

Hong Kong, China: *Mutual Legal Assistance In Criminal Matters Regulation*

CAP 525A MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS REGULATION

Section 1 Interpretation

In this Regulation, a reference to a form by number is a reference to the form in the Schedule which bears that number.

Section 2 Power of magistrate to send for witnesses and things

A magistrate who is performing functions under the Ordinance may issue a summons in accordance with Form 1 requiring a person named in the summons to attend as a witness before the magistrate in connection with the performance by the magistrate of those functions and there to give evidence, answer questions and produce to the magistrate such things in the person's possession or control as are referred to in the summons.

Section 3 Duty of witness to continue in attendance

A person summoned under section 2 to attend before a magistrate as a witness shall attend at the place and time, and on the date, specified in the summons and then from day to day unless excused or released from attending by a magistrate.

Section 4 Failure of witness to attend, etc.

- (1) If a person summoned under section 2-
 - (a) fails to attend before a magistrate as required by section 3; and
 - (b) offers no reasonable excuse for the failure to attend, then, after proof upon oath that-
 - (i) the summons was served on the person, either personally or by leaving the summons for him with some person at his last or most usual place of abode; and
 - (ii) a reasonable sum (where, in the opinion of the magistrate, necessary) was paid or tendered to the person for his costs or expenses to attend before the magistrate,the magistrate may issue a warrant in accordance with Form 2 to have the person-
 - (A) apprehended and informed, at the time of apprehension, of the reason therefor;
 - (B) brought, as soon as practicable, before the magistrate-
 - (I) to give evidence, answer questions and produce to the magistrate such things in the person's possession or control as are referred to in the summons; and
 - (II) to show cause why he should not be punished under subsection (2) for the failure to attend; and
 - (C) detained in custody until released by order of the magistrate.

(2) A person brought before a magistrate pursuant to a warrant under subsection (1) who fails to satisfy the magistrate that he had a reasonable excuse for the failure to attend as required by the summons commits an offence and the magistrate may impose upon the person a fine at level 3 and order the person to be imprisoned for 3 months.

Section 5 Failure of witness to answer questions, etc.

A person attending before a magistrate as a witness as required by section 3, or a warrant under section 4, who-

(a) refuses to be sworn as a witness or refuses to take any other step to similar effect in accordance with the law of the place outside Hong Kong the appropriate authority of which has made the request concerned; (23 of 2003 s. 25)

(aa) without lawful or reasonable excuse, refuses to answer a question when required to do so by the magistrate; or (23 of 2003 s. 25)

(b) without lawful or reasonable excuse, refuses or fails to produce a thing that the person was required to produce by the summons, commits an offence and the magistrate may-

(i) by issuing a warrant in accordance with Form 3, order the person to be imprisoned for 3 months unless the person in the meantime consents to be so sworn, to take the step, to answer the question or to produce the thing, as the case may be; or (23 of 2003 s. 25)

(ii) impose upon the person a fine at level 3.

Section 6 Witnesses' allowances

The Criminal Procedure (Witnesses' Allowances) Rules (Cap 221 sub. leg. B) shall, with all necessary modifications, apply to and in relation to proceedings before a magistrate under the Ordinance as if-

(a) those proceedings were criminal proceedings; and

(b) a witness in those proceedings were a witness within the meaning of those Rules.

Section 7 Issue of search warrant

A search warrant issued by a magistrate pursuant to an application under section 12 of the Ordinance shall be in accordance with Form 4.

Section 8 Appointment of process server

The process server for the purposes of section 31 of the Ordinance shall be the Chief Bailiff or his authorized agent.

(21 of 1999 s. 36)

SCHEDULE

[section 1]

FORM 1 [section 2]

SUMMONS TO WITNESS

In the matter of proceedings relating to under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525):

To:
of

YOU ARE HEREBY SUMMONED pursuant to section 2 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap 525 sub. leg. A) to be and appear before me at in Hong Kong on day, the day of 19, at a.m.*/p.m.* and to attend from day to day unless you are excused or released from so attending to give evidence*/answer questions*/produce the following things*:

Dated this day of 19

.....

Magistrate

* Delete whichever is inapplicable.

NOTE: A person who has been served with this summons and who, without reasonable excuse, fails to attend before a magistrate as required by this summons commits an offence. The magistrate may issue a warrant to have the person brought before him and may impose, for the offence, a fine at level 3 and/or imprisonment for a period not exceeding 3 months.

FORM 2 [section 4]

WARRANT WHERE WITNESS HAS NOT OBEYED SUMMONS

In the matter of proceedings relating to
under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525):

To each and all of the police officers of Hong Kong.

WHEREAS:

(a) a summons was issued by me, a magistrate, under section 2 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap 525 sub. leg. A) to of requiring him to be and appear before me as a witness at in Hong Kong on day, the day of 19, at a.m.*/p.m.*;

(b) proof having been made before me upon oath (or by affirmation) of the summons having been served on the witness;

(c) proof having been made before me upon oath (or by affirmation) that a reasonable sum was paid or tendered to the witness for his costs or expenses to attend before me*;

(d) the witness has failed to be and appear before me at the place and time, and on the date, specified in the summons and no reasonable excuse has been offered for such failure:

YOU ARE HEREBY COMMANDED to apprehend the witness, to inform him, at the time of apprehension, of the reason therefor and to promptly bring him before me to give evidence*/answer questions*/produce the things referred to in the summons*, and to detain the witness in custody for that purpose.

Dated this day of 19

.....

Magistrate

* Delete whichever is inapplicable.

FORM 3 [section 5]

WARRANT FOR COMMITMENT OF WITNESS REFUSING TO BE SWORN, GIVE EVIDENCE OR PRODUCE THINGS

In the matter of proceedings relating to under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525):

To each and all of the police officers of Hong Kong and to the Commissioner of Correctional Services.

WHEREAS

..... now attending before me at in Hong Kong on day, the day of 19....., at a.m.*/p.m.* as required by section 3*/a warrant under section 4* of the Mutual Legal Assistance in Criminal Matters Regulation (Cap 525 sub. leg. A) and being required by me to be sworn (or affirmed) as a witness (or to take any other step to similar effect in accordance with the law of the place outside Hong Kong concerned) now refuses so to do*/(or being a witness) refuses to answer a question when required by me to do so*/refuses or fails to produce a thing referred to in a summons under section 2 of the Mutual Legal Assistance in Criminal Matters Regulation (Cap 525 sub. leg. A)*, without offering any lawful or reasonable excuse for such his refusal*/failure*:

YOU, THE SAID POLICE OFFICERS, ARE HEREBY COMMANDED to take the said and to safely convey him to a prison, and there to deliver him to the Commissioner of Correctional Services, together with this warrant:

YOU, THE SAID COMMISSIONER OF CORRECTIONAL SERVICES, ARE HEREBY COMMANDED to receive the said into custody in a prison, and there imprison him for such his contempt for the space of days*/months*, unless he shall in the meantime consent to being sworn (or affirmed) as a witness or take the step in accordance with the law of the place outside Hong Kong concerned*/answer the question*/produce the thing required*, and for your so doing this shall be sufficient warrant.

Dated this day of 19

.....

Magistrate

* Delete whichever is inapplicable.

(23 of 2003 s. 26)

FORM 4 [section 7]

SEARCH WARRANT UNDER SECTION 12

In the matter of proceedings relating to under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525).

To, an authorized officer.

WHEREAS:

(a) a request has been made by, an appropriate authority of the place outside Hong Kong, to the Secretary for Justice to arrange for the issue of a search warrant under section 12 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525) in relation to a thing, being

- (i) which is relevant to an investigation*/a prosecution*/an ancillary criminal matter* that has commenced in that place involving an external serious offence, namely; and
- (ii) which there are reasonable grounds to believe is located in Hong Kong;

(b) the Secretary for Justice has nominated you, in writing, to apply to a magistrate for the search warrant so requested;

(c) you have laid before me, a magistrate, an information on oath (or by affirmation) setting out the grounds for the belief that the thing to which that request relates will on the day of 19 be on*/in the clothing that is worn by*/in the effective control of*/; and*

OR

upon land*/upon*/in*/premises*/, being

.....; and*

(d) I am satisfied, having regard to such further information as I have required*, /that there are reasonable grounds for issuing the warrant:

NOW THEREFORE I, under section 12 of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), hereby authorize you, for the purpose of assisting in that investigation*/prosecution*/ancillary criminal matter* in relation to that external serious offence, with such assistance, and by such force, as is necessary and reasonable:between the hours of and, *at any time of the day or night, *to search for that thing;

OR

between the hours of and, *at any time of the day or night,* to enter upon that land*/upon*/into*/those premises*/, to search that land*/those premises*/for that thing;

and to seize any thing of the following kind:
..... found in the course of
the search that you believe, on reasonable grounds, to be relevant to that
investigation*/prosecution*/ancillary criminal matter* in relation to that external serious offence.

THIS WARRANT ceases to have effect on the day of 19....., being a
date not later than one month after the issue of this warrant.

Issued on day of 19

.....

Magistrate

* Delete whichever is inapplicable.