

AGREEMENT
BETWEEN
THE PORTUGUESE REPUBLIC
AND
THE PEOPLE'S REPUBLIC OF CHINA
ON MUTUAL JUDICIAL ASSISTANCE
IN CRIMINAL MATTERS

The Portuguese Republic and the People's Republic of China (hereinafter referred to as "the Contracting States"),

With a view to improving the effective cooperation between the two countries in respect of mutual judicial assistance in criminal matters on the basis of mutual respect for sovereignty and equality and mutual benefit,

Have decided to conclude this Agreement and have agreed as follows:

Article 1

Scope of Application

1. The Contracting States shall, in accordance with the provisions of this Agreement, provide mutual judicial assistance in criminal matters.

2. Such assistance shall include:

- (a) serving documents of criminal proceedings;
- (b) taking testimonies or statements from persons;
- (c) providing documents, records and articles of evidence;
- (d) obtaining and providing expert evaluations;
- (e) locating and identifying persons;

- (f) conducting judicial inspections or examining sites or objects;
- (g) making persons available for giving evidence or assisting in investigations;
- (h) transferring persons in custody for giving evidence or assisting in investigations;
- (i) conducting inquiry, searches, freezing and seizures;
- (j) forfeiting proceeds from criminal activities and instruments of crime;
- (k) notifying results of criminal proceedings and supplying criminal records;
- (l) exchanging information on law; and
- (m) any other forms of assistance which is not contrary to the laws of the Requested State.

3. This Agreement shall only apply to mutual judicial assistance between both Contracting States. The provision of this Agreement shall deny any private person any right to obtain or exclude any evidence, or to impede the execution of a request.

Article 2

Central Authorities

1. Each Contracting State shall designate Central Authorities responsible for sending, receiving and transmitting the requests for judicial assistance provided for under this Agreement.

2. The Central Authorities referred to in paragraph 1 of this Article shall be the Procuradoria-Geral da República for the Portuguese Republic and the Supreme People's Procuratorate and the Ministry of Justice for the People's Republic of China.

3. Should either Contracting State changes its designated Central

Authority, it shall inform the other Contracting State of such change through diplomatic channels.

Article 3

Refusal or Postponement of Assistance

1. The Requested State may refuse to provide assistance if:

(a) the request relates to conduct which would not constitute an offence under the laws of the Requested State;

(b) the request is considered by the Requested State as relating to a political offence;

(c) the request relates to an offence which is a purely military offence under the laws of the Requested State;

(d) there are substantial grounds for the Requested State to believe that the request has been made for the purpose of investigating, prosecuting, punishing or other proceedings against a person on account of that person's race, sex, religion, nationality or political opinions, or that that person's position may be prejudiced for any of those reasons;

(e) the Requested State is in the process of or has terminated criminal proceedings or has already rendered a final judgment against the same suspect or accused for the same offence as related to in the request;

(f) the Requested State determines that the execution of the request would impair its sovereignty, security, public order or other essential public interests, or would be contrary to the fundamental principles of its national laws.

2. Offences that are not regarded as political offences under any international treaty, convention or agreement to which the Contracting States are Parties shall not be treated as political offences.

3. The Requested State may postpone to provide assistance if execution of a request would interfere with an ongoing investigation, prosecution or other proceedings in the Requested State.

4. Before refusing a request or postponing its execution, the Requested State shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with them.

5. If the Requested State refuses or postpones to provide assistance, it shall inform the Requesting State of the reasons for the refusal or postponement.

Article 4

Form and Content of Requests

1. A request shall be made in writing and affixed with the signature or seal of the requesting authority. In urgent situations, the Requested State may accept a request in other forms and the Requesting State shall confirm the request in writing promptly thereafter unless the Requested State agrees otherwise.

2. A request for assistance shall include the following:

(a) the name of the competent authority conducting the investigation, prosecution or other proceedings to which the request relates;

(b) a description of the nature of the relevant case, a summary of the relevant facts of and the provisions of laws applicable to the case to which the request relates;

(c) a description of the assistance sought and that of the purpose and relevance for which the assistance is sought; and

(d) the time limit within which the request is desired to be executed.

3. To the extent necessary and possible, a request shall also include the following:

(a) information on the identity and residence of a person from whom evidence is sought;

(b) information on the identity and residence of a person to be served and that person's relationship to the proceedings;

(c) information on the identity and whereabouts of the person to be located or identified;

(d) a description of the place or object to be inspected or examined;

(e) a description of any particular procedure desirous to be followed in executing the request and reasons therefore;

(f) a description of the place to be searched and of the property to be inquired, frozen and seized;

(g) a description of the need for confidentiality and the reasons therefore;

(h) information as to the allowances and expenses to which a person invited to be present in the Requesting State to give evidence or assist in investigation will be entitled; and

(i) such other information which may facilitate execution of the request.

4. If the Requested State considers the contents contained in the request not sufficient to enable it to deal with the request, it may request additional information.

5. Requests and supporting documents made under this Article shall be accompanied by a translation in the language of the Requested State.

6. Any documents transmitted in accordance with this Agreement shall not require any form of authentication or legalization.

Article 5

Execution of Requests

1. The Requested State shall promptly execute a request for assistance in accordance with its national laws.

2. Insofar as not contrary to its national laws, the Requested State may execute the request for assistance in the manner requested by the Requesting State.

3. The Requested State shall promptly inform the Requesting State of the outcome of the execution of the request. If the assistance requested can not be provided, the Requested State shall inform the Requesting State of the reasons.

Article 6

Confidentiality and Limitation on Use

1. The Requested State shall keep confidential a request, including its contents, supporting documents and any action taken in accordance with the request, if so requested by the Requesting State. If the request cannot be executed without breaching such confidentiality, the Requested State shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

2. The Requesting State shall keep confidential the information and evidence provided by the Requested State, if so requested by the Requested State, or shall use such information or evidence only under the terms and conditions specified by the Requested State.

3. The Requesting State shall not use any information or evidence obtained under this Agreement for any purposes other than for the case

described in the request without the prior consent of the Requested State.

Article 7

Service of Documents

1. The Requested State shall, in accordance with its national laws and upon request, effect service of documents that are transmitted by the Requesting State. However, the Requested State shall not be obligated to effect service of a document which requires a person to appear as the accused.

2. The Requested State shall, after effecting service, provide the Requesting State a proof of service that shall include the description of the date, place, and manner of service, and be affixed with the signature or seal of the authority which served the document. If service cannot be effected, the Requesting State shall be so informed and be advised of the reasons thereof.

Article 8

Taking of Evidence

1. The Requested State shall, in accordance with its national laws and upon request, take evidence and transmit it to the Requesting State.

2. When the request concerns the transmission of documents or records, the Requested State may transmit certified copies or photocopies thereof. However, where the Requesting State explicitly requires transmission of originals, the Requested State shall meet such requirement to the extent possible.

3. Insofar as not contrary to the laws of the Requested State, the documents and other materials to be transmitted to the Requesting State in accordance with this Article shall be certificated in such forms as may be

requested by the Requesting State in order to make them admissible according to the laws of the Requesting State.

4. Insofar as not contrary to the laws of the Requested State, the Requested State shall permit the presence of such persons as specified in the request during the execution of the request, and shall allow such persons to pose questions, through judicial personnel of the Requested State, to the person from whom evidence is to be taken. For this purpose, the Requested State shall promptly inform the Requesting State of the time and place of the execution of the request.

5. A person who is required to give evidence under this Agreement may decline to give evidence if the laws of the Requested State permit the person not to give evidence in similar circumstances in proceedings originating in the Requested State.

Article 9

Availability of Persons to Give Evidence or Assist in Investigation

1. When the Requesting State requests the appearance of a person to give evidence or assist in investigation in the territory of the Requesting State, the Requested State shall invite the person to appear before the judicial authority in the territory of the Requesting State. The Requesting State shall indicate the extent to which allowances and expenses will be paid to the person. The Requested State shall promptly inform the Requesting State of the person's response.

2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the territory of the Requesting State no less than sixty days before the scheduled appearance unless, in urgent cases, the Requested State has agreed to a

shorter period of time.

Article 10

Transfer of Persons in Custody for Giving Evidence or Assisting in Investigations

1. The Requested State may, at the request of the Requesting State, temporarily transfer a person in custody in its territory to the Requesting State for appearing before a judicial authority to give evidence or assist in investigations, provided that the person so consents and the Contracting States have previously reached a written agreement on the conditions of the transfer.

2. If the person transferred is required to be kept in custody under the laws of the Requested State, the Requesting State shall hold that person in custody.

3. The Requesting State shall promptly return the person transferred to the Requested State as soon as he/she finished giving evidence or assisting in investigations.

4. For the purpose of this Article, the person transferred shall receive credit for service of the sentence imposed in the Requested State for the period of time served in the custody of the Requesting State.

Article 11

Protection of Witnesses and Experts

1. Any witness or expert present in the territory of the Requesting State shall not be investigated, prosecuted, detained, punished or subject to any other restriction of personal liberty by the Requesting State for any acts or

omissions which preceded that person's entry into its territory, nor shall that person be obliged to give evidence or to assist in any investigation, prosecution or other proceedings other than that to which the request relates, except with the prior consent of the Requested State and that person.

2. Paragraph 1 of this Article shall cease to apply if the person referred to in paragraph 1 of this Article has stayed on in the territory of the Requesting State forty-five days after that person has been officially notified that his/her presence is no longer required or, after having left, has voluntarily returned. But this period of time shall not include the time during which the person fails to leave the territory of the Requesting State for reasons beyond his/her control.

3. A person who declines to give evidence or assist in investigations in accordance with Articles 9 or 10 shall not be subject to any penalty or mandatory restriction of personal liberty for such decline.

Article 12

Inquiry, Search, Freezing and Seizure

1. The Requested State shall, to the extent its national law permits, execute a request for inquiry, search, freezing and seizure of evidential materials, articles and assets.

2. The Requested State shall provide the Requesting State with such information as requested concerning the results of executing the request, including information on the results of inquiry or search, the place and circumstances of freezing or seizure, and the subsequent custody of such materials, articles or assets.

3. The Requested State may transmit the seized materials, articles or assets to the Requesting State if the Requesting State agrees to the terms and

conditions for such transmission as proposed by the Requested State.

Article 13

Return of Documents, Records and Articles of Evidence to the Requested State

At the request of the Requested State, the Requesting State shall return to the Requested State the originals of documents or records and articles of evidence provided to it by the latter under this Agreement as soon as possible.

Article 14

Forfeiture of Proceeds from Criminal Activities and Instruments of Crime

1. The Requested State shall, upon request, endeavor to ascertain whether any proceeds from criminal activities or instruments of crime are deposited within its territory and shall notify the Requesting State of the result of inquiries. In making the request, the Requesting State shall state to the Requested State the reasons for inferring that the proceeds or instruments may be deposited in the latter's territory.

2. Once the suspected proceeds or instruments of crime are found in accordance with paragraph 1 of this Article, the Requested State shall, at the request of the Requesting State, take measures to freeze, seize and forfeit such proceeds or instruments according to its national laws.

3. At the request of the Requesting State, the Requested State may, to the extent permitted by its national laws and under the terms and conditions agreed to by the Contracting States, transfer all or part of the proceeds or instruments of crime, or the proceeds from the sale of such assets to the Requesting State.

4. In applying this Article, the legitimate rights and interests of the

Requested State and any third party to such proceeds or instruments shall be respected under the laws of the Requested State.

Article 15

Notification of Results of Proceedings in Criminal Matters

1. A Contracting State that has made a request to the other in accordance with this Agreement shall, at the request of the latter, inform the latter of results of the criminal proceedings to which the request of assistance relates.

2. Either Contracting State shall, upon request, inform the other Contracting State of results of criminal proceedings it has instituted against a national of the latter.

Article 16

Supply of Criminal Records

The Requested State shall provide, upon request, the Requesting State with the past criminal records and information of the sentence against the person investigated or prosecuted in a criminal matter in the territory of the Requesting State, if the person concerned has been subject to penal prosecution in the Requested State.

Article 17

Exchange of Information on Law

The Contracting States shall, upon request, furnish each other with the laws in force or the laws used to be in force and information on judicial practice in their respective countries.

Article 18

Expenses

1. The Requested State shall meet the cost for executing the request, but the Requesting State shall bear the following:

(a) expenses for persons to travel to, stay in and leave from the Requested State under Article 8 (4);

(b) allowances or expenses for persons to travel to, stay in and leave from the Requesting State under Articles 9 or 10 in accordance with the standards or regulations of the place where such allowances or expenses have been incurred; and

(c) expenses and fees of experts.

2. The Requesting State shall, upon request, pay in advance the expenses, allowances and fees it shall bear.

3. If it becomes apparent that the execution of a request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the request can be executed.

Article 19

Other Basis for Cooperation

This Agreement shall not prevent either Contracting State from providing assistance to the other Contracting State according to other applicable international agreements or its national laws. The Contracting States may also provide assistance in accordance with any other arrangement, agreement, or practice which may be applicable.

Article 20

Settlement of Disputes

Any dispute arising out of the interpretation and application of this Agreement shall be resolved through consultation.

Article 21

Temporal application

This Agreement applies to any requests presented after its entry into force even if the relevant acts or omissions occurred before that date.

Article 22

Entry into Force, Amendment and Termination

1. This Agreement shall enter into force thirty days after the date of receipt of the later notification in writing and through the diplomatic channel, conveying the fulfilment of their respective constitutional or legal formalities for the entry into force of the Agreement.

2. This Agreement may be amended at any time by written agreement between the Contracting States.

3. Either Contracting State may terminate this Agreement at any time by notice in writing to the other Contracting State through diplomatic channels. Termination shall take effect on the one hundred and eightieth day after the date on which the notice is given.

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

DONE in duplicate at Lisbon, on this 9th day of December 2005, in the Portuguese, Chinese and English languages, all texts being equally authentic. In case there is any divergence of interpretation of this Agreement, the English text shall prevail.

For the Portuguese Republic

For the People's Republic of China