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Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the Hong Kong Special Administrative
Region of the People's Republic of China

concerning Mutual Legal Assistance in Criminal Matters

Hong Kong, 23 January 1998

[The Agreement entered into force on 9 February 2002]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
April 2002*

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA CONCERNING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") and 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;

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

Have agreed as follows:

ARTICLE 1

Scope of Assistance

- (1) The Parties shall provide, in accordance with the provisions of this Agreement, mutual assistance in the investigation and prosecution of crime and in proceedings related to criminal matters.
- (2) Assistance shall include:
 - (a) identifying and locating persons;
 - (b) serving of documents;
 - (c) the obtaining of evidence, articles or documents, including the execution of letters rotagory;
 - (d) executing requests for search and seizure;
 - (e) facilitating the personal appearance of witnesses;
 - (f) effecting the temporary transfer of persons in custody to appear as witnesses;
 - (g) obtaining production of judicial or official records;
 - (h) tracing, restraining, forfeiting and confiscating the proceeds and instrumentalities of crime;
 - (i) providing information, documents and records; and
 - (j) delivery of property, including lending of exhibits.
- (3) 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.

ARTICLE II

Central Authority

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for the Hong Kong Special Administrative Region shall be the Department of Justice. The Central Authority for the United Kingdom shall be the Home Office.
- (3) Requests under this Agreement shall be made by the Central Authority of the Requesting Party to the Central Authority of the Requested Party.

ARTICLE III

Other Assistance

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

ARTICLE IV

Limitations on Compliance

- (1) The Requested Party shall refuse assistance if:
 - (a) the request for assistance impairs the sovereignty, security or public order of the United Kingdom or, in the case of the Government of the Hong Kong Special Administrative Region, of the People's Republic of China.
 - (b) the request for assistance relates to an offence of a political character;
 - (c) the request for assistance relates to an offence only under military law;
 - (d) there are substantial grounds for believing that the request for assistance will result in a person being prejudiced on account of his race, religion, nationality or political opinions;
 - (e) the request for assistance relates to the prosecution of a person for an offence in respect of which the person has been convicted, acquitted or pardoned in the requested Party or for which the person could no longer be prosecuted by reason of lapse of time if the offence had been committed within the jurisdiction of the requested Party;
 - (f) it is of the opinion that the granting of the request would seriously impair its essential interests;
 - (g) the acts or omissions alleged to constitute the offence would not, if they had taken place within the jurisdiction of the Requested Party, have constituted an offence; and
 - (h) the request concerns restraint or confiscation of proceeds or instrumentalities of an offence which, had it occurred within the jurisdiction of the Requested Party, would not have been an offence in respect of which a confiscation order could have been made.
- (2) For the purposes of paragraph (1)(f), the Requested Party may take into account whether the provision of assistance could prejudice the safety of any person.
- (3) For the purposes of paragraph (1)(g):
 - (a) the totality of the acts or omissions alleged to constitute the offence against the law of the Requesting State shall be considered and not merely the legal elements of that offence;
 - (b) for offences relating to taxes, duties, or customs controls, 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.

(4) The Requested Party shall 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.

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

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

(a) shall promptly inform the Requesting Party of the reason for considering denial or postponement; and

(b) shall consult with the Requesting Party to determine whether the assistance sought should only be granted in part or subject to such terms and conditions as the Requested Party deems necessary.

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

ARTICLE V

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 within 24 hours.

(2) Requests for assistance shall include:

(a) the name of the authority on behalf of which the request is made;

(b) a description of the purpose of the request and the nature of the assistance requested;

(c) a description of the nature of the investigation, prosecution, offence or criminal matter and whether or not proceedings have been instituted;

(d) the court order, if any, or a certified copy thereof, sought to be enforced and a statement to the effect that it is a final order;

(e) where proceedings have been instituted, details of the proceedings;

(f) a summary of the relevant facts and laws;

(g) any requirements for confidentiality;

(h) details of any particular procedure the Requesting Party wishes to be followed;

(i) details of the period within which the request should be complied with; and

(j) the identity of the person or persons to be or being investigated or prosecuted.

(3) All documents submitted in support of a request shall, if required by the Requested Party, be accompanied by a translation into an official language of the Requested Party.

ARTICLE VI

Execution of Requests

- (1) The Central Authority of the Requested Party shall promptly execute the request or arrange for its execution through its competent authorities.
- (2) A request shall be executed subject to the law of the Requested Party and, to the extent not prohibited by the law of the Requested Party, in accordance with the directions stated in the request so far as practicable.
- (3) The Requested Party shall promptly inform the Requesting Party of any circumstances which are likely to cause 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.

ARTICLE VII

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 assume all expenses of executing a request within its jurisdiction, except:
 - (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; and
 - (e) other expenses to the extent that these are of an extraordinary nature.

The Requested Party shall decide which expenses other than expenses at (a) to (d) in this paragraph are expenses of an extraordinary nature.

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

ARTICLE VIII

Limitations on Use

- (1) The Requested Party shall use its best efforts to keep confidential a request and its contents except:
 - (a) where otherwise authorised by the Requesting Party; or
 - (b) to the extent necessary to execute the request.
- (2) Except in relation to any document which the Requesting Party is or would be under a legal duty in criminal proceedings to disclose, the Requested Party, after consultation with the Requesting Party, may require that information or evidence furnished or to be furnished pursuant to this Agreement be kept confidential or be disclosed or used only subject to such terms and conditions as it may specify.
- (3) Except in relation to any document which the Requesting Party is under a legal duty in criminal proceedings to disclose, 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.

(4) Where the Requesting Party indicates that it would be unable to comply with any conditions in relation to confidentiality or limitation as to disclosure or use of any information or evidence were it to be furnished under this Agreement, the Requested Party may refuse assistance.

ARTICLE IX

Obtaining of Evidence, Articles or Documents

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

(2) For the purposes of this Agreement, the giving or taking of evidence shall include the production of documents, records or other material.

(3) For the purposes of requests under this Article, the Requesting Party shall specify the questions to be put to the witnesses or the subject matter about which they are to be examined.

(4) Where, pursuant to a request for assistance, a person is to give evidence for the purpose of proceedings in the Requesting Party, the 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.

ARTICLE X

Statements of Persons

Where a request is made to obtain the statement of a person the Requested Party shall endeavour to obtain such statement.

ARTICLE XI

Location or Identity of Persons

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

ARTICLE XII

Service of Documents

- (1) The Requested Party shall serve any subpoena or other process requiring the appearance of any person as a witness or defendant in criminal proceedings before a court of the Requesting Party and any document issued by a court exercising criminal jurisdiction which records a decision of that court and which is transmitted to it for the purposes of service.
- (2) The Requesting Party shall transmit a request for the service of a document in the Requesting Party within a reasonable time before a response or appearance is due.
- (3) The Requested Party shall, subject to its law, provide a proof of service in the manner required by the Requesting Party.

ARTICLE XIII

Publicly Available and Official Documents

- (1) Subject to its law the Requested Party shall provide copies of the following documents within its jurisdiction:
 - public records;
 - publicly available judicial records.
- (2) The Requested Party may at its discretion 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 XIV

Certification and Authentication

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

ARTICLE XV

Transfer of Persons in Custody

A person in custody in the Requested Party whose presence is requested in the Requesting Party for the purposes of providing assistance pursuant to this Agreement shall, if the Requested Party consents, be transferred from that Party to the Requesting Party for that purpose, provided:

- (a) the person consents; and
- (b) the Requesting Party has guaranteed the maintenance in custody of the person while the sentence of imprisonment remains in force; and
- (c) the Requesting Party has guaranteed such person's subsequent return to the Requested Party.

ARTICLE XVI

Transfer of other Persons

- (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) Upon receipt of such a request the Requested Party shall invite the person to travel to the Requesting Party and inform the Requesting Party of the person's response.

ARTICLE XVII

Safeguards

- (1) A person who consents to provide assistance pursuant to this Agreement shall not be prosecuted, detained, or restricted in his personal liberty in the Requesting Party for any criminal offence which preceded his departure from the Requested Party while he is in the area of the Requesting Party giving assistance under this Agreement.
- (2) Paragraph (1) shall not apply if the person, not being a person in custody transferred under Article XV, and being free to leave, has not left 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 provide assistance pursuant to this Agreement shall not, subject to the law of the Requested Party, be required to give evidence in any proceedings other than the proceedings to which the request relates.
- (4) A person who fails to comply with a subpoena or other process served pursuant to Article XII or who does not consent to provide assistance pursuant to Article XV or Article XVI shall not by reason thereof be liable to any penalty or coercive measure under the law of either Party.

ARTICLE XVIII

Search and Seizure

- (1) The Requested Party shall, insofar as its law permits, carry out requests for search, seizure and delivery of any material to the Requesting Party which is relevant to a proceeding or investigation in relation to a criminal matter.
- (2) The Requested Party shall provide such information as may be required by the Requesting Party concerning the result of any search, the place of seizure, the circumstances of seizure, and the subsequent custody of the property seized.
- (3) The Requesting Party shall observe any conditions as to return and safe custody imposed by the Requested Party in relation to any seized property which is delivered to the Requesting Party.

ARTICLE XIX

Proceeds of Crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instrumentalities 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 or instrumentalities may be located in its jurisdiction.

(2) Where suspected proceeds or instrumentalities 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 or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the confiscation of proceeds or instrumentalities such assistance shall be given by whatever means are permitted by the law of the Requested Party.

(4) Proceeds of crime 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:

- (a) “confiscation” means any measure resulting in the deprivation of property;
- (b) “proceeds of crime” means any property derived or realised, directly or indirectly, by any person as a result of criminal activity, or the value of any such property;
- (c) property includes money and all kinds of moveable or immoveable and tangible or intangible property and includes any interest in such property.

ARTICLE XX

Settlement of Disputes

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

ARTICLE XXI

Application of the Agreement

This Agreement shall apply:

- (1) in relation to the United Kingdom:
 - (a) to England and Wales, Scotland and Northern Ireland; and
 - (b) to any territory for whose international relations the United Kingdom is responsible and to which this Agreement shall have been extended, subject to any modifications, by an exchange of notes through the diplomatic channel; and
- (2) in relation to the Hong Kong Special Administrative Region, to the Hong Kong Special Administrative Region.

ARTICLE XXII

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) Each of the Parties may terminate this Agreement at any time by giving 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 this Agreement as if it was still in force.

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

DONE at the Hong Kong Special Administrative Region, this twenty-third day of January one thousand nine hundred and ninety eight in the English and Chinese languages, each text being equally authentic.

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

R A BURNS

For the Government of the Hong Kong
Special Administrative Region of the
People's Republic of China:

PETER LAI

大不列顛及北愛爾蘭聯合王國("聯合王國")政府與經中華人民共和國中央人民政府正式授權的中華人民共和國香港特別行政區("香港特別行政區")政府；

為加強雙方在調查和檢控罪案及索究、禁制和充公犯罪得益和犯罪工具方面的執法效能，協議如下：

第一條 提供協助的範圍

(1) 締約雙方須按照本協定，在調查和檢控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) 辨認和追尋有關的人；
- (b) 送達文件；
- (c) 取得證據、物品或文件，包括執行調查委托書；
- (d) 執行搜查和檢取物品的要求；
- (e) 安排證人親自出庭；
- (f) 安排暫時移交被拘留的人出庭作證；
- (g) 獲取司法或官方紀錄；
- (h) 索究、禁制、沒收和充公犯罪得益和犯罪工具；
- (i) 提供資料、文件和紀錄；及
- (j) 交付物品，包括借出證物。

(3) 本協定純為締約雙方互相提供協助而設。協定的條文並不給予任何個人取得、隱瞞、或排除證據，或妨礙執行協助要求的任何權利。

第二條 中心機關

- (1) 締約雙方須各自設立一個中心機關。
- (2) 香港特別行政區的中心機關為律政司。聯合王國的中心機關為內政部。
- (3) 根據本協定提出的要求須由要求方的中心機關向被要求方的中心機關提出。

第三條 其他協助

締約雙方也可按照其他協定、安排或慣例提供協助。

第四條 履行協定的限制

- (1) 如出現以下情況，被要求方應拒絕提供協助：
 - (a) 協助要求會損害聯合王國，或就香港特別行政區而言，中華人民共和國的主權、安全或公共秩序；
 - (b) 協助要求關乎政治性質的罪行；
 - (c) 協助要求關乎只在軍法下才構成的罪行；
 - (d) 有充分理由相信協助要求將會引致某人因其種族、宗教、國籍或政治意見而受到不利的待遇；
 - (e) 協助要求所涉及的被告人，已因同一罪行在被要求方的管轄區被定罪、無罪釋放或被赦免、或假若該人是在被要求方的管轄區犯該罪行，由於時效消失，不能因此再被檢控；
 - (f) 被要求方認為應允要求將會嚴重損害其本身的基本利益；

- (g) 被指稱構成罪行的作為或不作為，如在被要求方的管轄區發生，並不構成罪行；
 - (h) 涉及禁制或充公以下性質的罪行的犯罪得益或工具的要求：有關罪行如在被要求方管轄區內發生，並不構成可就其發出充公令的罪行。
- (2) 就第(1)(f)款而言，被要求方可考慮提供協助會否不利於任何人的安全。
- (3) 就第(1)(g)款而言：
- (a) 應考慮被指稱構成觸犯要求方法律的作為或不作為的總體情況，而非只是考慮該罪行的法律因素；
 - (b) 在涉及稅項、應課稅品稅項或海關管制的罪行方面，被要求方的法律並無徵收相同的稅項或應課稅品稅項的規定，或設相同的海關管制，或其法律並無與要求方法律所載相同的稅項、應課稅品稅項或海關方面的規例，這一點並不具關鍵性。
- (4) 如有關要求關乎在要求方管轄區屬可判死刑的罪行，但根據被要求方的法律並無判處死刑的規定，或通常不會執行死刑，則除非要求方作出被要求方認為充分的保證，即有關的人將不會被判死刑，或即使被判死刑亦不會執行，否則被要求方將拒絕提供協助。
- (5) 如執行要求會妨礙正在被要求方進行的調查或檢控，被要求方可延期提供協助。
- (6) 在根據本條拒絕或延期提供協助前，被要求方須通過中心機關：
- (a) 及早知會要求方考慮拒絕或延期提供協助的理由；及
 - (b) 與要求方磋商，以確定可否只提供部分協助或在合乎被要求方認為必需的條件下提供協助。
- (7) 要求方如在合乎第(6)(b)款所述的條件下接受協助，必須遵守該等條件。

第五條 要求

- (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，但必須在 24 小時內以書面確認。
- (2) 提出司法協助的要求須包括以下內容：
 - (a) 要求方代其提出要求的機關的名稱；
 - (b) 說明提出要求的目的及所需協助的性質；
 - (c) 說明調查、檢控、罪行或刑事案件的性質，及說明是否已提起訴訟；
 - (d) 有待執行的法庭判令（如有的話），或判令經證明的副本，並說明有關判令乃最終判令；
 - (e) 如已提起訴訟，說明訴訟的詳情；
 - (f) 案件有關事實及法律的撮要；
 - (g) 有關保密的任何要求；
 - (h) 要求方希望被要求方依循的任何特別程序的細節；
 - (i) 履行要求的期間的詳細說明；及
 - (j) 將被或正被調查或檢控的人的身分。
- (3) 如被要求方提出要求，要求方為支持要求而提交的所有文件，必須附有被要求方所用官方語文的譯本。

第六條 執行要求

- (1) 被要求方的中心機關須迅速執行要求，或安排通過其主管機關執行要求。
- (2) 協助要求須按照被要求方的法律予以執行，並須在被要求方的法律所不禁止的範圍內，盡可能依照要求內所述的指示來執行。
- (3) 被要求方須迅速將任何可能導致嚴重延遲回應該項要求的情況通知要求方。
- (4) 被要求方須迅速就不履行全部或不履行部分協助要求的決定及作出該決定的理由通知要求方。

第七條 代表及開支

- (1) 被要求方須作出一切必要安排，使要求方在因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) 被要求方須承擔在其管轄區內執行要求的所有開支，但下述項目除外：
 - (a) 應要求方要求而聘請的律師的費用；
 - (b) 聘請專家的費用；
 - (c) 翻譯費用；
 - (d) 交通費用及有關人等的津貼；及
 - (e) 非一般性的其他開支。

被要求方須決定除本款(a)至(d)項外，哪些開支屬非一般性的開支。

- (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。

第八條 使用限制

(1) 被要求方必須盡最大的努力把要求和要求的內容保密，但下述情況除外：

(a) 已獲要求方授權透露者；或

(b) 對執行要求有必要者。

(2) 除非要求方在刑事訴訟中負有或將負有法律義務透露任何文件，否則被要求方在與要求方磋商後，可要求把根據本協定提供或將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透露或使用該等資料或證據。

(3) 除非要求方在刑事訴訟中負有或將負有法律義務透露任何文件，否則未經被要求方中心機關事先同意，要求方不得透露或使用被要求方提供的資料或證據作不屬於要求內所述的用途。

(4) 如要求方表示不能遵守任何有關保密的條件，或有關透露或使用根據本協定提供的任何資料或證據的限制，被要求方可拒絕提供協助。

第九條 獲取證據、物品或文件

(1) 要求方如就在其管轄區內的刑事調查、刑事罪行的檢控或刑事案件的訴訟而提出取證的要求，被要求方須作出安排以便要求方獲取有關證據。

(2) 就本協定而言，提供或獲取證據包括出示文件、紀錄或其他資料。

(3) 為根據本條提出要求的目的，要求方須列明擬向證人提出的問題或擬向證人訊問的事項。

(4) 如因協助要求，某人須在被要求方管轄區內為在要求方管轄區內進行的訴訟的目的而作證，在要求方管轄區內的訴訟的當事人，他們的法律代表，及要求方的代表，可在被要求方的法律規限下出庭及向該證人發問。

(5) 因協助要求而在被要求方管轄區內作證的人，可在以下情況下拒絕作證：

(a) 根據被要求方的法律，如在被要求方管轄區內的訴訟中出現類似情況時，該證人可拒絕作證；或

(b) 根據要求方的法律，如在要求方管轄區內進行該類訴訟，該證人可拒絕作證。

(6) 如任何人宣稱有權根據要求方的法律拒絕作證，在決定有關問題時，被要求方須以要求方中心機關所發的證明書為憑據。

第十條 供詞

如要求方要求取得某人的供詞，被要求方須致力取得有關供詞。

第十一條 有關人士的所在及身分

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。

第十二條 送達文件

(1) 要求方交付送達的任何傳票或要求任何人士以證人或被告身分於要求方法庭的刑事訴訟案中出庭的其他法律文件，以及由行使刑事司法管轄權的法庭發出，紀錄了該法庭所作決定的任何文件，被要求方均須予以送達。

(2) 要求方須於回應或出庭的日期到期前的一段合理時間內，向被要求方提出送達該等文件的要求。

(3) 在其法律允許的限度內，被要求方須按要求方指定的形式，提供已送達文件的證明。

第十三條
可供公眾查閱的文件和官方文件

(1) 在其法律允許的限度內，被要求方須提供其管轄區內的下列文件：

- 公眾紀錄；
- 可供公眾查閱的司法紀錄。

(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，被要求方可按照其向本身的執法或司法機關提供該類文件、紀錄或資料的相同限制和條件，酌情向要求方提供。

第十四條
證明和認證

轉送往要求方的文件、抄件、紀錄、供詞或其他資料，只有在要求方提出要求的情況下，才須予以證明或認證。有關的資料只有在要求方的法律明確規定的情況下，才須由領事人員或外交人員證明或認證。

第十五條
移交被拘留的人

(1) 要求方根據本協定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協助，如在被要求方同意，而又符合下列條件的情況下，被要求方應把該人移交給要求方以提供有關的協助：

- (a) 該人同意；及
- (b) 要求方已保證在被移交的人的監禁刑期尚有效時繼續拘留該人；及
- (c) 要求方已保證事後把該人送還給被要求方。

第十六條 移交其他人

- (1) 要求方可要求被要求方協助安排任何人提供本協定所規定的協助。
- (2) 在接獲上述要求時，被要求方須邀請該人前往要求方，並知會要求方該人的回應。

第十七條 豁免

- (1) 同意根據本協定提供協助的人，當其仍在要求方境內按本協定提供協助時，不得因其在離開被要求方之前所犯的任何刑事罪行而被檢控、拘留或被限制人身自由。
- (2) 如有關的人並非根據第十五條移交的被拘留的人，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，或在離開要求方後返回者，則第(1)款不適用。
- (3) 除被要求方的法律另有規定外，不得要求任何同意根據本協定提供協助的人，在與該項要求有關的訴訟以外的任何其他訴訟中作證。
- (4) 要求方或被要求方不得因有人未遵守已送達的傳票或已根據第十二條送達的其他法律文件的規定而行事，或不同意按第十五條或第十六條提供協助，而根據本身的法律對該人施加懲罰或強制性措施。

第十八條 搜查及檢取

- (1) 要求方要求搜查、檢取及移交與刑事案件的訴訟或調查有關的物品，被要求方在本身法律許可的範圍內，須執行要求方的要求。
- (2) 要求方如要求提供有關搜查的結果、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，被要求方須提供。

(3) 被要求方把檢取到的物品交付予要求方，要求方須遵守被要求方就交還及安全保管該等物品提出的任何條件。

第十九條 犯罪得益

(1) 如要求方提出要求，被要求方須致力查明是否有任何犯罪得益或犯罪工具存放於其管轄區內，並須把調查結果通知要求方，要求方在提出要求時，須把何以相信這些得益或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) 被要求方如找到懷疑為犯罪得益的財物或犯罪工具時，須應要求採取本身法律容許的措施、防止任何人就這些財物或工具進行交易、或予以轉讓或處置，以待要求方的法庭就這些財物或工具作出最後裁定。

(3) 如要求方要求協助充公犯罪得益或犯罪工具，被要求方須採取任何本身法律容許的措施以提供協助。

(4) 除非雙方另有協議，否則根據本協定充公的犯罪得益須由被要求方保留。

(5) 就本協定而言：

(a) “充公”指導致財產遭剝奪的任何措施；

(b) “犯罪得益”指任何人從刑事活動直接或間接衍生或獲得的任何財產或任何該等財產的價值；

(c) 財產包括金錢及任何種類的動產或不動產以及有形或無形資產，亦包括該等財產的任何權益。

第二十條 解決爭議

任何因本協定的條文的解釋、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。

第二十一條
協定的適用

本協定適用於：

- (1) 就聯合王國而言：
- (a) 英格蘭、威爾斯、蘇格蘭及北愛爾蘭；及
 - (b) 由聯合王國負責其國際關係，並通過外交途徑互換照會，在受限於任何更改的情況下，延伸適用本協定的任何地區；及
- (2) 就香港特別行政區而言，適用於香港特別行政區。

第二十二條
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) 締約一方可隨時通知締約另一方終止本協定。在此情況下，本協定於締約另一方接獲通知後失效。但在協定終止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。
- 本協定於一九九八年一月二十三日在香港特別行政區簽訂。每份均用英文及中文寫成，兩種文本均同樣作準。

大不列顛及北愛爾蘭
聯合王國政府代表

中華人民共和國
香港特別行政區政府代表



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