

《刑事事宜相互法律協助(美利堅合眾國)令》
(第 525 章, 附屬法例 F)

Mutual Legal Assistance in Criminal Matters (United States of America) Order
(Cap. 525 sub. leg. F)

版本日期
Version date
14.11.2019

經核證文本
Verified Copy

(《法例發布條例》(第 614 章)第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

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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	14.11.2019
附表 1 Schedule 1	S1-1—S1-42	14.11.2019
附表 2 Schedule 2	S2-1—S2-4	14.11.2019

尚未實施的條文 / 修訂 ——

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

Provisions / Amendments not yet in operation —

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制定史

本為 1999 年第 278 號法律公告 —— 2019 年第 5 號編輯修訂紀錄

Enactment History

Originally L.N. 278 of 1999 — E.R. 5 of 2019

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(第 525 章，附屬法例 F)

(Cap. 525 sub. leg. F)

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《刑事事宜相互法律協助(美利堅合眾國)令》

Mutual Legal Assistance in Criminal Matters (United States of America) Order

(第 525 章第 4 條)

(Cap. 525, section 4)

(略去制定語式條文——2019 年第 5 號編輯修訂紀錄)

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

[2000 年 1 月 21 日] 2000 年第 3 號法律公告
(格式變更——2019 年第 5 號編輯修訂紀錄)

[21 January 2000] L.N. 3 of 2000
(Format changes—E.R. 5 of 2019)

1. (已失時效而略去——2019 年第 5 號編輯修訂紀錄)

1. (Omitted as spent—E.R. 5 of 2019)

2. 條例在香港與美利堅合眾國之間適用
就——

2. **Ordinance to apply between Hong Kong and United States of America**

- (a) 適用於香港政府和美利堅合眾國政府，而
- (b) 副本附錄於附表 1，

In relation to the arrangements for mutual legal assistance—

- (a) which are applicable to the Government of Hong Kong and the Government of the United States of America; and
- (b) a copy of which is annexed at Schedule 1,

的相互法律協助的安排，現指示在撮錄於附表 2 的對本條例作出的變通的規限下，本條例在香港與美利堅合眾國之間適用。

it is hereby directed that the Ordinance shall, subject to the modifications to the Ordinance summarized in Schedule 2, apply as between Hong Kong and the United States of America.

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附表 1

[第 2 條]

香港政府 與 美利堅合眾國政府 關於 刑事司法協助的協定

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Schedule 1

[s. 2]

Agreement between the Government of Hong Kong and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters

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香港政府經負責管理與其有關的外交事務的主權國政府正式授權，與美利堅合眾國政府(下文稱為“締約雙方”)，

為通過彼此合作和在刑事司法方面互相協助，加強雙方在調查、檢控、防止罪案及充公、沒收犯罪得益和犯罪工具方面的執法效能，

協議如下：

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Article 15	Service of Documents
Article 16	Search and Seizure
Article 17	Return of Items
Article 18	Confiscation and Forfeiture
Article 19	Certification and Authentication
Article 20	Other Assistance
Article 21	Consultation
Article 22	Resolution of Disputes
Article 23	Entry Into Force and Termination

The Government of Hong Kong, having been duly authorized by the sovereign government responsible for the foreign affairs relating to Hong Kong, and the Government of the United States of America, hereinafter called “the Parties”,

Desiring to improve the effectiveness of law enforcement of both Parties in the investigation, prosecution, and prevention of crime and the confiscation or forfeiture of the proceeds and instrumentalities of crime through cooperation and mutual legal assistance related to criminal matters,

Have agreed as follows:

第一條

提供協助的範圍

- (1) 締約雙方須按照本協定，在調查、檢控和防止刑事罪行及進行刑事訴訟方面互相提供協助。
- (2) 提供的協助，包括以下各項：
 - (a) 取得證據、證供或供詞；
 - (b) 提供資料、文件、紀錄和物品；
 - (c) 追尋和辨認有關的人或物品；
 - (d) 送達文件；
 - (e) 移交被拘留的人及其他人以提供協助；
 - (f) 執行搜查和檢取物品的要求；
 - (g) 充公和沒收犯罪活動得益和犯罪工具，或就該等行動提供協助；
 - (h) 交付物品，包括借出證物或其他物品；及
 - (i) 被要求方法律沒有禁止的任何其他形式的協助。
- (3) 本協定包括就涉及稅項、關稅、外匯管制或其他稅務事項的刑事罪行提供協助，但不包括就涉及該等罪行的非刑事訴訟提供協助。
- (4) 本協定純為締約雙方互相提供司法協助而設立，而非為向私人提供該等協助而設立或制訂。任何個人不得憑藉本協定的任何條文以妨礙協助要求的執行，或排除或隱瞞根據本協定取得的證據。

Article 1

Scope of Assistance

- (1) The Parties shall provide mutual assistance, in accordance with the provisions of this Agreement, in connection with the investigation, prosecution, and prevention of criminal offences, and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) taking evidence, testimony, or statements of persons;
 - (b) providing information, documents, records, and items;
 - (c) locating or identifying persons or items;
 - (d) serving documents;
 - (e) transferring persons in custody and others to provide assistance;
 - (f) executing requests for search and seizure;
 - (g) confiscating and forfeiting the proceeds and instrumentalities of crime and otherwise assisting in relation thereto;
 - (h) delivering property, including lending exhibits or other items; and
 - (i) any other form of assistance not prohibited by the law of the Requested Party.
- (3) This Agreement shall include assistance for criminal offences related to taxation, customs duties, foreign exchange control, or other revenue matters but shall not include assistance for non-criminal proceedings relating thereto.
- (4) This Agreement is intended solely for mutual legal assistance between the Parties, and is not intended or designed to provide such

第二條

中心機關

- (1) 締約雙方須各自設立一個中心機關。
- (2) 香港的中心機關為律政司或經其正式授權的人。美利堅合眾國的中心機關為美國司法部長或經其正式授權的人。
- (3) 根據本協定作出的要求或其他通訊，須由締約雙方的中心機關直接進行。

第三條

提供協助的限制

- (1) 如出現以下情況，被要求方的中心機關須拒絕提供協助：
 - (a) 協助要求會損害美利堅合眾國或就香港而言，負責管理與其有關的外交事務的主權國政府的主權、安全或公共秩序；
 - (b) 被要求方的中心機關認為應允要求將會損害被要求方的基本利益；
 - (c) 被要求方的中心機關認為協助要求關乎政治罪行，或有充分理由相信，提出協助要求的目的是基於某人的種族、宗教、國籍或政治意見而予以檢控、處罰或提出訴訟。

assistance to private parties. A private party may not rely upon any provision of this Agreement to impede the execution of a request, or to exclude or suppress evidence obtained under this Agreement.

Article 2

Central Authorities

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for Hong Kong shall be the Attorney General of Hong Kong or a person duly authorized by the Attorney General. The Central Authority for the United States of America shall be the Attorney General of the United States or a person duly authorized by the Attorney General.
- (3) Requests and other communications pursuant to this Agreement shall be made directly between the Central Authorities of the Parties.

Article 3

Limitations on Providing Assistance

- (1) The Central Authority of the Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security, or public order (ordre public) of the United States of America or, in the case of Hong Kong, the sovereign government responsible for the foreign affairs relating to Hong Kong;
 - (b) it is of the opinion that the granting of the request would impair the Requested Party's essential interests;
 - (c) it is of the opinion that the request for assistance relates to a political offence or that there are substantial grounds for believing the request was made for the purpose of

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- (d) 被要求方的中心機關認為被指稱構成刑事罪行的作為或不作為，如在被要求方的管轄區發生，並不構成刑事罪行，又或者不論該等作為或不作為在被要求方的管轄區會否構成罪行，也不會在要求方的管轄區構成本協定附件內所述的任何類別的罪行。
- (2) 在考慮某些作為或不作為就第(1)(d)款而言會否構成罪行時，不應考慮該等作為或不作為有否涉及州際運輸或有否涉及使用影響州際貿易或對外貿易的郵遞或其他設施，該等事項只關乎確立美國聯邦法院的司法管轄權。
- (3) 如出現以下情況，被要求方的中心機關可拒絕提供協助：
- (a) 要求關乎的罪行，乃由軍事法律所規定，而根據一般的刑事法律，則不會構成罪行；
- (b) 協助要求所涉及的被告人，已因同一刑事罪行在被要求方管轄區被定罪或無罪釋放；或
- (c) 協助要求並非依循本協定提出。
- (4) 在根據本條拒絕提供協助前，被要求方的中心機關：
- (a) 須及早知會要求方的中心機關考慮拒絕提供協助的理由；
- (b) 須與要求方的中心機關磋商，以確定可否在合乎被要求方的中心機關認為必需的條件下提供協助。
- (5) 要求方如在第(4)(b)款所述的條件下接受協助，必須遵守該等條件。
- (6) 被要求方的中心機關如拒絕提供協助，須通知要求方的中心機關其拒絕的理由。

prosecuting, punishing, or otherwise proceeding against a person on account of the person's race, religion, nationality, or political opinions; or

- (d) it is of the opinion that the acts or omissions alleged to constitute the criminal offence would not have constituted a criminal offence if they had taken place within the jurisdiction of the Requested Party, or, irrespective of whether they would have done so, would not constitute in the Requesting Party an offence within any of the descriptions in the Annex to this Agreement.
- (2) In considering whether acts or omissions constitute an offence for the purpose of paragraph (1)(d), it shall be irrelevant whether any of those acts or omissions involve interstate transportation or the use of the mails or other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court.
- (3) The Central Authority of the Requested Party may refuse assistance if:
- (a) the request relates to an offence under military law that would not be an offence under ordinary criminal law;
- (b) the request for assistance relates to the prosecution of a person for a criminal offence in respect of which the person has been convicted or acquitted in the Requested Party; or
- (c) the request is not made in conformity with the Agreement.
- (4) Before refusing assistance pursuant to this Article, the Central Authority of the Requested Party:
- (a) shall promptly inform the Central Authority of the Requesting Party of the reason for considering refusal; and
- (b) shall consult with the Central Authority of the Requesting Party to determine whether assistance may be given subject

第四條

要求的形式和內容

- (1) 除非在緊急情況下，要求必須以書面提出。在緊急情況下，可提出口頭的要求，但必須及早以書面確認。
- (2) 協助要求及支持文件必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。
- (3) 協助要求須包括以下內容：
 - (a) 負責進行與要求有關的調查、檢控或訴訟的機關的名稱；
 - (b) 說明調查、檢控或訴訟的標的和性質，包括與事件有關的具體刑事罪行；
 - (c) 說明要求提供的證據、資料或其他協助；
 - (d) 關於要求取得證據、資料或提供其他協助的目的的說明；
 - (e) 案件有關事實及法律的撮要。
- (4) 在有必要及可能的範圍內，協助要求並須包括以下內容：
 - (a) 關於任何被要求提供證據、資料或其他協助的人的身分及其所在的資料；
 - (b) 關於被送達人的身分及其所在、該人與訴訟的關係，以及送達方式的資料；
 - (c) 關於被追尋的人的身分及其下落的資料；

to such terms and conditions as the Central Authority of the Requested Party deems necessary.

- (5) If the Requesting Party accepts assistance subject to the terms and conditions referred to in paragraph (4)(b), it shall comply with those terms and conditions.
- (6) If the Central Authority of the Requested Party refuses assistance, it shall inform the Central Authority of the Requesting Party of the reasons for the refusal.

Article 4

Form and Contents of Requests

- (1) Requests shall be made in writing except in urgent cases. In urgent cases, requests may be made orally, but shall be confirmed in writing promptly thereafter.
- (2) Requests and supporting documents shall be submitted in, or accompanied by a translation into, an official language of the Requested Party.
- (3) Requests shall include the following:
 - (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 the specific criminal offences that relate to the matter;
 - (c) a description of the evidence, information, or other assistance sought;
 - (d) a statement of the purpose for which the evidence, information, or other assistance is sought; and
 - (e) a summary of the relevant facts and law.
- (4) To the extent necessary and possible, requests shall also include:

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- (d) 說明要搜查的地方或人，及要檢取的物品；
- (e) 說明要取得或記錄任何證供、證據或供詞的方式；
- (f) 列明要向某人提出的問題，或說明關於要向該人審查的標的，或兩者均包括在內；
- (g) 說明在執行要求時要依循的任何特別程序；
- (h) 被要求在要求方管轄區出席的人有權獲得的津貼和開支的資料；
- (i) 有關保密的任何要求；
- (j) 與要求有關的任何時間限制；
- (k) 任何被要求執行的法庭判令的經證明副本，並附說明有關判令乃不可上訴的最終判令；
- (l) 為符合要求方接納證據的標準而要填寫的證書或表格的副本；
- (m) 為方便被要求方執行要求而可能要提請被要求方注意的任何其他資料。

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- (a) information on the identity and location of any person from whom evidence, information, or other assistance is sought;
- (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 whereabouts of a person to be located;
- (d) a description of the place or person to be searched and of the items to be seized;
- (e) a description of the manner in which any testimony, evidence, or statement is to be taken and recorded;
- (f) a list of questions to be asked of a person or a description of the subject matter about which the person is to be examined, or both;
- (g) a description of any particular procedure to be followed in executing the request;
- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
- (i) any requirements for confidentiality;
- (j) any time limits relevant to the request;
- (k) a certified copy of any court order sought to be enforced, and a statement to the effect that it is a final order not subject to appeal;
- (l) a copy of any certificates or forms to be completed in order to meet the standards of admissibility in the Requesting Party; and
- (m) any other information that may be brought to the attention of the Requested Party to facilitate its execution of the request.

第五條

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) 該等機關須盡最大努力執行要求。被要求方的法院應有權發出執行要求所需的傳召出庭令、搜查令或其他命令。
- (3) 要求須根據本協定或適用的法律授權執行。被要求方須在不違反其法律的範圍內按照要求內所指定的方法來執行。
- (4) 如被要求方的中心機關確定執行要求會妨礙正在其管轄區內進行的刑事偵查、檢控或訴訟，被要求方可延遲執行要求，或在符合經與要求方中心機關磋商後同意為必要的條件下執行要求。如要求方同意在符合該等條件下接受協助，則須遵守該等條件。
- (5) 被要求方須迅速將任何可能導致嚴重延遲回應協助要求的情況通知要求方。
- (6) 如要求方的中心機關要求保密，被要求方必須盡最大努力把有關要求和要求的內容保密。如無法在不違反保密要求的情況下執行要求，則被要求方的中心機關須通知要求方的中心機關，由要求方的中心機關決定是否仍應執行要求。
- (7) 被要求方的中心機關須對要求方的中心機關就執行要求的進展提出的合理要求作出回應。
- (8) 被要求方的中心機關須將執行要求的結果迅速通知要求方的中心機關。被要求方如不能執行要求的全部或部分，其中心機關須將理由通知要求方的中心機關。

Article 5

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) Such authorities shall use their best efforts to execute the request. The Courts of the Requested Party shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.
- (3) Requests shall be executed as empowered by this Agreement or by applicable law. The method of execution specified in the request shall be followed to the extent that it is not incompatible with the law of the Requested Party.
- (4) If the Central Authority of the Requested Party determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that Party, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting Party. If the Requesting Party accepts the assistance subject to the conditions, it shall comply with the conditions.
- (5) The Requested Party shall promptly inform the Requesting Party of any circumstances that are likely to cause a significant delay in responding to the request.
- (6) The Requested Party shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting Party. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested Party shall so inform the Central Authority of the Requesting Party, which shall then determine whether the request should nevertheless be executed.

第六條

代表及開支

- (1) 被要求方須作出一切必要安排，使要求方在因提出協助要求而引起的任何訴訟中獲得代表，否則被要求方須代表要求方，保障要求方的利益。
- (2) 被要求方須承擔執行要求的所有一般性開支，但下述項目除外：
 - (a) 應要求方的要求而聘請的律師的費用；
 - (b) 聘請專家的費用；
 - (c) 語音抄錄，以及語言傳譯及翻譯的費用；
 - (d) 應要求方的要求而前往外地的人的交通費用及津貼。
- (3) 在執行要求期間，如察覺需作非一般性開支，以履行有關要求，締約雙方須進行磋商，以決定繼續執行要求的條件。

Article 6

Representation and Expenses

- (7) The Central Authority of the Requested Party shall respond to reasonable requests by the Central Authority of the Requesting Party on progress toward execution of the request.
 - (8) The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the outcome of the execution of the request. If the request cannot be executed in whole or in part, the Central Authority of the Requested Party shall inform the Central Authority of the Requesting Party of the reasons therefor.
- (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 transcription, and language interpretation and 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 fulfill the request, the Parties shall consult to determine the terms and conditions under which the execution of the request may continue.

第七條
使用限制

- (1) 被要求方的中心機關可規定要求方在未經被要求方的中心機關事先同意之前，不得在不屬於要求內所述的調查、檢控或訴訟中，使用根據本協定所獲得的任何資料或證據。在該等情況下，要求方須遵守該項規定。
- (2) 被要求方的中心機關可要求將根據本協定提供的資料或證據保密，或只限在被要求方所指定的條件下方可使用該等資料或證據。要求方如在該等條件下接納該等資料或證據，便須遵守該等條件。
- (3) 在香港根據其法例或美國根據其憲法有義務在刑事訴訟中使用或透露資料或證據的範圍內，本條並不妨礙在刑事訴訟中使用或透露資料或證據。要求方須將任何該等透露資料或證據的建議預先通知被要求方。
- (4) 根據第(1)或(2)款在要求方管轄區內公開的資料或證據，可在公開後用作任何用途。

第八條
供詞

如要求方要求取得某人的供詞，供刑事案件的調查、檢控或訴訟用途，被要求方須在該人同意下，致力獲取有關供詞。

Article 7
Limitations on Use

- (1) The Central Authority of the Requested Party may require that the Requesting Party not use any information or evidence obtained under this Agreement in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested Party. In such a situation, the Requesting Party shall comply with the requirement.
- (2) The Central Authority of the Requested Party may request that information or evidence furnished under this Agreement be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting Party accepts the information or evidence subject to such conditions, the Requesting Party shall comply with the conditions.
- (3) Nothing in this Article shall preclude the use or disclosure in a criminal proceeding of information or evidence to the extent that there is an obligation to do so for Hong Kong under its law or for the United States under its Constitution. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.
- (4) Information or evidence that has been made public in the Requesting Party in accordance with paragraph (1) or (2) may thereafter be used for any purpose.

Article 8
Statements of Persons

Where a request is made to obtain the statement of a person for the purpose of an investigation, prosecution, or proceeding related to a

第九條

在被要求方管轄區內獲取證據或證供

- (1) 要求方如就刑事案件的調查、檢控或訴訟提出取證要求，被要求方須安排獲取該等證據。如有需要，被要求方須強令依據本協定在其管轄區內被要求提供證據的人出席作證。
- (2) 就本協定而言，提供或獲取證據包括作證或錄取證供，以及提供文件、紀錄或物品。
- (3) 在要求方的要求下，被要求方的中心機關須預先提供有關依據本條獲取證據的日期和地點的資料。
- (4) 被要求方須容許在要求內所指定的人在執行要求時出席，並在其法律所容許的範圍內准許該等人士向作證或提供證據的人發問。
- (5) 如第(1)款所述人士根據被要求方的法律提出豁免，無行為能力或特權的請求，須依據被要求方的法律解決。如該等請求是根據要求方的法律提出的，則仍須獲取證據，並將請求告知要求方的中心機關，由要求方的有關當局解決。
- (6) 要求方可要求被要求方根據要求內所指定的程序證明在被要求方管轄區內依據本條所提供的文件、紀錄或任何其他物品，或作為根據本條獲取的證供的主題的文件、紀錄或任何其他物品。有關文件、紀錄或物品如已根據該等程序予以證明，在要求方管轄區內須被當為證明事情真實性的可接納證據。

Article 9

Taking of Evidence or Testimony in the Requested Party

- (1) Where a request is made that evidence be taken for the purpose of an investigation, prosecution, or proceeding related to a criminal matter, the Requested Party shall arrange to have such evidence taken. A person in the Requested Party from whom evidence is requested pursuant to this Agreement shall be compelled, if necessary, to appear and give evidence.
- (2) For the purposes of this Agreement, the giving or taking of evidence shall include the giving or taking of testimony and the production of documents, records, or items.
- (3) Upon request, the Central Authority of the Requested Party shall furnish information in advance about the date and place of the taking of evidence pursuant to this Article.
- (4) The Requested Party shall permit such persons as are specified in the request to be present during the execution of the request and, to the extent permitted by its law, shall allow such persons to question the person giving the testimony or evidence.
- (5) If the person referred to in paragraph (1) asserts a claim of immunity, incapacity, or privilege under the law of the Requested Party, it shall be resolved pursuant to the Requested Party's law. If such a claim is asserted under the law of the Requesting Party, the evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting Party for subsequent resolution by the authorities of that Party.
- (6) The Requesting Party may request that documents, records, and any other items produced in the Requested Party pursuant to this Article

第十條

可供公眾查閱的文件和官方文件

- (1) 被要求方須向要求方提供被要求方管轄區內的政府部門及機構所管有的可供公眾查閱的紀錄的副本，包括任何形式的文件或資料。
- (2) 被要求方的政府部門或機構所管有但不供公眾查閱的任何文件、紀錄或資料，被要求方可按照向其本身的執法或司法機關提供該類文件、紀錄或資料的副本的相同範圍和條件，向要求方提供。
- (3) 要求方可要求被要求方根據要求內所指定的程序證明依據本條所提供的官方紀錄。如有關官方紀錄已根據該等程序予以證明，在要求方管轄區內須被當為證明所述事情真實性的可接納證據。

第十一條

移交被拘留的人

- (1) 要求方要求把被拘留在被要求方管轄區內的人移交給要求方以提供本協定所規定的協助，如該人同意，而締約雙方的中心機關亦同意，則可把該人由被要求方移交給要求方以提供有關的協助。

or that are the subject of testimony taken under this Article be certified in accordance with procedures specified in the request. If certified in accordance with such procedures, they shall be admissible in evidence in the Requesting Party as proof of the truth of the matters set forth therein.

Article 10

Publicly Available and Official Documents

- (1) The Requested Party shall provide the Requesting Party with copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies in the Requested Party.
- (2) The Requested Party may provide copies of any documents, records, 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 copies would be available to its own law enforcement or judicial authorities.
- (3) The Requesting Party may request that official records produced pursuant to this Article be certified in accordance with procedures specified in the request. If certified in accordance with such procedures, they shall be admissible in evidence in the Requesting Party as proof of the truth of the matters set forth therein.

Article 11

Transfer of Persons in Custody

- (1) A person in the custody of the Requested Party whose presence in the Requesting Party is sought for the purpose of providing assistance pursuant to this Agreement shall be transferred from the Requested Party to the Requesting Party for that purpose if the person consents and if the Central Authorities of both Parties agree.

- (2) 凡依據第九條第(4)款或應要求方的要求須把被拘留在要求方管轄區內的人移交給被要求方以協助執行要求，如該人同意，而雙方的中心機關亦同意，則須把該人由要求方移交給被要求方。
- (3) 就本條而言：
- (a) 接收方有權繼續拘留該名被移交的人，而除非發送方授權作其他安排，否則接收方必須繼續拘留該人；
 - (b) 接收方須在環境許可的情況下盡快將被移交的人歸還給發送方拘留，或按照雙方中心機關所商定的時間將被移交的人歸還給發送方拘留；
 - (c) 接收方不得要求發送方提出進行歸還被移交人的引渡程序；及
 - (d) 被移交的人在發送方管轄區內須服的刑期，須扣除他被拘留在接收方管轄區期間內所服的刑期。

第十二條

其他人士的出席

要求方的中心機關可要求被要求方協助，為根據本協定提供協助的目的而促使任何非被拘留的人在要求方管轄區內提供協助。在收到要求後，被要求方的中心機關須邀請該人前往要求方管轄區提供協助。被要求方的中心機關須將該人的回覆迅速告知要求方的中心機關。

- (2) Where the presence of a person in custody in the Requesting Party is desired in the Requested Party pursuant to Article 9(4) or at the request of the Requesting Party to assist in execution of a request, the person shall be transferred from the Requesting party to the Requested Party if the person consents and if the Central Authorities of both Parties agree.
- (3) For the purposes of this Article:
- (a) the receiving Party shall have the authority to keep the person transferred in custody and shall be obliged to do so unless otherwise authorized by the sending Party;
 - (b) the receiving Party shall return the person transferred to the custody of the sending Party as soon as circumstances permit or as otherwise agreed by both Central Authorities;
 - (c) the receiving Party shall not require the sending Party to initiate extradition proceedings for the return of the person transferred; and
 - (d) the person transferred shall receive credit for service of the sentence imposed in the sending Party for time served in the custody of the receiving Party.

Article 12

Attendance of Other Persons

The Central Authority of the Requesting Party may request the assistance of the Requested Party in making a person who is not in custody available in the Requesting Party for the purpose of providing assistance pursuant to this Agreement. Upon receipt of such a request, the Central Authority of the Requested Party shall invite the person to travel to the Requesting Party to provide assistance. The Central Authority of the Requested Party shall promptly inform the Central Authority of the Requesting Party of the response of the person.

第十三條

安全通行

- (1) 除非要求內另有指定，否則依據第十一或十二條被移交的人，不得因其在離開發送方管轄區之前的作為或不作為而被送達法律文件，或被檢控、懲罰或被限制人身自由。
- (2) 如要求內對第(1)款所述的安全通行的任何限制作出規定，被要求方的中心機關須告知被要求出席的人有關這些限制的性質。
- (3) 如有關的人並非根據第十一條移交的被拘留人，並本可自由離去，但在該人接獲通知毋須再逗留後 15 天內仍未離開要求方，或離開要求方後返回，則第(1)款不適用。
- (4) 任何人同意根據第十一或十二條提供證據，不得根據該人所作證供而對其檢控，但作假證供的情況則不在此限。
- (5) 任何同意根據第十一或十二條提供協助的人，除與要求有關的協助外，不得被要求提供任何其他協助。
- (6) 任何人不同意根據第十一或十二條提供協助，要求方或被要求方的法庭不得因此而要他遭受懲罰或強制措施。

Article 13

Safe Conduct

- (1) Unless otherwise specified in the request, a person transferred pursuant to Article 11 or 12 shall not be subject to any service of process or be prosecuted, punished, or subject to any restriction of personal liberty by reason of any acts or omissions that preceded the person's departure from the sending Party.
- (2) If the request provides for any limitations on the safe conduct referred to in paragraph (1), the person whose presence is requested shall be advised by the Central Authority of the Requested Party of the nature of those limitations.
- (3) Paragraph (1) shall not apply if the person, not being a person transferred in custody under Article 11, and being free to leave, has not left the Requesting Party within a period of fifteen days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.
- (4) A person who consents to provide evidence pursuant to Article 11 or 12 shall not be subject to prosecution based on his testimony, except for perjury.
- (5) A person who consents to provide assistance pursuant to Article 11 or 12 shall not be required to provide assistance other than that to which the request relates.
- (6) A person who does not consent to provide assistance pursuant to Article 11 or 12 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting or Requested Party.

第十四條

有關人士或物品的所在或身分

如要求方提出要求，被要求方須致力查明要求內所指的任何人的所在及身分或物品的所在。

第十五條

送達文件

- (1) 要求方依據本協定交付送達的任何文件，被要求方須盡力予以送達。
- (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席，要求方須於預定回應或出席的日期前的合理時間內，向被要求方提出送達該等文件的要求。
- (3) 被要求方可以利用郵遞或在要求方提出要求時，按要求方法律規定而被要求方法律不禁止的任何其他方式，把任何文件送達。
- (4) 被要求方須按要求方指定的方式，交回已送達文件的證明。
- (5) 被送達人未有遵照送達給他的法律文件的規定而行事，要求方不得根據本身的法律而對該被送達人施加懲罰或強制措施，但如果美國是要求方而該被送達人又是美國的國民或永久性居民，則屬例外。

Article 14

Location or Identity of Persons or Items

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

Article 15

Service of Documents

- (1) The Requested Party shall use its best efforts to serve any document transmitted to it pursuant to this Agreement 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) The Requested Party may effect service of any document by mail or, if the Requesting Party so requests, in any other manner required by the law of the Requesting Party that is not prohibited by the law of the Requested Party.
- (4) The Requested Party shall return a proof of service in the manner specified 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 unless that person is, where the United States of America is the Requesting Party, a national or permanent resident of the United States of America.

第十六條

搜查及檢取

- (1) 要求方提出搜查、檢取及交付任何物品予要求方的要求，如具備資料證明有關行動按被要求方的法律是正當的，被要求方須執行該等要求。
- (2) 如要求方要求提供有關任何搜查的結果、檢取物品的地點、檢取物品的情況，以及物品檢取後的保管情況等資料，被要求方須予提供。
- (3) 要求方可要求每一位負責保管檢獲物品的人員，按照有關要求所指定的程序，證明有關物品的性質、有關物品的連續保管，以及有關物品的完好狀況。該等證明在要求方管轄區內須被當為證明所述事情真實性的可接納證據。
- (4) 被要求方依據本條把任何檢取到的物品交付予要求方，要求方須遵守被要求方的中心機關就該等物品提出的任何條件。

第十七條

交還物品

如被要求方的中心機關提出要求，要求方的中心機關須盡快把被要求方為依據本協定執行要求而交付予要求方的任何文件、紀錄或物品交還。

Article 16

Search and Seizure

- (1) The Requested Party shall carry out a request for the search, seizure, and delivery of any item to the Requesting Party if the request includes the information justifying 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.
- (3) The Requesting Party may request that each official who has had custody of a seized item certify the identity of the item, the continuity of custody, and the integrity of its condition in accordance with procedures specified in the request. Each such certification shall be admissible in evidence in the Requesting Party as proof of the truth of the matters set forth therein.
- (4) The Requesting Party shall observe any conditions imposed by the Central Authority of the Requested Party in relation to any seized property that is delivered to the Requesting Party under this Article.

Article 17

Return of Items

If required by the Central Authority of the Requested Party, the Central Authority of the Requesting Party shall return as soon as possible any documents, records, or items delivered to it in execution of a request under this Agreement.

第十八條

充公及沒收

- (1) 如要求方提出要求，被要求方須致力查明是否有任何違反要求方法律的犯罪得益或犯罪工具存放於被要求方管轄區內，並須把調查結果通知要求方。要求方在提出要求時，須把何以相信犯罪得益或犯罪工具可能存放於被要求方管轄區內的理由通知被要求方。
- (2) 被要求方如根據第(1)款找到懷疑為犯罪得益或犯罪工具的財物，須採取本身法律容許的措施，防止任何人就這些懷疑為犯罪得益或犯罪工具的財物進行交易、轉讓或處置，以待要求方的法院作出最後裁定。
- (3) 如要求方要求協助沒收或充公犯罪得益或犯罪工具，被要求方須採取適當方法提供所需的協助。協助的方法可包括執行要求方法院作出的命令、或就有關的要求提起訴訟、或在關乎要求的訴訟中提供幫助。
- (4) 被要求方的中心機關須把任何依據本條採取的行動通知要求方的中心機關。
- (5) 負責保管犯罪得益或工具的一方須按照本身的法律處置該等財物。締約一方可以在該方的法律容許的範圍內，及按照雙方商定的條件，把該等財物或出售該等財物的得益轉移予締約另一方。

Article 18

Confiscation and Forfeiture

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities 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 or instrumentalities may be located in its jurisdiction.
- (2) Where, pursuant to paragraph (1), suspected proceeds or instrumentalities 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 or instrumentalities of crime, pending a final determination by a court of the Requesting Party.
- (3) Where a request is made for assistance in securing the confiscation or forfeiture of proceeds or instrumentalities of crime, such assistance shall be given by whatever means are appropriate. This may include enforcing an order made by a court in the Requesting Party or initiating or assisting in proceedings in relation to the request.
- (4) The Central Authority of the Requested Party shall notify the Central Authority of the Requesting Party of any action taken pursuant to this Article.
- (5) The Party that has custody over proceeds or instrumentalities of crime shall dispose of them in accordance with its law. Either Party may transfer such assets, or the proceeds of their sale, to the other Party, to the extent permitted by the transferring Party's law and upon such terms as may be agreed.

第十九條

證明和認證

轉送往要求方的文件、紀錄、或物品，只有在要求方的中心機關提出要求時，才須予以證明或認證。該等文件、紀錄、或物品，只有在要求方的法律有所規定時，才須由領事人員或外交人員證明或認證。

第二十條

其他協助

締約雙方可按照其他協定，或按照適用的法律、安排或慣例互相提供協助。

第二十一條

磋商

締約雙方的中心機關須作適當的磋商，以促使本協定得到最有效的運用。雙方的中心機關也可視乎需要而商定實際的措施，以便本協定得以順利執行。

Article 19

Certification and Authentication

Documents, records, or items to be transmitted to the Requesting Party shall only be certified or authenticated if the Central Authority of the Requesting Party so requests. Such documents, records, or items shall be certified or authenticated by consular or diplomatic officers only if required by the law of the Requesting Party.

Article 20

Other Assistance

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

Article 21

Consultation

The Central Authorities of the Parties shall consult as appropriate to promote the most effective use of this Agreement. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Agreement.

第二十二條

解決爭議

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

第二十三條

生效及終止

- (1) 本協定將於締約雙方以書面通知對方已各自履行為使本協定生效的規定之日後 30 天開始生效。
- (2) 無論有關的作為或不作為是否在本協定生效之前發生，本協定都適用於有關的要求。
- (3) 締約一方可以書面通知締約另一方終止本協定。在此情況下，本協定於締約另一方接獲通知三個月後失效。但在接獲終止協定通知前已接獲的提供協助要求，則仍須按照協定的條款處理，如同協定仍然生效。

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。

本協定於一九九七年四月十五日在香港簽訂，一式兩份，每份均用中文及英文寫成，兩種文本均同等作準。

Article 22

Resolution 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 23

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 whether or not the relevant acts or omissions occurred prior to this Agreement's entry into force.
- (3) Either Party may terminate this Agreement by giving notice to the other in writing. In that event, the Agreement shall cease to have effect three months after the date of the receipt of such notice. Requests for assistance that have been received prior to receipt of notice of termination of the 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 authorized by their respective Governments, have signed this Agreement.

附件

締約雙方認識到在涉及例如販毒、劫機及其他恐怖活動罪行；違反保護知識產權法律的罪行；以及涉及非法入境的罪行的有關調查、檢控和訴訟方面互相提供廣泛的司法協助的重要性。此外，締約雙方同意就有關以下各類罪行的調查、檢控和訴訟提供協助，不論被指稱構成罪行的作為或不作為在被要求方的法律規定下會否構成罪行：

- (1) 違反有關清洗黑錢的法律的罪行；
- (2) 對政府的詐騙行為，包括實際上剝奪政府或其機構的金錢、有價值的財產或不受虛假陳述及瞞騙的情況下執行其事務的能力的行為；
- (3) 第一條第(3)款所包括的罪行；
- (4) 違反有關對外貪污行為的法律的罪行；
- (5) 有關出口管制的罪行，包括規避有關管制貨品或武器出口的法律的行為，以及違反有關管制任何類別貨品的出口或進口的法律的其他罪行；
- (6) 刑事性剝削兒童，無論為性或其他目的，包括兒童色情方面的商業交易；
- (7) 違反有關有組織罪行及敲詐勒索的法律的罪行；及

ANNEX

DONE at Hong Kong this fifteenth day of April 1997 in duplicate, in the Chinese and English languages, both texts being equally authentic.

The Parties recognize the importance of providing broad mutual legal assistance in relation to investigations, prosecutions, and proceedings concerning offences such as trafficking in narcotic drugs, hijacking and other terrorist offences, offences against the laws protecting intellectual property, and offences relating to illegal immigration. In addition, the Parties agree to provide assistance in investigations, prosecutions, and proceedings concerning the following offences without regard to whether the acts or omissions alleged to constitute the offence would constitute an offence under the laws of the Requested Party:

- (1) offences against the laws relating to money laundering;
- (2) fraud against the government, including behaviour that has the effect of depriving the government or its agencies of money, valuable property, or the ability to conduct its affairs free from false statements and deceit;
- (3) offences covered by Article 1(3);
- (4) offences against the laws relating to foreign corrupt practices;
- (5) export control offences, including conduct tending to evade the laws controlling the export of goods or arms, and other offences against the laws relating to the control of exportation or importation of goods of any type;
- (6) criminal exploitation of children, whether for sexual or other purposes, including commercial dealing in child pornography;
- (7) offences against the laws relating to organized crime and racketeering; and

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附表 1

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- (8) 經締約雙方的中心機關磋商後不時通過交換外交照會而商定的其他罪行。
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- (8) such further offences as may from time to time be agreed upon by exchange of diplomatic notes following consultation between the Central Authorities.
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附表 2

Schedule 2

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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)(g) 條須加以變通而以下文代替 ——
“(g) 該項請求關乎某作為或不作為，而假使** 該作為或不作為 ——
(i) 假使* 在香港發生，便不會構成香港罪行；或*
(ii) 並不構成符合以下說明的相互法律協助的安排的附件中述及的外地罪行 ——
(A) 該等安排是適用於香港政府以及美利堅合眾國政府的；及
(B) 有一份該等安排的副本附錄於《刑事事宜相互法律協助(美利堅合眾國)令》(1999 年第 278 號法律公告)附表 1。*”。
2. 本條例第 17(3)(b) 條須加以變通而以下文代替 ——
“(b) 該人在有機會離開香港的情況下** 有機會離開香港而在自他有該機會起計的 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。”。
3. 本條例第 23(1)(d) 條須加以變通而以下文代替 ——
“(d) 律政司司長* 信納 ——

Schedule 2

[s. 2]

Modifications to the Ordinance

1. Section 5(1)(g) of the Ordinance shall be modified to read as follows—
“(g) the request relates to an act or omission that—
(i)* if it had occurred in Hong Kong, would not have constituted a Hong Kong offence; or*
(ii) does not constitute an external offence described in the Annex to the arrangements for mutual legal assistance—
(A) which are applicable to the Government of Hong Kong and the Government of the United States of America; and
(B) a copy of which is annexed at Schedule 1 to the Mutual Legal Assistance in Criminal Matters (United States of America) Order (L.N. 278 of 1999).*”。
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 Attorney General** Secretary for Justice* to be a criminal matter

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附表 2

Schedule 2

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- (i) 該地方已就第(2)款提述的事宜作出充分(不論是否無約制)的承諾，並已給予該囚犯或其他人該等承諾的副本，而該囚犯或其他人隨後已同意在該地方給予上述協助*；及~~** 或 *~~
- ~~(ii) 該囚犯或其他人已獲給予該等承諾的副本並已隨後同意在該地方給予上述協助→**~~
- (ii) 該地方並沒有就第(2)款提述的所有事宜作出充分的承諾，並已給予該囚犯或其他人該等承諾的副本和已對他就並無作出充分承諾的事宜的性質作出通知，而該囚犯或其他人隨後已同意在該地方給予上述協助，**。

* 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)。

in relation to which it is desirable that the person give assistance.”.

3. Section 23(1)(d) of the Ordinance shall be modified to read as follows—

“(d) the ~~Attorney General~~** Secretary for Justice* is satisfied that—

(i) the place has given adequate (whether or not unqualified) undertakings in respect of the matters referred to in subsection (2) and the prisoner or other person has been given a copy of those undertakings and has subsequently consented to giving such assistance in that place*; and~~** or*~~

~~(ii) the prisoner or other person has been given a copy of those undertakings and has subsequently consented to giving such assistance in that place,**~~

(ii) the place has not given adequate undertakings in respect of all the matters referred to in subsection (2) and the prisoner or other person has been given a copy of those undertakings, advised as to the nature of the matters in respect of which adequate undertakings have not been given and has subsequently consented to giving such assistance in that place,**.

* 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).