

No. 32472

**BRAZIL
and
PORTUGAL**

**Treaty on mutual assistance in criminal matters. Signed at
Brasília on 7 May 1991**

Authentic text: Portuguese.

Registered by Brazil on 31 January 1996.

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et
PORTUGAL**

**Traité d'assistance mutuelle en matière pénale. Signé à Bra-
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Texte authentique : portugais.

Enregistré par le Brésil le 31 janvier 1996.

[TRANSLATION — TRADUCTION]

TREATY¹ ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL AND THE GOVERNMENT OF THE PORTUGUESE REPUBLIC

The Government of the Federative Republic of Brazil and
The Government of the Portuguese Republic
(Hereinafter referred to as the “Contracting Parties”),

Inspired by the ties of fraternity, friendship and cooperation that characterize relations between the two countries,

Aware of the profound affinities that enrich the relationship between their peoples,

Desiring to extend that special relationship in the field of cooperation in areas of common interest,

Seeking to enhance their effectiveness in combating crime,

Convinced that the adoption of common rules in the area of mutual assistance in criminal matters is a means of attaining those objectives,

Have agreed as follows:

Article 1

OBJECT AND SCOPE OF ASSISTANCE

1. The Contracting Parties undertake to afford each other assistance in criminal matters, in accordance with the present Treaty, in conducting the necessary preliminary investigations or proceedings in any criminal case in respect of acts falling within the jurisdiction of the entities competent under the law of each of the Parties.

2. Such assistance shall involve, specifically:

- (a) Effecting service of documents;
- (b) Obtaining evidentiary items;
- (c) Examining persons, sites and objects and executing searches and seizures of goods;
- (d) Effecting service on and examining suspects and defendants, witnesses and experts;
- (e) Providing information concerning the applicable law and the criminal records of suspects, defendants and convicted persons.

¹ Came into force on 1 December 1994, i.e., the first day of the second month following the month of the exchange of the instruments of ratification, which took place at Brasília on 10 October 1994, in accordance with article 20 (2).

3. Such assistance shall not extend to procedural acts subsequent upon the judicial decision to admit the accusation or to indict the defendant.

4. Such assistance shall be independent of extradition and may be provided even in cases where extradition is refused.

5. This Treaty shall not apply to the enforcement of detention orders or sentences or offences under military law which are not offences under ordinary criminal law.

6. Assistance in cases brought for offences in respect of taxes, charges or customs or foreign exchange duties shall be provided only by agreement between the Parties for each category of offence.

Article 2

DUAL CRIMINALITY

1. Assistance shall be provided only in relation to acts punishable under the laws of both Parties.

2. For the purposes of this article, in determining whether an act is an offence under the laws of both Parties, it shall not matter whether the elements constituting the offence are typified or characterized differently or whether the same or different terminology is used.

Article 3

REFUSAL OF ASSISTANCE

1. Assistance shall be refused if the requested Party considers that:

(a) The request relates to a political offence or an offence connected with a political offence;

(b) Granting the request would prejudice its sovereignty, security, public policy or other essential interests;

(c) There are substantial grounds for believing that the request for assistance has been made to facilitate the prosecution of 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;

(d) Granting the request would prejudice fundamental human rights and freedoms.

2. Assistance may be refused if the requested Party considers that there are substantial grounds that would make the granting of assistance unreasonable.

3. Before refusing a request for assistance, the requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the requesting Party accepts assistance subject to these conditions, it shall comply with them.

4. The requested Party shall immediately inform the requesting Party of its decision not to execute, in whole or in part, the request for assistance, and of the reasons for that decision.

5. Offences shall not be considered political if they are not political offences under:

- (a) The law of the requested Party;
- (b) Any international convention to which both Contracting Parties are parties.

Article 4

LAW APPLICABLE TO EXECUTION OF REQUESTS

1. Requests for assistance shall be executed in accordance with the law of the requested Party.

2. When the requesting Party expressly so requests, the request for assistance may be executed in accordance with that Party's legislation, provided that this is not incompatible with the legislation of the requested Party and does not seriously prejudice the parties involved in the proceeding.

Article 5

REQUIREMENTS FOR THE REQUEST FOR ASSISTANCE

1. The request for assistance shall be signed by the competent authority and shall include the following information:

(a) The name of the requesting authority and of the authority to which the request is addressed;

(b) A precise description of the assistance requested;

(c) A statement of the offence to which the request relates, a brief description of the facts and information on the date and place of their occurrence;

(d) To the extent possible, the identity and nationality of the person who is the subject of the proceedings referred to in the request;

(e) In the case of service of judicial decisions or any other documents or notifications, the name and address, if known, of the person to be served or notified;

(f) A statement certifying that examination, search, seizure and surrender of material or negotiable instruments are permitted by the law of the requesting Party;

(g) Details of any particular procedure or requirement that the requesting Party wishes to be followed, including confidentiality and time limits to be observed.

2. The requesting Party shall send such information sought by the requested Party as is necessary for execution of the request.

Article 6

EXECUTION OF THE REQUEST

1. In execution of the request, the requested Party:

(a) Shall send such material, documents and other items as may be requested; in the case of documents, it shall send certified copies of these;

(b) May refuse or postpone the sending of material which is necessary for an ongoing proceeding;

(c) Shall notify the requesting Party of the results of the request and, if so requested, of the date and place of execution of the request and the entitlement, if any, of persons to be present.

2. The requesting Party shall return material sent in execution of a request as soon as possible, unless the requested Party, without prejudice to its rights or the rights of third parties, waives its right to such return.

Article 7

SERVICE OF DOCUMENTS

1. The requested Party shall effect service of judicial decisions and any other documents relating to proceedings that are transmitted to it for this purpose by the requesting Party.

2. Service may be effected by simply handing over the document to the addressee or, if the requesting Party so requests, in any other manner provided by or consistent with the legislation of the requested Party.

3. The requested Party shall provide the requesting Party with proof of service of documents. If service cannot be effected, the requesting Party shall be so informed and advised of the reasons.

Article 8

APPEARANCE OF SUSPECTS, DEFENDANTS, WITNESSES AND EXPERTS

1. If the requesting Party seeks the appearance of a person in its territory as a suspect, defendant, witness or expert, it may request the requested Party to assist in making that person available.

2. The requested Party shall effect service of the summons if it is satisfied that:

(a) Satisfactory arrangements have been made for the person's safety;

(b) The person whose appearance is sought has given his or her consent in a statement made of his or her own free will and reproduced in writing; and

(c) Any coercive measures or penalties of any kind, whether or not specified in the summons, will be without effect.

3. The request for service of a summons under paragraph 1 of this article shall indicate the allowances and travel and subsistence expenses payable and shall be so made that it is received at least 50 days before the date on which the person must appear. In case of need, the requested Party may waive the 50-day requirement.

Article 9

APPEARANCE OF PERSONS IN CUSTODY

1. If the requesting Party seeks the appearance in its territory of a person who is in custody in the territory of the requested Party, the requested Party shall transfer

the person in custody to the territory of the requesting Party if it is satisfied that there are no serious reasons for opposing the transfer and that the person in custody has given his or her consent.

2. Transfer shall not be permitted if, given the circumstances of the case, the judicial authority of the requested Party considers transfer to be inappropriate, and specifically when:

(a) The presence of the person in custody is required in an ongoing criminal proceeding in the territory of the requested Party;

(b) Transfer could entail the prolongation of provisional or pre-trial detention.

3. The requesting Party shall hold the transferred person in custody and shall return that person to the requested Party within the period set by that Party or when the person's attendance is no longer required.

4. The time which the person spends outside the territory of the requested Party shall be computed for the purposes of provisional or pre-trial detention or the discharge of a sentence or protective measures.

5. When the sentence imposed on a person transferred under this article expires while that person is in the territory of the requesting Party, the person shall be set at liberty and thereafter treated as a person not in custody for the purposes of this Treaty.

6. A person in custody who does not consent to give evidence pursuant to this article shall not, by reason thereof, be liable to any penalty or subjected to any coercive measure.

Article 10

IMMUNITIES AND PRIVILEGES

1. Any person who appears in the territory of the requesting Party pursuant to articles 8 or 9 of this Treaty shall not:

(a) Be detained, prosecuted or punished by the requesting Party or subjected to any other restriction on his or her individual liberty in the territory of that Party in respect of any acts that occurred prior to his or her departure from the territory of the requested Party; or

(b) Without that person's consent, be required to give evidence in any proceedings other than the proceeding to which the request relates.

2. The immunity provided for in paragraph 1 shall cease if the person voluntarily remains in the territory of the requesting Party for more than 45 days after the date on which his or her presence is no longer required or if, having left, he or she has voluntarily returned.

Article 11

PROCEEDS OF CRIME

1. The requested Party shall, upon request, endeavour to ascertain whether any proceeds of the alleged crime are located within its jurisdiction and shall notify the requesting Party of the results of its inquiries. In making the request, the re-

requesting Party shall notify the requested Party of the basis of its belief that such proceeds may be located within its jurisdiction.

2. The requested Party shall, if its law permits, arrange for execution of any order of confiscation of the proceeds of crime, or any other measure with similar effect, made by a court of the requesting Party.

3. Where the requesting Party communicates its intention to seek the execution of any order of confiscation or similar measure, the requested Party shall take such measures as are permitted by its law to prevent any dealing in or transfer or disposal of the property that is or may be affected by the order.

4. Proceeds confiscated pursuant to this Treaty shall be retained by the requested Party unless both Parties decide otherwise in a particular case.

5. In applying this article, the rights of bona fide third parties shall be respected in accordance with the law of the requested Party.

6. The provisions of this article shall also apply to the tools of crime.

Article 12

CONFIDENTIALITY

1. The requested Party shall, if so requested, keep confidential the request for assistance, its contents and supporting documents and the granting of such assistance. If the request cannot be executed without breaching confidentiality, the requested Party shall so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The requesting Party shall, if so requested, keep confidential the evidence and information provided by the requested Party, except to the extent that the evidence and information are needed for the proceedings described in the request.

3. The requesting Party shall not, without the prior consent of the requested Party, use evidence obtained or information derived therefrom for purposes other than those stated in the request.

Article 13

INFORMATION ON SENTENCES AND CRIMINAL RECORDS

1. The Parties shall, as far as possible, notify each other of any sentences or other criminal judgements imposed on nationals of the other Party.

2. Either Party may request the other to provide information concerning the criminal record of a person, giving the reasons for the request. The requested Party shall grant the request insofar as its authorities are able to obtain this information in accordance with its domestic law.

Article 14

CENTRAL AUTHORITY

1. Each Party shall designate a central authority to send and receive requests and other communications relating to mutual assistance pursuant to this Treaty.

2. A central authority receiving a request for assistance shall forward it to the appropriate authorities for execution and shall transmit the response or the results of the request to the central authority of the other Party.

3. Requests shall be sent and received by the two central authorities either directly or through the diplomatic channel.

4. The central authority for Brazil shall be the Procuradoria-Geral and the central authority for Portugal shall be the Procuradoria-Geral.

Article 15

PRESENCE OF AUTHORITIES OF THE REQUESTING PARTY

Within the scope of the assistance provided for by this Treaty, either Contracting Party may authorize the presence of authorities of the other Party at investigations or proceedings which must take place in its territory.

Article 16

COSTS

The requested Party shall bear the costs of executing the request for assistance, except for the following, which shall be borne by the requesting Party:

(a) Allowances and expenses relating to the travel of persons pursuant to article 8 and expenses relating to the travel of persons in custody pursuant to article 9;

(b) Allowances and expenses incurred in relation to the travel of prison officers or escorts; and

(c) Where sought by the requested Party, exceptional costs incurred in executing the request.

Article 17

JURIDICAL COOPERATION

1. The Contracting Parties undertake to provide each other with information on juridical matters in the areas covered by this Treaty.

2. The Contracting Parties may agree to extend the scope of the cooperation referred to in the preceding paragraph to juridical areas other than those mentioned therein.

Article 18

OTHER FORMS OF ASSISTANCE

The assistance provided for in this Treaty shall not rule out any other form of assistance in criminal matters which the Parties may agree to afford each other on a case-by-case basis.

Article 19

RESOLUTION OF DOUBTS

Any doubts or difficulties arising out of the application or interpretation of this Treaty shall be resolved by consultation between the Contracting Parties.

Article 20

ENTRY INTO FORCE AND DENUNCIATION

1. This Treaty is subject to ratification.

2. This Treaty shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged and shall remain in force until denounced by one of the Parties. It shall cease to have effect six months after the day on which the denunciation is received.

DONE at Brasília, on 7 May 1991, in duplicate in the Portuguese language, both texts being equally authentic.

For the Government
of the Federative Republic
of Brazil:

FRANCISCO REZEK

For the Government
of the Portuguese Republic:

JOÃO DE DEUS PINHEIRO