the cost of establishing the videolink, costs related to the servicing of the videolink in the Requested Party, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the Requested Party.

(3) If during the execution of the request it becomes apparent that expenses of a substantial or 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.

ARTICLE 8

CONFIDENTIALITY AND LIMITATIONS ON USE

- (1) The Requested Party, to the extent permitted by its law and if so requested, shall keep the request for assistance, the contents of a request and its supporting documents, and the fact of granting of such assistance, confidential, except to the extent that disclosure is necessary to execute a request. If the request cannot be executed without breaching the requested confidentiality, the Requested Party shall so inform the Requesting Party which shall then determine whether the request should nevertheless be executed.
- (2) The Requesting Party, to the extent permitted by its law and if so requested, shall keep confidential evidence and information provided by the Requested Party, including documents, objects or records, except to the extent that disclosure is necessary for the investigation, prosecution or proceeding described in the request.
- (3) The Requesting Party shall not use information or evidence furnished, including documents, objects or records, for purposes other than those stated in the request without the prior consent of the Requested Party.

第九條

在被請求方取得證供及證據

- (1) 如請求方就在其司法管轄區的與刑事事宜有關的偵查、檢控或法律程序提出求取證供或證據的請求，被請求方須安排取得有關證供或證據。
- (2) 就本協定而言，作證或取證包括交出文件、物品、紀錄或其他物料。
- (3) 凡因應根據本條提出的協助請求而求取證供或證據，就向提供證供或證據的人提出問題而言，則在請求方進行的偵查、檢控或法律程序所關乎的人、將提供證供或證據的人以及請求方的代表，可在被請求方的法律的規限下出席或由法律代表出席或兩 一起出席。
- (4) 根據協助請求而需在被請求方提供證供或證據的人，可在以下情況下拒絕提供證供或證據：
 - (a) 假如在被請求方提起的法律程序中出現類似情況，被請求方的法律容許該人拒絕提供證供或證據；或
 - (b) 假如在請求方進行該等法律程序，請求方的法律容許該人拒絕提供證供或證據。
- (5) 如任何人聲稱有權根據請求方的法律拒絕提供證供或證據，則在決定有關問題時，被請求方須以請求方中心機關的證明書，作為該項權利確然存在的憑據。

ARTICLE 9

OBTAINING OF TESTIMONY AND EVIDENCE IN THE
REQUESTED PARTY

- (1) Where a request is made that testimony or evidence be taken for the purpose of an investigation, prosecution or proceeding in relation to a criminal matter in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such testimony or evidence taken.
- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, objects, records or other material.
- (3) Where testimony or evidence is to be taken, pursuant to a request for assistance under this Article, the person to whom the investigation, prosecution or proceeding in the Requesting Party relates, the person who is to give testimony or evidence and representatives of the Requesting Party may, subject to the law of the Requested Party, appear or have legal representation or both for the purpose of questioning the person giving the testimony or evidence.
- (4) A person who is required to give testimony or evidence in the Requested Party pursuant to a request for assistance may decline to do so where either:
 - (a) the law of the Requested Party would permit that person to decline to give testimony or evidence in similar circumstances in proceedings which originated in the Requested Party; or
 - (b) the law of the Requesting Party would permit that person to decline to give testimony or evidence in such proceedings in the Requesting Party.

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第十條

視像會議

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

第十一條

送達文件

- (1) 請求方交付送達的任何文件，被請求方須予以送達。
- (2) 如有關文件要求被送達人在請求方作出回應，請求方須於預定回應的限期前的一段合理時間內交付送達該文件的請求。
- (3) 如有關文件要求被送達人在請求方的境內出席，送達該文件的請求須於預定出席日期最少 30 天前，為被請求方所接獲。
- (4) 被請求方須藉以下方法，證明已送達文件：
 - (a) 被送達人註明日期及簽署的收條；或
 - (b) 被請求方根據其法律作出的聲明，表明文件已經送達，並載明送達的方式及日期。
- (5) 任何人不得因未有遵照依據本條送達給他的傳票的規定在請求方的境內出席，而遭受締約任何一方的法律處罰或被處以強制措施。

ARTICLE 10

VIDEO CONFERENCE

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

ARTICLE 11

SERVICE OF DOCUMENTS

- (1) The Requested Party shall serve any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document that requires a response in the Requesting Party within a reasonable time before the time-limit of the scheduled response.
- (3) A request for the service of document requiring a person to appear in the territory of the Requesting Party shall have been received by the Requested Party at least 30 days before the scheduled appearance.
- (4) The Requested Party shall give proof of service:
 - (a) by means of a receipt dated and signed by the person served;or

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第十二條

可供公眾取閱的文件和官方文件

- (1) 如請求方提出請求，被請求方須在其法律的規限下，提供可供公眾取閱的文件的副本。
- (2) 被請求方的政府部門或機構所管有但不供公眾取閱的官方文件、紀錄或資料，被請求方可在其法律容許的範圍內，按照其向本身的執法和司法機關提供該類文件、紀錄或資料的相同範圍和條件，提供副本。

第十三條

核證

交付請求方的證據、文件、謄本、紀錄、陳述或其他物料，只有在請求方提出要求的情況下，才會予以核證。

第十四條

ARTICLE 12

PUBLICLY AVAILABLE AND OFFICIAL DOCUMENTS

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

ARTICLE 13

CERTIFICATION

Evidence, documents, transcripts, records, statements or other material which are to be transmitted to the Requesting Party shall only be certified if the Requesting Party so requests.

ARTICLE 14

移交被羈押的人

- (1) 如請求方要求把羈押在被請求方的人移交至請求方的境內，以提供證供或口供、或進行辨認手續或提供被請求方的法律所容許的協助，而被請求方亦同意，且提供上述協助並非為偵查或裁定該人的任何刑事法律責任，則須把該人由被請求方暫時移交至請求方的境內，以提供有關的協助。如該人根據被請求方的法律需予羈押，則請求方須保證把該人繼續羈押。請求方亦須保證，在無需該人協助後盡快(不遲於被請求方指定的時限)把該人送還給被請求方。
- (2) 在以下情況，被請求方可拒絕移交有關的人：
- (a) 該人不同意；
 - (b) 因被請求方的某項未決的偵查或法律程序的關係須將該人留下；或
 - (c) 有其他至為重要的理由拒絕移交。
- (3) 被移交給請求方的被羈押的人，如在請求方的境內逗留期間可根據被請求方的法律獲得釋放，被請求方須知會請求方，而請求方須確保該人獲得釋放，並把該人視為第十五條所指的人般對待。
- (4) 被移交的人在被請求方內被施加的刑期，須扣除他被羈押在請求方期間內所服的刑期。
- (5) 任何人不得因不同意被移交而根據締約任何一方的法律遭受處罰或被處以強制措施。

TRANSFER OF PERSONS IN CUSTODY

- (1) A person in custody in the Requested Party whose presence is required in the territory of the Requesting Party for the purpose of providing testimony or statements or identification or providing such assistance as permitted by the law of the Requested Party shall, if the Requested Party consents, be temporarily transferred from the Requested Party to the territory of the Requesting Party for that purpose provided that the assistance is not for the investigation or determination of any criminal liability of that person. While the person is required to be held in custody under the law of the Requested Party, the Requesting Party shall guarantee the maintenance in custody of the person. The Requesting Party shall also guarantee the person's subsequent return as soon as his or her presence is no longer required, but no later than the time specified by the Requested Party.
- (2) Transfer may be refused if:
- (a) the person concerned does not consent;
 - (b) the person's presence is required for an investigation or proceeding pending in the Requested Party; or
 - (c) there are other overriding grounds against transfer.
- (3) Where a person in custody who is transferred, becomes entitled under the law of the Requested Party to be released from custody whilst he or she is in the territory of the Requesting Party, the Requested Party shall inform the Requesting Party which shall ensure the person's release and thereafter treat the person as a person referred to in Article 15.
- (4) The person transferred shall receive credit for service of the sentence imposed in the Requested Party for time served in the custody of the Requesting Party.

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第十五條

在請求方出席

- (1) 請求方可請求被請求方協助邀請某人在請求方的境內出席，以按本協定提供協助。
- (2) 被請求方在接獲有關請求後，須邀請該人前往請求方的境內出席，並徵詢該人是否同意有關安排。
- (3) 任何人不得因不同意在請求方的境內出席而根據締約任何一方的法律遭受處罰或被處以強制措施。

第十六條

安全通行

- (1) 根據第十四條被移交至請求方的被羈押的人，或根據第十五條提供協助的人，不得因在其離開被請求方之前的任何作為、不作為或判決而在請求方遭檢控、拘留或限制人身自由，但根據第十四條第(1)款所保證繼續羈留該人則不在此限。
- (2) 如有關的人並非根據第十四條移交的被羈押的人，且本可自由離去，但在該人接獲通知無須再逗留後 15 天內仍未離開請求方，或在離開請求方後返回，則第(1)款不適用。

ARTICLE 15

APPEARANCE IN THE REQUESTING PARTY

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

(1) The Requesting Party may request the assistance of the Requested Party in inviting a person to appear in the territory of the Requesting Party to provide assistance pursuant to this Agreement.

(2) The Requested Party shall, upon receipt of such a request, invite the person to appear in the territory of the Requesting Party and seek that person's concurrence thereto.

(3) A person who does not consent to appear in the territory of the Requesting Party shall not by reason thereof be liable to any penalty or coercive measure pursuant to the law of either Party.

ARTICLE 16

SAFE CONDUCT

(1) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be prosecuted, detained, or subject to any other restrictions in his or her personal liberty in the Requesting Party by reason of an act, omission or judgment that relates to the time prior to his or her departure from the Requested Party, except the maintenance in custody of the person as guaranteed under Article 14(1).

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(3) 根據第十四條被移交至請求方的被羈押的人，或根據第十五條提供協助的人，不得因其所作證供而遭受檢控，但犯偽證罪則不在此限。

(4) 根據第十四條被移交至請求方的被羈押的人，或根據第十五條提供協助的人，除與該項請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。

第十七條

搜查及檢取

(1) 如請求方請求搜查、檢取及交付它認為與刑事事宜的偵查、檢控或法律程序有關的物料，被請求方在本身法律容許的範圍內，須執行該請求。

(2) 如請求方要求提供與搜查的結果、檢取的地點、檢取的情況以及檢獲物料的保管有關的資料，被請求方須予提供。

(3) 如被請求方把檢獲物料交付請求方，請求方須遵循被請求方就該等物料施加的任何條件。

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(2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article 14, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his or her presence is no longer required, or having left the Requesting Party, has returned.

(3) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be subject to prosecution based on his or her testimony, except for perjury.

(4) A person in custody who is transferred to the Requesting Party pursuant to Article 14 or a person who provides assistance pursuant to Article 15 shall not be required to provide assistance in any proceedings other than the proceedings to which the request relates.

ARTICLE 17

SEARCH AND SEIZURE

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material that the Requesting Party considers relevant to an investigation, prosecution or proceeding 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 material seized.

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

第十八條

犯罪得益

- (1) 如請求方提出請求，被請求方須盡力查明是否有任何犯罪得益處於其司法管轄區，並須把調查結果通知請求方。請求方在提出請求時，須把相信這些得益可能處於被請求方司法管轄區的理由通知被請求方。
- (2) 被請求方如根據第(1)款尋獲涉嫌犯罪得益，則須在請求方提出請求的情況下，採取其法律容許的措施，防止任何人處理、轉移或處置這些犯罪得益，以待請求方的法院就這些得益作出最後裁定。
- (3) 有關協助沒收犯罪得益的請求，須根據被請求方的法律執行。
- (4) 除非締約雙方另有協議，否則根據本協定沒收的得益須由被請求方保留。
- (5) 就本協定而言，“犯罪得益”包括：
 - (a) 相當於由犯罪所得的財產及其他利益的價值的財產；
 - (b) 從犯罪而直接或間接所得或將犯罪所得變現而直接或間接所得的財產；及
 - (c) 曾在或擬在與罪行有關連的情況下使用的財產，或該等財產的價值。

ARTICLE 18

PROCEEDS OF CRIME

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds of a crime 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, upon request, 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 request shall be executed pursuant to the law of the Requested Party.
- (4) Proceeds confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) For the purposes of this Agreement, “proceeds of crime” includes:
 - (a) property which represents the value of property and other benefits derived from the commission of an offence;
 - (b) property derived or realized directly or indirectly from the commission of an offence; and
 - (c) property used or intended to be used in connection with an offence or the value of such property.

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第十九條

解決爭議

任何因本協定的解釋、適用或履行而產生的爭議，如締約雙方的中心機關無法自行達成協議，須通過外交層次的談判解決。

第二十條

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的日期起計 30 天後生效。

(2) 締約一方可隨時藉給予締約另一方書面通知而終止本協定。在此情況下，本協定將於締約另一方接獲通知後失效。但在協定終止前已接獲的協助請求，則仍須按照協定的條款處理，如同協定仍然生效。

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。

ARTICLE 19

SETTLEMENT OF DISPUTES

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

ARTICLE 20

ENTRY INTO FORCE AND TERMINATION

(1) This Agreement shall enter into force 30 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 written notice to the other. In that event this Agreement shall cease to have effect on receipt of that notice. Requests for assistance which have been received prior to termination of this Agreement shall nevertheless be processed in accordance with the terms of the Agreement as if the Agreement were still in force.

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

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附表 1

本協定於二零一三年十一月二十八日在香港簽訂，一式兩份，每份均用中文、英文及瑞典文寫成，各文本均為真確本，如文本之間有釋義上的分歧，則以英文文本為準。

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Done in duplicate at Hong Kong, this Twenty Eighth day of November, Two thousand and Thirteen, in the Chinese, English and Swedish languages, each text being equally authentic. In case of divergence in interpretation, the English text shall prevail.

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附表 2

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附表 2

[第 2 條及附表 3]

對本條例的變通

1. 本條例第 5(1)(d) 條現予變通至如下所示 ——
“(d) 有充分理由相信該項請求提出的目的是基於某人的種族、性別、* 宗教、國籍、族裔 * 或政治見解而對該人進行檢控、懲罰或以其他方式使該人蒙受不利；”。
2. 本條例第 5(1)(e) 條現予變通至如下所示 ——
“(e) 該項請求關乎因外地罪行而對某人進行的檢控，而
——*
(i)* 該人已就該外地罪行或由構成該外地罪行的同一作為或不作為所構成的另一外地罪行，被有關地方或香港 * 的管轄法院或其他當局定罪、裁定無罪或赦免→**；* 或
(ii)* 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，* 已** 接受該地方或香港的 * 法律所規定的懲罰；”。
3. 本條例第 5(1) 條現予變通，加入 ——
“(ea) 該項請求關乎就某作為或不作為而對某人進行的檢控，而假使該作為或不作為是在香港發生，便會因時效消失，而不再能夠在香港予以檢控；
(eb) 該項請求關乎因外地罪行而對某人進行的檢控，而就有關作為或不作為，已有免除檢控的決定在香港作出；**”。

Schedule 2

[s. 2 & Sch. 3]

Modifications to the Ordinance

1. Section 5(1)(d) of the Ordinance is modified to read as follows—
“(d) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, sex* religion, nationality, ethnic origin* or political opinions;”.
2. Section 5(1)(e) of the Ordinance is 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 in respect of that offence or of another external offence constituted by the same act or omission as that offence.* 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;”.
3. Section 5(1) of the Ordinance is modified by adding—
“(ea) the request relates to the prosecution of a person 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;

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附表 2

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4. 本條例第 17(1) 條現予變通，刪去第 (ii) 段。
5. 本條例第 17(3)(b) 條現予變通至如下所示——
- “(b) 該人可自由離開香港，並接獲通知該人已無須為下述任何目的逗留，但該人沒有在接獲該通知後的 15 日內離開香港 * 在有機會離開香港的情況下仍留在香港，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。”。
6. 本條例第 23(2)(a) 條現予變通——
- (a) 在第 (i) 節的末處加入“或”；
- (b) 刪去第 (ii) 節。

* 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)。

(eb) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong.*”.

4. Section 17(1) of the Ordinance is modified by deleting paragraph (ii).
5. Section 17(3)(b) of the Ordinance is modified to read as follows—
- “(b) the person, being free to leave Hong Kong, has not left Hong Kong within a period of 15 days after being notified that the person’s presence is no longer required for any of the following purposes* has had an opportunity of leaving Hong Kong and 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.”.
6. Section 23(2)(a) of the Ordinance is modified—
- (a) by adding “or” at the end of subparagraph (i);
- (b) by deleting subparagraph (ii).

* The text underlined is added. (The underlining is for ease of identifying the modification).

** The text crossed out is deleted. (The crossing out is for ease of identifying the modification).

附表 3

[第 2 條]

對本條例的變通的撮錄

1. 附表 2 第 1、2 及 3 條指明對本條例第 5(1) 條的變通，該等變通令律政司司長如認為有以下情況，則由香港以外某地方提出的要求根據本條例提供協助的請求，亦須予拒絕——
 - (a) 有充分理由相信，該項請求的目的，是基於某人的性別或族裔，而對該人進行檢控、懲罰或以其他方式使該人蒙受不利；
 - (b) 該項請求關乎因外地罪行而檢控某人，而該人已就該罪行或由構成該罪行的同一作為或不作為所構成的另一外地罪行，被香港的管轄法院或其他當局定罪、裁定無罪或赦免，或已接受香港法律所規定的懲罰；
 - (c) 該項請求關乎就某作為或不作為而檢控某人，而假使該作為或不作為是在香港發生，便會因時效消失，而不再能夠在香港予以檢控；或
 - (d) 該項請求關乎因外地罪行而檢控某人，而就有關作為或不作為，已有免除檢控的決定在香港作出。

Schedule 3

[s. 2]

Summary of Modifications to the Ordinance

1. Sections 1, 2 and 3 of Schedule 2 specify modifications to section 5(1) of the Ordinance so that a request by a place outside Hong Kong for assistance under the Ordinance must also be refused if, in the opinion of the Secretary for Justice—
 - (a) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's sex or ethnic origin;
 - (b) the request relates to the prosecution of a person for an external offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in Hong Kong, or has undergone the punishment provided by the law of Hong Kong, in respect of that offence or of another external offence constituted by the same act or omission as that offence;
 - (c) the request relates to the prosecution of a person 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; or
 - (d) the request relates to the prosecution of a person for an external offence in respect of which a decision on waiver of prosecution concerning the act or omission has been issued in Hong Kong.

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2. 附表 2 第 4 條指明對本條例第 17(1) 條的變通，以收窄給予下述人士的豁免權之範圍：依據本條例第 17(1)(a) 或 (b) 條所提述的請求而身處香港以就刑事事宜給予協助的人。
3. 附表 2 第 5 條指明對本條例第 17(3)(b) 條的變通，以更準確地說明在甚麼情況下，依據律政司司長提出的請求而身處香港以就刑事事宜給予協助的人，不再根據本條例第 17(1) 條享有豁免權。
4. 附表 2 第 6 條指明對本條例第 23(2)(a) 條的變通，以收窄香港以外某地方須為下述事項而作出的承諾之範圍：請求某人在該地方給予本條例第 23(1) 條所提述的協助。

2. Section 4 of Schedule 2 specifies a modification to section 17(1) of the Ordinance to limit the extent of immunities granted to a person who is in Hong Kong to give assistance in relation to a criminal matter pursuant to a request referred to in section 17(1)(a) or (b) of the Ordinance.
3. Section 5 of Schedule 2 specifies modifications to section 17(3)(b) of the Ordinance to more precisely delineate the circumstances under which a person who is in Hong Kong to give assistance in relation to a criminal matter, pursuant to a request made by the Secretary for Justice, ceases to have immunities under section 17(1) of the Ordinance.
4. Section 6 of Schedule 2 specifies modifications to section 23(2)(a) of the Ordinance to limit the extent of undertakings to be given by a place outside Hong Kong for the purpose of a request that a person give assistance referred to in section 23(1) of the Ordinance in the place.