

**政府總部禁毒處的信頭**

本處檔號 Our Ref. : NCR 2／6／5 Pt.II

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條例草案委員會秘書

(經辦人：馬淑霞小姐)

馬小姐：

**《1998 年法律適應化修改條例草案》委員會**

本年十一月二十三日的來信，夾附香港大律師公會就《1998 年法律適應化修改條例草案》所提的意見書，已經收到。下文載述政府就該會所提各點的回應，請於十一月二十七日條例草案委員會舉行會議前，把本信呈交各委員參考。

**意見書第 2 段**

“有關的行政命令”一詞，是“《殖民地規例》”作出適應化修改後的名詞，指由行政長官根據《基本法》第 四十八條第（四）項，就管理公務人員而發出的任何行政命令，以及根據這些命令制定的任何規例或指示。作出適應化修改，旨在涵蓋《1997 年公務人員（管理）命令》、根據該命令制定的《公務人員（紀律）規例》，以及其後制定的任何這類命令或規例。有關制定《1997 年公務人員（管理）命令》的詳情，已載於我們昨天請你轉交條例草案委員會的“《1997 年公務人員（管理）命令》”文件。你也可以從我們昨天一併請你轉交條例草案委員會的高等法院判詞副本，得悉今年較早時候法庭就上述命令的合法性進行司法覆核的結果。

“政府規例”一詞，是“《香港政府規例》”作出適應化修改後的名詞，指“稱為《政府規例》的行政規則及規管公務人員的任何其他行政規則或文書”。《政府規例》是由行政長官制定或在他授權下制定，但不包括根據《公共財政條例》（第 2 章）制定的其他規例。除《政府規例》外，還有與 管理公務

人員有關的，以及各局、部門或職系可發出的其他行政規則或規例，例如局／部門通告、訓令、常規或其他行政規則及規例。這些行政規則或規例可由各局局長、部門首長或職系首長根據各自的行政權力發出，以管理轄下各局、部門和職系及相關事宜。

### 意見第 3 及第 4 段

《移交被判刑人士條例》（第 513 章）訂下的其中一項規定，是與處理根據香港特區與其他司法管轄區所訂協議提出的移交被判刑者要求有關。本港必須在宗主國（一九九七年七月一日前是英國，該日之後是 中華人民共和國）同意下，才能簽訂和實施上述協議。此外，根據《基本法》第九十六條，在中央人民政府協助或授權下，香港特區可與外國就司法互助關係作出適當安排。香港特區是根據若干協議處理移交被判刑者的要求，而中央人民政府對這些協議所帶來的國際權利和義務須負最終責任，因此，條例加入有關通知中央人民政府的條文（即第 9 條）是必需的，以反映中央人民政府在此事上的合法權益。《移交被判刑人士條例》（第 513 章）第 9 條是與《逃犯條例》（第 503 章）第 24 條及《刑事事宜相互法律協助條例》（第 525 章）第 34 條（副本附上）一致。

禁毒專員  
(李美美代行)

特別副本送：	保安局局長	(經辦人：郭譚佩儀女士)
(正本無此註)	公務員事務局局長	(經辦人：陳松青先生)
	律政司司長	(經辦人：顏博志先生 孫衛忠先 梁東華先生 韓達忠先生)
	政制事務局局長	(經辦人：李杏怡小姐)
	行政署署長	(經辦人：岑張淑瑞女士)
	懲教署署長	(經辦人：黃玉雯小姐)

一九九八年十一月二十六日

(b) 看來是簽上該地方的主管當局的正式印鑑或公印的，  
所須當作已妥為認證。

(3) 除非(4)款另有規定外，本條例不得損及在根據本條例進行的任何法律程序  
中的以下事項——

- (a) 可接納為證據的任何文件根據香港任何其他法律獲接納為證據；或
- (b) 根據香港任何其他法律對任何事項的證明。

(4) 在不損害第 10(2)(b) 或 12(4) 款的一般性的原則下，凡根據本條例為某項有  
關舉行而被尋求移交到訂明地方的人，被指稱會作出構成該項有關舉行的行為，則(4)  
何否認該項指稱的證據，均不得在根據本條例進行的任何法律程序中獲接納為證據。  
據此——

- (a) 被人無權提出上述證據；及
- (b) 任何法院均無權收取上述證據。

(5) 在不損害第(4)款的一般性的原則下，在根據本條例進行的法律程序中，可  
提出證據以證明被帶到負責交付拘押的法院或任何其他法院的人並非該等法律程序所  
關乎的移交要求中所指出的人。

(6) 在本條中，“文件”(document) 包括文件的複本。

#### 24. 鐵賈須就某些事項向國務大臣發出通報等

- (1) 在符合第(2)款的規定下，總督須安排就以下事項向國務大臣發出通報——
  - (a) 為依據訂明安排將某人從訂明地方移交到香港而提起的任何法律程序；
  - (b) (凡已就某人作出拘押令)為依據訂明安排將某人從香港移交到訂明地方  
而提起的任何法律程序；
  - (c) (凡依據訂明安排某人將要從訂明地被移交到香港)為將該人如此移交  
而擬將該人運送經過的在該訂明地方與香港之間的地方(如有的話)；
  - (d) (凡某人將要從香港被移交到訂明地)為將該人如此移交而擬將該人運  
送經過的在香港與該訂明地之間的地方(如有的話)；

#### CAP. 503 Fugitive Offenders

(b) purports to be sealed with the official or public seal of a  
competent authority of that place.

(3) Subject to subsection (4), in any proceedings under this Ordinance,  
nothing in this Ordinance shall prejudice either—

- (a) the admission in evidence of any document which is admissible  
in evidence; or
- (b) the proof of any matter,  
under any other law of Hong Kong.

(4) Without prejudice to the generality of section 10(2)(b) or 12(4), in any  
proceedings under this Ordinance, any evidence which contradicts an  
allegation that a person sought to be surrendered under this Ordinance to a  
prescribed place has engaged in conduct which constitutes a relevant offence  
for which such surrender is sought is inadmissible and, accordingly—

- (a) that person is not entitled to adduce such evidence; and
- (b) any court is not entitled to receive such evidence.

(5) Without prejudice to the generality of subsection (4), in proceedings  
under this Ordinance evidence may be adduced for the purposes of showing  
that a person brought before the court of committal or any other court is not  
the person identified in the request for surrender to which the proceedings  
relate.

(6) In this section, "document" (文件) includes a copy of a document.

#### 24. Governor to give notice to Secretary of State in relation to certain matters, etc.

(1) Subject to subsection (2), the Governor shall cause the Secretary of  
State to be given notice of—

- (a) any proceedings that have been instituted for the surrender of a  
person to Hong Kong from a prescribed place pursuant to  
prescribed arrangements;
- (b) any proceedings that have been instituted for the surrender of a  
person from Hong Kong to a prescribed place pursuant to  
prescribed arrangements where an order of committal has been  
made in relation to the person;
- (c) where a person is to be surrendered to Hong Kong from a  
prescribed place pursuant to prescribed arrangements, the place  
or places, if any, between the prescribed place and Hong Kong  
through which it is proposed to transport the person for the  
purposes of so surrendering him;
- (d) where a person is to be surrendered from Hong Kong to a  
prescribed place, the place or places, if any, between Hong Kong  
and the prescribed place through which it is proposed to  
transport the person for the purposes of so surrendering him;

第 503 章 **逃犯條例**

- (c) 任何擬將正被香港以外地方移交到香港以外另一地方(不論該等地方是否訂明地方)的人經香港遞送的建議。
  - (2) 根據第(1)款要出的通報，須——
    - (a) 附有訂明文件及載有訂明詳情；及
    - (b) 以訂明方式提出。
  - (3) 凡國務大臣——
    - (a) 向總督發出指令須就或不得就第(1)款(a)、(b)、(c)、(d)或(e)段所提述的任何事項而採取行動；及
    - (b) 基於如不遵從該項指令全則聯合王國在國防事宜或外交事務上的利益會受到重大影響的理由而總督要出該項指令。
- 則總督須遵從該項指令。但上述任何指令的實施均不得影響總督須按照法律以處理本款所適用的任何個案的責任。
- (4) 就本條而言——
    - (a) 凡有以下情況，即屬已提起法律程序，以將某人從訂明地方移交到香港——
      - (i) 某人為某項罪行被尋求移交，而就該項罪行要求駁出手令以暫時逮捕該人的申請已向該地方發出；或
      - (ii) 某人為某項罪行被尋求移交，而就該項罪行將該人移交到香港的要求已向該地方發出；
    - (b) 凡某人為某項罪行被尋求移交，而就該項罪行逮捕該人的手令(不論是臨時手令或是其他手令)已在香港發出，即屬已提起法律程序，以前該人從香港移交到訂明地方。

**25. 附表的修訂**

總督會同行政局可藉命令修訂附表 1 或 2。

**26. 規例**

總督會同行政局可訂立規例，以——

- (a) 訂明根據本條例須訂明成准予訂明的任何事宜；

CAP. 503 *Fugitive Offenders*

- (c) any proposed transport through Hong Kong of a person who is being surrendered to a place outside Hong Kong by another place outside Hong Kong (and whether or not either such place is a prescribed place).
  - (2) A notice under subsection (1) shall—
    - (a) be accompanied by the prescribed documents and contain the prescribed particulars; and
    - (b) be given in the prescribed manner.
  - (3) Where the Secretary of State issues an instruction to the Governor to take, or not to take, an action—
    - (a) in relation to any matter referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1); and
    - (b) on the ground that if the instruction were not complied with the interests of the United Kingdom in matters of defence or foreign affairs would be significantly affected,
- then the Governor shall comply with that instruction, but no such instruction shall operate to affect the responsibilities that the Governor shall discharge in accordance with law in dealing with any case to which this subsection applies.
- (4) For the purposes of this section, proceedings have been instituted for the surrender of a person—
    - (a) to Hong Kong from a prescribed place, where there has been issued to that place—
      - (i) an application for the issue of a warrant for the provisional arrest of the person in relation to the offence for which such surrender is sought; or
      - (ii) a request for the surrender of the person to Hong Kong in respect of the offence for which such surrender is sought;
    - (b) from Hong Kong to a prescribed place, where a warrant (whether provisional or otherwise) has been issued in Hong Kong for the arrest of the person in relation to the offence for which such surrender is sought.

**25. Amendment of Schedules**

The Governor in Council may, by order, amend Schedule 1 or 2.

**26. Regulations**

The Governor in Council may make regulations—

- (a) prescribing anything that is required or permitted to be prescribed under this Ordinance;

- (ii) 就違反規例的罪行，訂明不超過第 3 級罰款或監禁 6 個月的刑罰。
- 總督須就香港請求及外地請求**
- 國務大臣**
- (1) 總督須安排將每項香港請求及外地請求通知國務大臣。
- (2) 如國務大臣向總督發出採取或不採取任何行動的指示，而—  
 (a) 該行動是關於香港請求或外地請求的；及  
 (b) 所基於的理由是如該指示不獲遵從，則聯合王國的主權、安全或公共秩序方面的權益會受到重大影響，  
 則總督及律政司須遵從該指示，但該指示的施行不得影響總督或律政司在處理本款適用之任何案件中須按照法律履行的責任。
- (3) (a) 如屬香港請求，須於提出該項請求前給予第(1)款所指的通知，但該項請求屬緊急性質的則除外，而在此情況下，則須於提出該項請求的同時給予通知；  
 (b) 如屬外地請求，須於接獲該項請求後並在進行該項請求前在合理切實可行範圍內盡快給予第(1)款所指的通知，但該項請求屬緊急性質的則除外；  
 (c) 第(1)款所指的通知須連同以下文件—  
 (i) 該項請求的副本一份；  
 (ii) 連同的文件的副本；  
 (iii) 支持該項請求的主要事實的摘要；及  
 (iv) 國務大臣所要求的其他與該項請求有關的文件；  
 (d) 如屬外地請求—  
 (i) 第(1)款所指的通知須就該項請求可否予以順應並說明意見並連同理由；及  
 (ii) 第(1)款所指的通知須提交將會提供或已提供（如屬緊急請求）的協助的細節。  
 (e) 凡外地請求已予以順應，則總督須應國務大臣的要求（如有此要求）將依據該項請求所提供的任何證據或文件的詳情，向國務大臣提交。  
 (f) 就本條而言—

CAP. 525 *Mutual Legal Assistance in Criminal Matters*

(ii) prescribing penalties not exceeding a fine at level 3 or imprisonment for 6 months for offences against the regulations.

**34. Governor to give notice to Secretary of State in relation to Hong Kong requests and external requests**

(1) The Governor shall cause the Secretary of State to be given notice of every Hong Kong request and external request.

(2) Where the Secretary of State issues an instruction to the Governor to take, or not to take, an action—

- (a) in relation to a Hong Kong request or external request; and
- (b) on the ground that if the instruction were not complied with the interests of the United Kingdom in matters of sovereignty, security or public order would be significantly affected, then the Governor and the Attorney General shall comply with that instruction, but no such instruction shall operate to affect the responsibility that the Governor or the Attorney General shall discharge in accordance with law in dealing with any case to which this subsection applies.

(3) A notice under subsection (1) shall—

- (a) in the case of a Hong Kong request, be given before the request is made unless the request is urgent, in which case the notice shall be given at the same time as the request is made;
- (b) in the case of an external request, be given as soon as reasonably practicable after receipt of the request and before the request is processed unless the request is urgent;
- (c) be accompanied by—
  - (i) a copy of the request;
  - (ii) copies of the accompanying documents;
  - (iii) a summary of the material facts supporting the request; and
  - (iv) such other documents relevant to the request as may be required by the Secretary of State;
- (d) in the case of an external request—
  - (i) state advice with reasons whether the request may be complied with; and
  - (ii) give details of the assistance which will be, or in the case of an urgent request has been, provided.

(4) Where an external request has been complied with, the Governor shall, if the Secretary of State so requires, provide the Secretary of State with particulars of any evidence or documents provided pursuant to the request.

(5) For the purposes of this section—

- (a) 香港請求如是根據第 11 或 25 條提出的，即屬緊急性質；
- (b) 外地請求如是根據第 12 或 27 條提出的，即屬緊急性質；
- (6) 在本條中——
  - (a) “外地請求”(external request) 指——
    - (i) 根據任何安排而提出相互法律協助的任何請求，不論該等安排是否屬訂明安排；或
    - (ii) 符合以下條件的任何其他請求——
      - (i) 由——
        - (A) 香港以外某地方的政府提出的；或
        - (B) 香港以外某地方提出的；
      - (ii) 為刑事事宜方面的協助而提出的；及
      - (iii) 順應該請求需要行使香港成文法則下的任何權力；
  - (b) “香港請求”(Hong Kong request) 指——
    - (i) 根據任何安排而提出相互法律協助的任何請求，不論該等請求是否屬訂明安排；或
    - (ii) 符合以下條件的任何其他請求——
      - (i) 由政府或香港提出的；
      - (ii) 為刑事事宜方面的協助而提出的；及
      - (iii) 順應該請求需要行使香港以外某地方的成文法則下的任何權力。

### 35. 附表的修訂

- (1) 立法局可藉決議修訂附表 1。
- (2) 地方會同行政局可藉憲報公告修訂附表 2。

### 36. 相應及其他修訂

附表 3 指明的成文法則，現按該附表所列的方式予以修訂。

#### 附表 1

##### 稅務文件

##### 第一部分

##### 稅務顧問的稅務文件

與稅務顧問與以下人士之間的通訊的任何文件——

- (a) 當事人。而該稅務顧問是就該當事人的稅務事宜而獲委任為稅務顧問的；或

[第 2(1) 及 35 條]

### CAP. 525 Mutual Legal Assistance in Criminal Matters

37

- (a) a Hong Kong request is urgent if it is a request under section 11 or 25;
- (b) an external request is urgent if it is a request under section 12 or 27.
- (6) In this section—
  - (a) “external request” (外地請求) means—
    - (i) any request under any arrangements for mutual legal assistance, whether or not the arrangements are prescribed arrangements; or
    - (b) any other request—
      - (i) by—
        - (A) the government of a place outside Hong Kong; or
        - (B) a place outside Hong Kong;
      - (ii) for assistance in a criminal matter; and
      - (iii) compliance with which requires the exercise of any power under an enactment of Hong Kong;
  - (b) “Hong Kong request” (香港請求) means—
    - (a) any request under any arrangements for mutual legal assistance, whether or not the arrangements are prescribed arrangements; or
    - (b) any other request—
      - (i) by the Government or Hong Kong;
      - (ii) for assistance in a criminal matter; and
      - (iii) compliance with which requires the exercise of any power under an enactment of a place outside Hong Kong.

### 35. Amendment of Schedules

- (1) The Legislative Council may, by resolution, amend Schedule 1.
- (2) The Governor in Council may, by notice in the Gazette, amend Schedule 2.

### 36. Consequential and other amendments

The enactments specified in Schedule 3 are amended as set out in that Schedule.

#### SCHEDULE 1

##### TAX DOCUMENTS

##### PART I

##### TAX DOCUMENTS OF TAX ADVISERS

[第 2(1) & 35]

- (a) a document which is a communication between a tax adviser and an adviser; or