

《刑事事宜相互法律協助(南非)令》
(第 525 章, 附屬法例 AC)

Mutual Legal Assistance in Criminal Matters (South Africa) Order
(Cap. 525 sub. leg. AC)

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經核證文本
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條文 Provision	頁數 Page number	最後更新日期 Last updated date
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附表 1 Schedule 1	S1-1—S1-38	9.2.2012
附表 2 Schedule 2	S2-1—S2-4	9.2.2012

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

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《刑事事宜相互法律協助(南非)令》

(第 525 章, 附屬法例 AC)

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Mutual Legal Assistance in Criminal Matters (South Africa) Order

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《刑事事宜相互法律協助(南非)令》

(第 525 章第 4 條)

(略去制定語式條文——2012 年第 1 號編輯修訂紀錄)

[2011 年 12 月 2 日] 2011 年第 163 號法律公告

(格式變更——2012 年第 1 號編輯修訂紀錄)

1. (已失時效而略去——2012 年第 1 號編輯修訂紀錄)

2. 本條例在香港與南非之間適用

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，在香港與南非共和國之間適用。

Mutual Legal Assistance in Criminal Matters (South Africa) Order

(Cap. 525, section 4)

(Enacting provision omitted—E.R. 1 of 2012)

[2 December 2011] L.N. 163 of 2011

(Format changes—E.R. 1 of 2012)

1. (Omitted as spent—E.R. 1 of 2012)

2. Ordinance to apply between Hong Kong and South Africa

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 Republic of South Africa.

附表 1

[第 2 條]

《中華人民共和國香港特別行政區政府與南非共和國政府關於刑事事宜相互法律協助的協定》

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，與南非共和國政府，

為加強雙方在偵查、檢控及防止罪案及沒收犯罪得益方面的執法效能，並互相給予在刑事事宜上的最大程度的合作；

協議如下：

第一條

提供協助的範圍

Schedule 1

[s. 2]

Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of South Africa 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 Republic of South Africa;

Desiring to extend to each other the widest measure of co-operation in criminal matters and 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:

ARTICLE 1

SCOPE OF ASSISTANCE

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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相互協助。

(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) 提供的協助，包括：

(2) Assistance shall include:

(a) 辨認和追尋有關的人；

(a) identifying and locating persons;

(b) 送達文件；

(b) serving of documents;

(c) 取得和交付陳述、證據、物件或文件，包括執行調查委託書及借出證物；

(c) the obtaining and delivery of statements, evidence, articles or documents, including the execution of letters rogatory and lending of exhibits;

(d) 執行搜查和檢取的請求；

(d) executing requests for search and seizure;

(e) 安排證人親自出庭；

(e) facilitating the personal appearance of witnesses;

(f) 安排暫時移交被羈押的人以證人身份出庭；

(f) effecting the temporary transfer of persons in custody to appear as witnesses;

(g) 取得司法或官方紀錄的交出；

(g) obtaining production of judicial or official records;

(h) 追查、限制、充公和沒收犯罪活動得益和犯罪工具；及

(h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of criminal activities; and

(i) 提供資料、文件和紀錄。

(i) providing information, documents and records.

(3) 根據本協定可就與違反稅項、關稅、外匯管制或其他稅收方面的法律有關的罪行提供協助，但不可就與上述罪行有關的非刑事法律程序提供協助。

(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 relating thereto.

(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。

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(5) 締約雙方可依據其他協定、安排或慣例而提供協助。

(4) This Agreement is intended solely for mutual assistance between the Parties. The provisions of this Agreement shall not give rise to any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of a request.

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

第二條

ARTICLE 2

中心機關

CENTRAL AUTHORITY

(1) 根據本協定提出的請求須由請求方的中心機關向被請求方的中心機關提出。

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

(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。南非共和國的中心機關為司法及憲法發展部檢察總長。締約任何一方均可隨時更改其中心機關，但須將有關更改通知對方。

(2) The Central Authority of the Hong Kong Special Administrative Region shall be the Secretary for Justice or his or her duly authorised officer. The Central Authority for the Republic of South Africa shall be the Director-General of the Department of Justice and Constitutional Development. Either Party may, at any time, change its Central Authority in which case it shall notify the other of the change.

(3) 中心機關之間可就本協定的事宜直接通訊。

(3) The Central Authorities may communicate directly with one another for the purposes of this Agreement.

第三條

ARTICLE 3

履行協定的限制

LIMITATIONS ON COMPLIANCE

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- (1) 如有以下情況，被請求方須拒絕提供協助：
- (a) 協助請求會損害南非共和國的主權、安全或公共秩序，或就香港特別行政區政府而言，會損害中華人民共和國的主權、安全或公共秩序；
 - (b) 協助請求關乎屬政治性質的罪行；
 - (c) 協助請求關乎在軍法下的罪行，而該罪行在被請求方的普通刑事法下不屬罪行；
 - (d) 有充分理由相信協助請求將會引致某人因其種族、性別、宗教、國籍或政治見解而蒙受不利；
 - (e) 協助請求關乎對某人的檢控，而該人已因同一罪行在請求方或被請求方被定罪、裁定無罪或赦免，或按照請求方的法律，因時效消失而不能再被檢控；
 - (f) 執行請求會不利於被請求方的公共秩序或類似的基要利益；
 - (g) 請求方不能遵守任何關於保密或限制使用獲提供的物料的條件；
 - (h) 執行請求或會不利於證人或受害人的安全；或
 - (i) 如屬南非共和國提出的請求，被指稱構成罪行的作為或不作為，如在香港特別行政區的司法管轄區內發生，並不構成罪行。
- (2) 如有關請求關乎在請求方屬可判死刑的罪行，但被請求方並無判處死刑的規定，或通常不會執行死刑，則除非請求方作出被請求

- (1) The Requested Party shall refuse assistance if:
- (a) the request for assistance impairs the sovereignty, security or public order of the Republic of South Africa or, in the case of 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 under military law which would not be an offence under the ordinary criminal law of the Requested Party;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, gender, 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 Requesting or Requested Party or for which the person could no longer be prosecuted by reason of lapse of time according to the law of the Requesting Party;
 - (f) the execution of the request would prejudice the public order or similar essential interests of the Requested Party;
 - (g) the Requesting Party cannot comply with any conditions in relation to confidentiality or limitation as to the use of material provided;

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方認為充分的保證，即有關的人將不會被判死刑，或即使被判死刑亦不會執行，否則被請求方可拒絕提供協助。

(3) 在請求方按照本條第(2)段提供保證的情況下，如請求方的法院判處死刑，亦不予執行。

(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。

(5) 在依據本條拒絕或暫緩提供協助前，被請求方須通過其中心機關：

- (a) 迅速將考慮拒絕或暫緩提供協助的理由知會請求方；及
- (b) 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) 請求方如接納在第(5)(b)款所述條款及條件的規限下接受協助，則須遵守該等條款及條件。

(h) the execution of the request may prejudice the safety of witnesses or victims; or

(i) in the case of a request by the Republic of South Africa the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Hong Kong Special Administrative Region, have constituted an offence.

(2) The Requested Party may refuse assistance if the request relates to an offence which carries the death penalty in the Requesting Party but in respect of which the death penalty is either not provided for in the Requested Party or not normally carried out unless the Requesting Party gives such assurances as the Requested Party considers sufficient that the death penalty will not be imposed or, if imposed, not carried out.

(3) In instances in which the Requesting Party provides an assurance in accordance with paragraph (2) of this Article, the death penalty, if imposed by the courts of the Requesting Party, shall 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

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第四條

請求

- (1) 請求須以書面提出。
- (2) 協助請求須包括：
 - (a) 請求方代其提出請求的機關的名稱；
 - (b) 對該項請求的目的及所需協助性質的描述；
 - (c) 對該項偵查、檢控、罪行或刑事事宜性質的描述，及說明是否已提起法律程序；
 - (d) 如已提起法律程序，說明法律程序的細節；
 - (e) 有關事實及法律的撮要；
 - (f) 有關保密的任何要求；
 - (g) 請求方希望得以遵循的任何特別程序的細節；及

- (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) of this Article, it shall comply with those terms and conditions.

ARTICLE 4

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;
 - (c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;
 - (d) where proceedings have been instituted, details of the proceedings;
 - (e) a summary of the relevant facts and laws;

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- (h) 履行請求的時限的細節。
- (3) 在有必要及可能的範圍內，請求亦須包括：
- (a) 關於任何被要求提供證據的人的身分及所在的資料；
- (b) 關於被送達文件的人的身分及所在、該人與有關法律程序的關係以及送達方式的資料；
- (c) 關於所追尋的人的身分及下落的資料；
- (d) 要搜查的地方或人及要檢取的物品的確切描述；
- (e) 對錄取及記錄任何證供或陳述的方式的描述；
- (f) 列明擬向證人提出的問題；
- (g) 對執行請求時須遵循的任何特別程序的描述；
- (h) 關於被請求在請求方出席的人將有權獲得的津貼及開支的資料；
- (i) 有助於執行該項請求的任何其他資料；及
- (j) 須執行的法院命令(如有的話)或該命令的經核證文本，以及說明有關命令是最終命令的陳述。
- (4) 除非請求方另作授權，否則被請求方須盡其所能將請求及其內容保密，並須在有需要時確保證人及受害人的安全。倘若無法在不違反保密要求的情況下執行請求，則被請求方的中心機關須將此事告知請求方的中心機關，由請求方的中心機關決定是否仍須執行請求。

- (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) To the extent necessary and possible, a request shall also include:
- (a) information in respect of the identity and location of any person from whom evidence is sought;
- (b) information on the identity and location of any person to be served, that person's relationship to the proceedings, and the manner in which service is to be effected;
- (c) information on the identity and whereabouts of any person to be located;
- (d) a precise description of any place or person to be searched and of any articles to be seized;
- (e) a description of the manner in which any testimony or statement is to be taken and recorded;
- (f) a list of questions to be asked of a witness;
- (g) a description of any particular procedure to be followed in executing the request;

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(5) 為支持請求而提交的所有文件，必須以被請求方所接納的語文寫成或翻譯為該語文。

- (h) information as to the allowances and expenses to which a person asked to appear in the Requesting Party will be entitled;
- (i) any other information to facilitate execution of the request; and
- (j) a court order if any, or certified copy thereof, which is to be enforced and a statement to the effect that it is a final order.

(4) Except when otherwise authorized by the Requesting Party, the Requested Party shall use its best efforts to keep confidential a request and its contents and shall where necessary ensure the safety of witnesses and victims. 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.

(5) All documents submitted in support of a request shall be in or translated into a language acceptable to the Requested Party.

第五條

ARTICLE 5

執行請求

EXECUTION OF REQUESTS

(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。

(1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.

(2) 請求須按照被請求方的法律予以執行。請求所指明的執行方法，除非為被請求方的法律所禁止，否則須予遵循。

(2) Requests shall be executed in accordance with the law of the Requested Party. However, the method of execution specified in the request

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(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) 被請求方須迅速將全部或部分不履行協助請求的決定及作出該決定的理由知會請求方。

(5) 請求方的中心機關如就執行請求的進展情況提出合理的查詢，被請求方的中心機關須作出回應。

shall be followed except insofar as it is not permitted by the law of the Requested Party.

(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.

(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.

(5) The Central Authority of the Requested Party shall respond to reasonable inquiries by the Central Authority of the Requesting Party concerning progress towards the execution of the request.

第六條

ARTICLE 6

代表及開支

REPRESENTATION AND EXPENSES

(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，及須在任何情況下代表請求方的利益。

(2) 被請求方須承擔在其境內執行請求的所有一般性開支，但下述項目除外：

- (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；

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

(2) The Requested Party shall assume all ordinary expenses of executing a request within its boundaries, except:

- (a) fees of counsel retained at the request of the Requesting Party;
- (b) fees of experts;

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(d) 謄本的開支；及

(e) 有關的人的交通開支及津貼。

(3) 在執行請求期間，如察覺需支付非一般性開支(包括管理財產的開支)，以履行有關請求，締約雙方須進行磋商，以決定繼續執行請求的條款及條件。

(c) expenses of translation;

(d) expenses of transcription; and

(e) travel expenses and allowances of persons.

(3) If during the execution of the request it becomes apparent that expenses of an extraordinary nature, including the expense of managing property, 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.

第七條

ARTICLE 7

使用限制

LIMITATIONS OF USE

(1) 被請求方在與請求方磋商後，可要求將所提供的資料或證據保密，或只限在被請求方所指明的條款及條件的規限下方可透露或使用該等資料或證據。

(2) 未經被請求方中心機關事先同意，請求方不得透露或使用獲提供的資料或證據作請求所述以外的用途。

(3) 如根據請求方的法律須使用或透露任何資料，則本條並不排除在此情況下使用或透露該等資料。請求方須將擬在此情況下透露資料一事預先告知被請求方。

(1) The Requested Party may require, after consultation with the Requesting Party, that information or evidence furnished be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.

(2) The Requesting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request without the prior consent of the Central Authority of the Requested Party.

(3) Nothing in this Article shall preclude the use or disclosure of information to the extent that there is an obligation to do so under the law of the Requesting Party. The Requesting Party shall notify the Requested Party in advance of any such proposed disclosure.

第八條

ARTICLE 8

取得證據、物品或文件

OBTAINING OF EVIDENCE, ARTICLES OR DOCUMENTS

- (1) 請求方如就在其司法管轄區內的刑事事宜的偵查、檢控或法律程序提出取證請求，被請求方須安排取得有關證據。
- (2) 向南非共和國的中心機關提出的關乎取得證據的協助請求，須附有由香港特別行政區的中心機關作出的或由他人代其作出的陳述，證明：
 - (a) 有關法律程序已於在香港特別行政區行使司法管轄權的法院或審裁處提起；或
 - (b) 有合理理由相信某項罪行已於香港特別行政區發生或必需確定某項罪行是否已如此發生，以及正於香港特別行政區就該罪行進行偵查。
- (3) 就本協定而言，作證或取證包括交出文件、紀錄或其他物料。
- (4) 凡某人依據一項協助請求而須為在請求方進行的法律程序作證，則在請求方進行有關法律程序的各方及其法律代表或請求方的代表，可在被請求方的法律的規限下出席，並在該人作證時向其發問。
- (5) 依據協助請求而需在被請求方作證的人，可在以下情況下拒絕作證：
 - (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作證；或

- (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 in the jurisdiction of the Requesting Party, the Requested Party shall arrange to have such evidence taken.
- (2) A request for assistance in obtaining evidence made to the Central Authority of the Republic of South Africa shall be accompanied by a statement by or on behalf of the Central Authority of the Hong Kong Special Administrative Region in which it is certified:
 - (a) that proceedings have been instituted in a court or tribunal exercising jurisdiction in the Hong Kong Special Administrative Region; or
 - (b) that there are reasonable grounds for believing that an offence has been committed in the Hong Kong Special Administrative Region or that it is necessary to determine whether an offence has been so committed, and that an investigation in respect thereof is being conducted in the Hong Kong Special Administrative Region.
- (3) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.
- (4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the

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(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作證。

(6) 如任何人聲稱有權根據請求方的法律拒絕作證，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為憑據。

(7) 請求方可要求按照其請求所指明的規定，核證根據本條在被請求方交出的文件、紀錄及其他物件或屬於根據本條在被請求方錄取之證供之標的之文件、紀錄及其他物件。

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 a right to decline to give evidence under the law of the Requesting Party, the Requested Party shall with respect thereto rely on a certificate of the Central Authority of the Requesting Party.

(7) The Requesting Party may request that documents, records, and any other items that are produced or that are the subject of evidence taken under this Article in the Requested Party be certified in accordance with requirements specified in the request.

第九條

ARTICLE 9

交還物件及物品

RETURN OF ITEMS AND OBJECTS

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被請求方的中心機關可要求請求方的中心機關盡快交還任何因根據本協定執行請求而向其提供的物件或物品(包括文件、紀錄或證物)。

The Central Authority of the Requested Party may require that the Central Authority of the Requesting Party return any item or object, including documents, records, or articles of evidence furnished to it in execution of a request under this Agreement as soon as possible.

第十條

ARTICLE 10

送達文件

SERVICE OF DOCUMENTS

- (1) 請求方交付送達的任何文件，被請求方須盡其所能予以送達。
- (2) 如送達文件的請求與被送達人作出回應或在請求方出席有關，請求方須於預定回應或出席的日期前的一段合理時間內交付請求。
- (3) 如送達文件的請求與被送達人在請求方的出席有關，則請求方的中心機關須在合理情況下，盡可能在請求內提供在刑事事宜中針對被送達人的待執行手令或其他法庭命令的有關資料。
- (4) 被請求方須在其法律的規限下，按請求方要求的形式，交回送達證明。
- (5) 如有法律文件規定被送達人在請求方出席，而該人沒有遵守該規定，請求方或被請求方不得因此而處罰該人或向其施加強制措施。

- (1) The Requested Party shall use its best efforts to effect service of any document transmitted to it for the purpose of service.
- (2) The Requesting Party shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting Party 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 information 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 proof of service in the manner required by the Requesting Party.
- (5) A person who fails to comply with any process served on him or her which requires his or her appearance in the Requesting Party shall not if he or she fails to appear, be liable to any penalty or coercive measures in the Requesting Party or Requested Party.

第十一條

可供公眾取閱的文件和官方文件

- (1) 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文件、紀錄或資料，被請求方可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。

第十二條

核證和認證

交付往請求方的文件、謄本、紀錄、陳述、法院命令或其他物料，並屬請求方要求予以認證者，則：

- (a) 如看來經被請求方的中心機關簽署或經他人代其簽署，即屬已予認證；及
- (b) 僅在請求方的法律有所規定的情況下，始需由領事人員或外交人員核證或認證。

ARTICLE 11

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 12

CERTIFICATION AND AUTHENTICATION

Documents, transcripts, records, statements, court orders or other material which are to be transmitted to the Requesting Party, and which the Requesting Party requires to be authenticated:

- (a) are authenticated if they purport to be signed by or on behalf of the Central Authority of the Requested Party; and
- (b) need be certified or authenticated by consular or diplomatic officers only if the law of the Requesting Party so requires.

第十三條

ARTICLE 13

移交被羈押的人

TRANSFER OF PERSONS IN CUSTODY

(1) 請求方如要求把羈押在被請求方的人移交給請求方，以按本協定提供協助，而被請求方及該人均同意，且請求方又保證把該人繼續羈押及在事後送還給被請求方，則須把該人移交給請求方以提供有關的協助。被移交的人在請求方被羈押期間，須當作繼續就他在被請求方被判的刑罰服刑。

(1) A person in custody in the Requested Party whose presence is required in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall, if the Requested Party consents, be transferred from the Requested Party to the Requesting Party for that purpose, provided the person consents and the Requesting Party has guaranteed the maintenance in custody of the person and his subsequent return to the Requested Party. The person transferred shall, whilst in custody in the Requesting Party, be regarded as continuing to serve the sentence imposed in the Requested Party.

(2) 如根據本條被移交的人的監禁刑期相當可能於該人身在請求方的司法管轄區時屆滿，被請求方須就此事告知請求方，而請求方須確保把該人於刑期屆滿時獲得釋放。

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

第十四條

ARTICLE 14

移交其他人

TRANSFER OF OTHER PERSONS

(1) 請求方可請求被請求方協助安排某人按本協定提供協助。

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

(2) 被請求方如信納請求方在該人的保安方面會作出妥善安排，則須請求該人前往請求方提供協助。

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第十五條

安全通行

- (1) 同意依據第十三或十四條提供協助的人，不得因其在離開被請求方前所犯任何刑事罪行或所涉民事事宜而在請求方被檢控、拘留或被限制人身自由。
- (2) 如有關的人並非根據第十三條移交的被羈押的人，且本可自由離去，但在該人接獲通知毋須再逗留後 15 天內仍未離開請求方，或在離開請求方後返回，則第 (1) 款不適用。
- (3) 同意根據第十三或十四條作證的人，不得因其所作證供而遭受檢控，但犯偽證罪及藐視法庭罪則不在此限。
- (4) 同意依據第十三或十四條提供協助的人，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。
- (5) 任何人不同意依據第十三或十四條提供協助，請求方或被請求方的法院不得因此而處罰該人或向其施加強制措施。

ARTICLE 15

SAFE CONDUCT

(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.

(1) A person who consents to provide assistance pursuant to Articles 13 or 14 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 13, and being free to leave, has not left the Requesting Party within a period of 15 days after being notified that his presence is no longer required, or having left the Requesting Party, has returned.

(3) A person who consents to give evidence under Articles 13 or 14 shall not be subject to prosecution based on his testimony, except for perjury or contempt of court.

(4) A person who consents to provide assistance pursuant to Articles 13 or 14 shall not be required to give evidence in any proceedings other than the proceedings to which the request relates.

(5) A person who does not consent to provide assistance pursuant to Articles 13 or 14 shall not by reason thereof be liable to any penalty or coercive measure by the courts of the Requesting Party or Requested Party.

第十六條

ARTICLE 16

搜查及檢取

SEARCH AND SEIZURE

- (1) 請求方如請求搜查、檢取及交付與刑事事宜的法律程序或偵查有關的物料，被請求方在本身法律容許的範圍內，須執行該請求。
- (2) 請求方如要求提供與搜查的結果、檢取財產的地點、情況以及檢獲財產的保管有關的資料，被請求方須予提供。請求方可要求每名曾負責保管檢獲物件的人員，按照有關請求內所指明的規定，核證有關物件的辨認資料、保管的持續期以及完好狀況。
- (3) 被請求方如把檢獲財產交付請求方，請求方須遵循被請求方就該等財產施加的任何條件。

(1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party 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. 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 requirements specified in the request.

(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.

第十七條

ARTICLE 17

犯罪得益

PROCEEDS OF CRIME

- (1) 如請求方提出請求，被請求方須盡力查明是否有任何因觸犯請求方法律而得來的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。

(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

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(2) 被請求方如根據第(1)款尋獲涉嫌犯罪得益，則須採取法律容許的措施，防止任何人處理、轉讓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，被請求方須藉任何適當方法提供協助。協助的方法可包括就請求關乎的得益強制執行請求方法院作出的命令、提起法律程序或在有關的法律程序中提供協助。

(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。

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.

第十八條

ARTICLE 18

解決爭議

SETTLEMENT OF DISPUTES

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藉磋商而解決，則締約雙方須經相互同意而通過外交途徑解決。

If any dispute arising out of the interpretation, application or implementation of this Agreement cannot be resolved through consultation between the Central Authorities of the Parties, the Parties shall by mutual consent resort to diplomatic channels.

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第十九條

ARTICLE 19

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各自履行為使本協定生效的規定的日期起計 30 天後開始生效。
- (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。

- (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) Either Party 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.

本協定於二零零九年二月二十日在香港簽訂。協定文本以中文及英文寫成，各文本均具同等效力。

Done at Hong Kong, this 20th day of February, Two thousand and Nine in the Chinese and English languages, each text being equally authentic.

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附表 2

[第 2 條]

對本條例作出的變通

1. 本條例第 5(1)(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，而因為時限已過，根據該地方的法律，該項檢控不再能夠在該地方提出；*”。

Schedule 2

[s. 2]

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, gender,* religion, nationality 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 can no longer be prosecuted in the place by reason of lapse of time under the law of the place;*”。

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4. 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他已無須為下述任何目的逗留，但他沒有在接獲該通知後的 15 天內離開香港*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。”。

* 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)。

4. 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.”.

* 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).