

MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Law 6/2006

The Legislative Assembly decrees, pursuant to Article 71, paragraph 1, and Article 94 of the Basic Law of the Macao Special Administrative Region, the following with the force of law:

Part I

General provisions

CHAPTER I

Object and scope of application

Article 1

Object

1. This law regulates, with the assistance and authorization of the Central People's Government, the legal cooperation in criminal matters between the Macao Special Administrative Region, hereinafter the MSAR, and the States or Territories outside the People's Republic of China.
2. The legal cooperation mentioned in the preceding paragraph comprises:
 - 1) Surrender of fugitive offender;
 - 2) Transfer of proceedings in criminal matters;
 - 3) Enforcement of criminal sentences;
 - 4) Transfer of sentenced persons;
 - 5) Surveillance of sentenced persons and persons on parole;
 - 6) Other forms of legal assistance in criminal matters.

Article 2

Scope of application

1. The implementation of this law shall be subject to the protection of national defence, external relations, sovereignty, security and *ordre public* of the People's Republic of China, as well as other interests of security and *ordre public* and other interests of the MSAR, as enshrined in its legal system.
2. The cooperation requests prescribed in this law shall comply with the notification procedure to the Central People's Government set forth in Law 3/2002.
3. No right to compel any form of cooperation shall derive from this law.

Article 3

Definitions

For the purposes of this law:

- 1) "Requesting Party": State or Territory that requests for cooperation;
- 2) "Requested Party": State or Territory to whom cooperation is requested;
- 3) "Sentenced person": person against whom a judicial decision has been taken that imposes a criminal reaction;
- 4) "Criminal reaction": any penalty or security measure involving deprivation of liberty, any pecuniary sanction or any other non-custodial sanction, including accessory sanctions;
- 5) Sentenced person with the penalty conditionally suspended: person against whom a judicial decision has been taken whereby he/she was found guilty and whose enforcement of the criminal reaction was conditionally suspended;
- 6) Person under parole: person against whom a penalty or security measure involving deprivation of liberty was imposed and whose compliance was, partially or totally, suspended from the sentence day or afterwards;
- 7) Surrender of fugitive offender: transfer of the person, who has been accused of or convicted for the commission of a crime, from the requested party to the requesting party, by request of the latter;
- 8) Transfer of sentenced person: transfer of a person, against whom a penalty or security measure involving the deprivation of liberty imposed in the sentencing party, to another State or Territory, in order to continue to serve his/her criminal sentence in that State or Territory;
- 9) Sentencing party: State or Territory that imposed the criminal sentence;

10) Jurisdictional area: any jurisdiction of the People's Republic of China or of another State or Territory.

CHAPTER II

General principles

Article 4

Primacy of international conventions

1. Legal cooperation in criminal matters shall be carried out in accordance with the provisions of the international conventions applicable in Macao and, where such provisions are non-existent or insufficient, the provisions of this law.
2. The provisions of the criminal procedural law shall have subsidiary application.

Article 5

Principle of reciprocity

1. Cooperation shall be provided in this law based on the principle of reciprocity.
2. Where circumstances so require, the Chief Executive shall demand an undertaking to the effect that reciprocity shall apply; such an undertaking may be granted to other States or Territories.
3. The absence of reciprocity shall not preclude the execution of a cooperation request, where such cooperation:
 - 1) Seems to be advisable taking into account the nature of the fact or the need to combat certain serious forms of criminality;
 - 2) May contribute to the improvement of the situation of the accused or sentenced person or to his/her social rehabilitation;
 - 3) May serve to clarify the facts related to the accusation of a MSAR resident.

Article 6

Dual punishment

1. The offence that constitutes the object of the cooperation request shall be punishable with a criminal reaction under the legislation of the requested party and under the legislation of the requesting party.
2. The non-punishment of the relevant facts in the MSAR does not preclude the execution of the cooperation request if its purpose is proved to be the exclusion of an unlawful act or fault of a person against whom criminal proceedings were filed.

Article 7

General mandatory grounds for refusal

1. Cooperation requests shall be refused, when:
 - 1) The proceedings do not comply or abide by the requirements laid down in the international conventions applicable to the MSAR;
 - 2) There are well-founded reasons to believe that cooperation is sought for the purpose of persecuting or punishing a person by virtue of that person's nationality, origin, race, sex, language, religion, political or ideological beliefs, educational level, economic status, social condition or belonging to a given social group;
 - 3) There is a risk that the procedural situation of the person might be impaired based on any of the factors indicated in the preceding sub-paragraph;
 - 4) The cooperation sought might lead to a trial by a court of exceptional jurisdiction or when it concerns the enforcement of a sentence passed by such a court;
 - 5) Any of the relevant fact is punishable with a penalty that may cause irreversible injury to the person's integrity;
 - 6) Any of the offences is punishable with a penalty or security measure involving life long or indefinite deprivation of liberty;
 - 7) Any of the relevant fact is punishable with a death penalty sentence.
2. The provisions in sub-paragraphs 5) to 7) of the preceding paragraph shall not preclude cooperation:
 - 1) If the requesting party offers an undertaking that the penalties or security measures mentioned in the preceding sub-paragraphs 5), 6) or 7) shall not be imposed or enforced;
 - 2) If the requesting State accepts the conversion of the said penalties or security measures by a MSAR court in accordance with the MSAR law applicable to the crime for which the person was convicted of; or
 - 3) If the request abides by the form of assistance provided for in sub-paragraph 6, paragraph 2, of Article 1, on the grounds that it will presumably be relevant to prevent the application of such penalties or security measures.
3. For the purposes to assess the sufficiency of the undertaking mentioned in sub-paragraph 1) of the preceding paragraph, account shall be taken, and in accordance with the law and practice of the requesting party, *inter alia*, to the possibility of the non-imposition of the penalty or security measure, to the re-examination of the situation of the person sought for and parole concession of the person, as well as to the possibility of pardon, amnesty, commutation or any other similar measure.
4. Without prejudice of paragraph 3, of Article 5, a cooperation request shall also be refused whenever reciprocity is not assured.

Article 8

Grounds for refusal based on the nature of the offence

1. A cooperation request shall also be refused whenever proceedings concern to:
 - 1) Any offence of a political nature or to any offence connected with a political offence, according to the legal concepts of the MSAR law;
 - 2) Any facts that constitute a military offence and do not constitute an offence under ordinary criminal law.
2. The following shall not be regarded as political offences:
 - 1) Genocide, crimes against humanity, war crimes and serious offences under the 1949 Geneva Conventions;
 - 2) Any acts mentioned in the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the United Nations General Assembly on 17 December 1984;
 - 3) Any other offences that ought not to be regarded as of a political nature under the terms of any international convention applicable to the MSAR.

Article 9

Extinction of criminal proceedings

1. Cooperation shall not be admissible, when criminal proceedings concerning the same facts in question have been filed in the MSAR or in another jurisdictional area outside to the requesting party, if:
 - 1) The proceedings have ended with a *res judicata* sentence of acquittal or with a decision to file the case;
 - 2) The conviction sentence was carried out or cannot be carried out in accordance with the law of the sentencing party;
 - 3) The extinction of criminal proceedings occurs by any other reason.
2. The provisions of sub-paragraphs 1) and 2) of the preceding paragraph shall have no effect if cooperation is sought for purposes of judicial review of a sentence by the requesting party and the grounds for such a review are identical to those that are provided for under the MSAR law.
3. The provisions of sub-paragraph 1) of paragraph 1 above shall not preclude cooperation, whenever it is sought for the purpose of re-opening the proceedings, in accordance with the law.

Article 10

Concurrent admissibility cases and cooperation refusal

1. If the fact against which criminal proceedings are filed falls within several provisions of the MSAR law, the cooperation request may be carried out only in respect to the offence or offences in relation to which the request is admissible and provided that the requesting party assures compliance with the conditions established for such cooperation.
2. Cooperation, however, shall be refused if the fact is provided for under several provisions of the MSAR law or if the requesting party and the request cannot be carried out, by virtue of the legal provisions of the MSAR law, when is qualified as an offence that constitutes grounds for refusal.

Article 11

Minor offences

Cooperation may be refused if the minor importance of the offence does not justify it.

Article 12

Protection of confidentiality

1. In executing a cooperation request addressed to the MSAR, the provisions of the criminal procedural legislation concerning grounds for refusal to testify, seizure, wire tapping, professional or State secrets, or any other cases in which confidentiality is protected, shall apply.
2. The provisions of the preceding paragraph shall apply to any information that, according to the request, ought to be given by persons not involved in the criminal proceedings of the requesting party.

Article 13

Applicable Law

1. The following shall have legal effect in the MSAR:
 - 1) Any acts that, under the law of the requesting party, interrupt or suspend periods of limitation;
 - 2) Any complaint submitted in due time to an authority of another State or Territory, whenever such complaint is equally considered as a requirement under MSAR law.
2. If the MSAR law regards the filing of a complaint as a requirement for prosecution, no criminal reaction shall be imposed or enforced in the MSAR in case of objection of the person entitled, except if the person has filed a complaint in accordance with subparagraph 2 of the preceding paragraph.

Article 14

Effect of detention

Any pre-trial detention or detention ordered in a jurisdictional area outside the MSAR as a result of one of the forms of cooperation provided for in this law shall be taken into account within the MSAR criminal proceedings framework or deducted from the penalty, under the terms of the Criminal Code, as if the deprivation of liberty had occurred in the MSAR.

Article 15

Compensation

The MSAR law shall apply to any compensation for unlawful or unjustifiable detention or imprisonment, or for other damages suffered by the suspect or the accused person:

- 1) During proceedings filed in the MSAR as a consequence of a cooperation request addressed to the MSAR;
- 2) During proceedings filed in another State or Territory as a consequence of a cooperation request submitted by any MSAR authority.

Article 16

Concurrent requests

1. If, for the same or for different facts, the cooperation request is addressed by several requesting parties, cooperation shall be granted to the requesting party that, in view of the circumstances of the case, might better safeguard both the interests of justice and the interests of the social rehabilitation of the suspect, accused or sentenced person.
2. The provisions of the preceding paragraph shall not apply to the forms of cooperation established in paragraphs 2) and 6) of Article 1.

Article 17

Rule of speciality

1. Any person who, as a result of a cooperation act, is in the MSAR to take part in criminal proceedings, either as a suspect, accused or a sentenced person, shall not be prosecuted, detained or sentenced nor shall in any way be restricted of personal liberty for any fact committed or for conviction prior to the presence in the MSAR, other than on the grounds for which the cooperation request was made.

2. Any person who, as a result of a cooperation act, is brought before an authority of other State or Territory to take part in criminal proceedings, either as a suspect, accused or a sentenced person, shall not be prosecuted, detained or sentenced nor shall be in any way be restricted of personal liberty for any fact committed or for conviction prior to the departure from the MSAR, other than on the grounds for which the cooperation request was made.
3. The admissibility of the cooperation request mentioned in the preceding paragraph depends on the necessary undertaking provided by the requesting party that the rule of speciality shall be complied with.
4. The immunity that results from this Article shall cease to have effect, whenever:
 - 1) Having the possibility, the person concerned does not leave the territory of the requesting party within a period of 45 days;
 - 2) After leaving the territory of the requesting party, the person concerned voluntarily returns to it; or
 - 3) After the suspect, accused or the sentenced person been previously heard, the requested party consents to the derogation of the rule of speciality.
5. The provisions of paragraphs 1 and 2 above do not preclude the possibility of extending the cooperation previously sought, by way of a new request to facts other than those which were substantiated in the original request; the new request shall be addressed and executed in accordance with this law.
6. Any request addressed under the provisions of the preceding paragraph shall be accompanied by a written document, containing the statements made by the person who benefits from the rule of speciality.
7. The provisions of the preceding paragraphs shall apply to any person that enters into another State or Territory in accordance or for the purposes prescribed in Articles 138 and 139.
8. If the request is submitted by the MSAR, the document mentioned in paragraph 6 shall be established before the Court of Second Instance.

Article 18

Special cases in which the rule of speciality does not apply

1. The immunity that results from the provisions of paragraphs 1 and 2 of the preceding Article shall also cease to have effect in cases in which the person who is the beneficiary renounces the application of the rule of speciality or when, by way of an international convention applicable to the MSAR, the rule of speciality shall not apply.
2. When immunity ceases to have effect because the person who is the beneficiary renounces the application of the rule of speciality, such renouncement must result from a personal statement, made before a judge, whereby it is proved that the person expressed

himself/herself voluntarily and in full knowledge of the consequences of his/her act, with the assistance of a legal counsel or in his/her absence thereof, with the assistance of an appointed legal counsel.

3. When the person concerned is summoned to testify in the MSAR, followed by a request addressed to the MSAR or submitted by a MSAR authority, the hearing shall be held before the Court of Second Instance.

Article 19

Optional refusal for cooperation

1. Cooperation may be refused if the facts that substantiate the request are object of ongoing criminal proceedings, or if the facts are or may also be the object of criminal proceedings for which the MSAR judiciary authority has jurisdiction.
2. Cooperation may also be refused if, in view of the circumstances of the case, the acceptance of the request may entail serious consequences for the person concerned due to age, health or other reasons of personal nature

Article 20

Non bis in idem

When cooperation request is granted, which involves transfer of competence over criminal proceedings in favour of a judiciary authority of a State or Territory, criminal proceedings cannot be filed or continued in the MSAR for the same facts that substantiated the request; neither shall the enforcement sentence, which has been transferred to another State or Territory judiciary authority, be enforced in the MSAR.

CHAPTER III

General rules of the cooperation procedure

Article 21

Language to be used

1. The cooperation request shall be made in the official language of the requesting party accompanied by a translation in the official language of the requested party, unless the requested party exempts the need for such translation.
2. The provisions of the preceding paragraph shall also apply to the documents that accompany the request.
3. The decisions concerning the admissibility or the refusal of a cooperation request shall be notified in the official language of the requested party, accompanied by a translation in

the official language of the requesting party, unless the requesting party exempts the need for such translation.

Article 22

Requests addressed to the MSAR

1. The Procuratorate is the entity responsible to receive and transmit any cooperation request covered by this law that are addressed to the MSAR authorities, as well as for all the communications relating thereto.
2. Any cooperation request under the preceding paragraph shall be submitted to the Chief Executive by the Procurator-General, accompanied with his/her opinion, in view of making a decision on its admissibility.
3. The Chief Executive may request any information to other MSAR entities, whenever he/she deems it to be necessary.

Article 23

Requests formulated by the MSAR

1. Any cooperation request formulated by the MSAR authorities shall be submitted to the Chief Executive, by the Procurator-General, in view of making a decision on its admissibility.
2. The Chief Executive may request any information to other MSAR entities, whenever he/she deems it to be necessary.
3. In case of admissibility of the request by the Chief Executive, the requests mentioned in paragraph 1 above shall be transmitted through diplomatic channels.

Article 24

Content of the request

1. The cooperation request shall indicate:
 - 1) The requesting authority as well as the requested authorities, even if the indication of the latter may be in general terms;
 - 2) The object and the grounds for the request;
 - 3) The legal qualification of the facts on the grounds of which the request is sought for the purposes of criminal proceedings;
 - 4) The identification of the suspect, accused or sentenced person, of the victim and of the witness or expert whose testimony is sought;

- 5) A description of the facts, including time and place, proportional to the importance of the cooperation sought;
 - 6) The text of the legal provisions applicable in the requesting party;
 - 7) Any other relevant documents related to the fact.
2. Validation of the documents mentioned in the preceding paragraph shall not be required.
 3. If the information provided by the requesting party is insufficient to accept the request, additional information may be requested, without prejudice to adopting provisional measures whenever it is not possible to await for the revised request.
 4. The requirement referred to in sub-paragraph 6) of paragraph 1 above may be dispensed when the form of cooperation requested is according to the provisions of sub-paragraph 6), paragraph 2, of Article 1.

Article 25

Decision of non-admissibility or non-formulation of the request

1. The decision of the Chief Executive that declares the inadmissibility of the cooperation request addressed to a MSAR authority or that declares that a request cannot be formulated must be substantiated.
2. The decision referred to in the preceding paragraph is not subject to appeal.
3. The decision of the Chief Executive shall be notified to the competent authority via the Procurator-General.

Article 26

Competent authorities

The competent authorities of MSAR to formulate a cooperation request or to execute a request address to the MSAR shall be determined in accordance with the provisions of the following Chapters and with the relevant provisions of the organic laws of the competent authorities; the provisions of Articles 213 and *seq.* of the Criminal Procedure Code shall have subsidiary application.

Article 26

Expenses

1. As a general rule, the execution of a cooperation request shall be free of charge.
2. The requesting party shall, however, bear the following expenses:

- 1) Compensation and remuneration, as well as travel and subsistence allowances due to witnesses and experts;
 - 2) Expenses incurred with the delivery or handing over of property;
 - 3) Expenses incurred with the transfer of persons to the requesting party;
 - 4) Expenses incurred with the transit of persons;
 - 5) Other expenses deemed to be of relevance by the requested party on account of the human or technological means used to comply with the request.
3. For the purposes mentioned in sub-paragraph 1) of the preceding paragraph, an advance payment may be made available to the witness or expert; such advance payment shall be mentioned in the notification to the requesting party and reimbursed after the execution of the request.
 4. The requirements of paragraph 2 above may be dispensed with, by agreement, on a case-by-case basis, between the MSAR and a State or Territory.

Article 28

Transfer of persons

1. Any transfer of persons sentenced to penalties or security measures involving deprivation of liberty, which should be executed in compliance with the decisions made under this law, shall be carried out by the Secretary in charge of the MSAR Prison Establishment, in agreement, as to the means of transport, the date, hour and place of surrender, with the authorities of the other party, whose territory the person concerned is or should be transferred to.
2. Transfer shall be carried out without undue delay as from the date of the decision.

Article 29

Handing over of objects and values

1. At the request of a State or Territory, objects or values derived from the commission of an offence, exclusively or as a complement of another request, unless they are not subject of being declared lost in favour of the requesting party or of the MSAR, may be handed over to their rightful owners, whenever they are not essential for evidentiary purposes related to an offence over which the MSAR authorities have jurisdiction.
2. Handing over of objects and values may be postponed or handed over with the condition that they are returned.
3. The rights of bona fide third parties shall be safeguarded, as well as those of the MSAR, *inter alia*, as regards taxes, donations, award, income, duties, fines, compensations or any other relevant remuneration legally due.

4. If there is an objection, the handing over of objects and values shall be entrusted only after a favourable *res judicata* decision by the competent authority.
5. Objects subject of being declared lost in favour of a State or Territory or in favour of the MSAR may be shared among parties, by agreement, on a case-by-case basis, between the MSAR and a State or Territory.

Article 30

Urgent provisional measures

1. In case of urgency, judiciary authorities of the requesting party may communicate with the MSAR judiciary authorities, either directly or through the International Criminal Police Organisation - INTERPOL, to request the adoption of a provisional measure or the practice of an act that cannot be postponed; the request shall state the grounds for the urgency and shall abide by the requisites prescribed in Article 24.
2. The requests shall be transmitted by post, by electronic means, or by any other means that allow a written record and provided that is admitted by the MSAR law.
3. If the MSAR judiciary authorities deem the request to be admissible, in accordance with this law and the subsidiary legislation, they shall execute it and transmit the facts to the Chief Executive.

Article 31

Effect of the request

1. Any final decision of a judiciary authority that refuses a cooperation request shall be notified to the requesting party through the channels prescribed in Article 23.
2. After the execution of a cooperation request, the judiciary authority shall forward the respective documents, if applicable, to the requesting party, in accordance with the provisions of Article 146.

Part II

Surrender of fugitive offender

CHAPTER I

Request for surrender of fugitive offender from MSAR

Section I

Conditions for the surrender of fugitive offender

Article 32

Purpose of and grounds for the surrender of fugitive offender

1. Surrender of fugitives may only take place for the purpose of criminal proceedings or imposing a penalty or security measure involving deprivation of liberty for a crime where the courts of the requesting party have jurisdiction.
2. For any of the purposes mentioned in the preceding paragraph, surrender of the person sought shall only be possible in respect of crimes, including attempted crimes that are punishable under both the MSAR law and the law of the requesting party by a penalty or security measure involving deprivation of liberty for a maximum period of at least one year.
3. If the surrender of a fugitive offender is based on several separate facts, each of which is punishable under the MSAR law and the law of the requesting party by a penalty or security measure involving deprivation of liberty, and, however, one or some of which do not fulfil the requirement mentioned in the preceding paragraph, surrender of fugitive offender shall be possible.
4. Request of a surrender of fugitive offender for the purpose of executing a penalty or security measure involving deprivation of liberty may only be granted if the duration of the sentence that remains to be served is not less than 6 months.

Article 33

Cases in which surrender of a fugitive offender is refused

1. Surrender of a fugitive offender shall be refused in the cases mentioned in Articles 7 to 9 above, as well as in the following cases:
 - 1) The crime was committed in the MSAR;
 - 2) The person requested is a Chinese national non-resident of the MSAR, or
 - 3) The person requested is a MSAR resident, unless if the request is formulated by the State of the person's nationality or whenever the obligation to surrender a fugitive offender derives from a self-executing norm from international convention applicable to the MSAR
2. Whenever the surrender of a fugitive offender is refused on the grounds provided for in sub-paragraphs 1) and 3) of the preceding paragraph or sub-paragraphs 4) to 7) of paragraph 1 of Article 7, criminal proceedings shall be filed for the facts that substantiate the request; all the information deemed to be necessary shall be asked to the requesting party.
3. For the purposes of the preceding paragraph, the judge may impose any provisional measures that may deem to be appropriate.
4. The MSAR authorities shall examine the resident status and the nationality of the person requested at the time of assessing the request for the surrender of fugitive offender.

Article 34

Crimes committed in another jurisdictional area

In case of offences committed in another jurisdictional area other than the requesting party, the surrender of fugitive's offenders may only be granted if under identical circumstances the MSAR would have had jurisdiction under the MSAR law, or if the requesting party can prove that the other jurisdictional area does not request the perpetrator of the offence.

Article 35

Re-surrender of fugitive offender

1. The requesting party shall not be empowered to re-surrender a fugitive offender to another jurisdictional area.
2. The provisions of the preceding paragraph shall have no effect when:
 - 1) Authorisation for re-surrender of a fugitive offender is requested and granted under the same terms as those established for a surrender request, after the person concerned having been previously heard, or
 - 2) The person sought, having been given the possibility to leave the territory of the requesting party, did not avail himself/herself of that possibility within a period of 45 days or, having departed, voluntarily returned to it.
3. For the purposes of sub-paragraph 1) of the preceding paragraph, a statement of the person concerned related to his/her re-surrender may be requested.
4. For the cases prescribed in this Article, the provisions of paragraph 8 of Article 17 shall apply.

Article 36

Postponement of surrender

1. Neither the fact that criminal proceedings are ongoing in a MSAR court against the person sought, nor the fact that that person is serving a sentence involving the deprivation of liberty for an offence other than the offence on the grounds of which surrender is requested, shall preclude surrender from being granted.
2. In such cases, the surrender of the person sought may be postponed until the proceedings terminate or the sentence is served.
3. The surrender of the person may also be postponed if it is established through medical expertise that the person concerned suffers from an illness that puts his/her life in danger.

Article 37

Temporary surrender

1. Under the circumstances described in paragraph 1 of the Article 36, the person sought may be temporarily surrendered for the purpose of procedural acts, which the requesting party demonstrates that it cannot be postponed without causing serious prejudice, *inter alia*, to attend the hearing of a trial; such surrender may not carry any prejudice to the ongoing proceedings in the MSAR and the requesting party must undertake the unconditional return of the person concerned once such procedural acts are terminated.
2. If the person temporarily surrendered was serving a sentence; the execution of the latter shall be suspended as from the date of the surrender of the person to the requesting party and until the date of the surrendering back of the person to the MSAR authorities.
3. In the case of the preceding paragraph, the duration of custody shall be, however, deducted from the period that remains to be served, whenever the requesting party did not take such custody into consideration.

Article 38

Concurrent requests for surrender

1. When there are two or more requests for the surrender of the same person, related to the same facts, the request of the State or Territory where the offence was committed or where the main facts have occurred shall have preference.
2. Where the requests concern different facts, the seriousness of the offence according to MSAR law, the date of the request, the nationality or the usual place of residence of the person sought, as well as any other concrete circumstances such as the existence of an agreement or the possibilities of re-surrender between the different requesting parties, shall be taken into account and preference shall be given accordingly in the decision.
3. The provisions of the preceding paragraph shall apply, *mutatis mutandis*, for the purposes of continuing an anticipatory detention.

Article 39

Provisional detention

1. In case of urgency, the provisional detention of the person sought may be requested as a preliminary act of a formal surrender of a request for fugitive offender.
2. Any decision on such provisional detention, or its continuation, shall be taken in conformity with the MSAR law.
3. Provisional detention request shall: indicate the existence of either a detention warrant or a sentence whereby such person was convicted; a summary of the facts giving rise to the offence in question, including when and where such offence was committed, the legal

provisions that are applicable, as well as the available data concerning the identity, the nationality, the residence and the whereabouts of that person.

4. The provisions of Article 30 shall apply to the transmission of the request.
5. Provisional detention shall be terminated if the surrender of fugitive offender request is not received by the MSAR authorities within 18 days of the date of the detention; it may however be postponed for up to 40 days of the detention, if the reasons invoked by the requesting party are deemed to be justifiable.
6. Provisional detention mentioned in the preceding paragraph may be replaced by any other coercive measures, in accordance with the provisions set forth in criminal procedural legislation.
7. The provisions of paragraph 5 shall not preclude re-detention and the surrender of a fugitive offender, if a request is received subsequently.
8. The provisional detention request shall only be accepted when no doubts arise as to the powers of the authority of the requesting party and when the request contains the information mentioned in paragraph 3 above.

Article 40

Indirect request for detention

The MSAR criminal police authorities may detain any person who, according to official sources, *inter alia*, the International Criminal Police Organization - INTERPOL, is wanted in another State or Territory for purposes of filing criminal proceedings or the purpose of serving a sentence, for any notorious fact that justifies the surrender of a fugitive offender.

Article 41

Consented surrender

1. Any person detained by the MSAR authorities, for the purpose of surrender, after having been informed of his/her right to this judicial procedure, may state that he/she consents to be surrendered to the requesting party and that he/she renounces to the procedure of surrender of a fugitive offender.
2. The statement mentioned in the preceding paragraph, shall be signed by the person sought and by his/her legal counsel or, in his/her absence, by an appointed legal counsel.
3. The judge shall assess whether the requirements for granting surrender are met, shall hear the person sought in order to assess whether the statement was made of that person's free will and, if appropriate, shall confirm the statement and issue an order for the surrender of the person concerned; all acts shall be formally recorded in writing.
4. The statement, once confirmed in accordance with the provisions of the preceding paragraph, shall be irrevocable.

5. The judicial act to confirm the statement shall, for all purposes, bear the legal value of a final decision in the procedure for surrender of a fugitive offender.

Article 42

Coercive non-custodial measures

While there is an ongoing procedure and until a final decision is made, the provisions of paragraph 6 of Article 39 shall apply *mutatis mutandis*.

Article 43

Handing over of seized property

1. At the request of the requesting party, the handing over of the property seized at the moment of the detention or subsequently, may be carried out together with the surrender of the person sought, if such property is deemed to be essential to the gathering of evidence related to the commission of an offence; such property must derive or proceed from the offence, if governed under MSAR law.
2. The rights of bona fide third parties shall be safeguarded, as well as those of legitimate owners or holders and of the MSAR, *inter alia*, as regards taxes, donations, award, income, duties, fines, compensations or any other relevant remuneration legally due.
3. The handing over of the property mentioned in paragraph 1 above may be carried out even if the surrender of the fugitive offender is not executed, *inter alia*, by virtue of his/her escape or death.

Article 44

Escape of the surrendered person

If a surrendered person who escapes after being surrendered to the requesting party before the end of the criminal proceedings or before having served the sentence, returns or is found in the MSAR shall be arrested and surrendered to the same party upon an detention warrant from the competent authority of that party, except if there is a violation of the conditions under which the surrender was granted.

Article 45

Transit

1. Transit of a person who is surrendered from a jurisdictional area outside the MSAR to another, may be granted, if the concerned offence is an offence for the purposes of surrender in accordance to the MSAR law.
2. If the person concerned is a MSAR resident, transit shall only be granted when conditions as would be required for the surrender of fugitive offender are satisfied.
3. Authorisation for transit is granted upon request of the interested party.

4. If the transit takes place by air transport and a landing emergency occurs, the provisions set forth in the preceding paragraph shall apply; the above-mentioned request shall be executed by the air captain.
5. Whilst in transit, the person concerned shall be kept under detention in the MSAR.
6. The request shall dully identify the person in transit; the elements mentioned in paragraph 3 of Article 39 shall apply *mutatis mutandis*.
7. The Chief Executive shall assess the formal aspects of the request and make a decision, without undue delay; such decision shall be immediately transmitted to the requesting party through the same channels used for the request.
8. The decision authorising the transit shall specify the conditions under which the transit will take place, as well as the authority that will supervise the transit.

Section II

Procedure for the surrender of a fugitive offender

Article 46

Requests

1. The request for the surrender of a fugitive offender must include, other than the elements mentioned in Article 24:
 - 1) Evidence to the effect that, under the concrete circumstances of the case, the person sought is subject to the criminal jurisdiction of the requesting party;
 - 2) Evidence, in case the offence was committed in a jurisdictional area other than the requesting party, that the former does not request the person for the same offence; and
 - 3) a formal undertaking to the effect that the person sought shall neither be surrender to a another jurisdictional area outside the requesting party, nor be detained for purposes of criminal proceedings or to serve a sentence or any other purposes, related to any facts committed prior to, or concomitantly with, the facts that substantiate the request.
2. The following must be appended to the surrender of fugitive offender request:
 - 1) The detention warrant of the person sought, issued by the competent authority;
 - 2) A certificate or an authenticated copy of the decision ordering the issue of the detention warrant, in the case of the surrender of fugitive for purposes of criminal proceedings;
 - 3) A certificate or an authenticated copy of the conviction, in case of surrender of a fugitive offender for the purpose of serving a sentence, as well as a statement specifying

the duration of the sentence left to be carried out, if that duration does not correspond to the duration stated in the sentence;

4) A copy of the relevant laws related to the conditions under which the person becomes immune from prosecution or punishment by the reason of lapse of the limitation period, as applicable;

5) If applicable, a statement by the competent authority concerning any facts that, according to the law of the requesting party, suspends or interrupts the limitation period prescribed;

6) A copy of the relevant laws related to the possibility to appeal, or to the possibility of a new trial in case of a conviction sentence rendered *in absentia*.

Article 47

Supplementary information

1. If the request for the surrender of fugitive offender is either incomplete, or not accompanied by all the information that is necessary in order to make a decision, the provisions of paragraph 3 of Article 24 shall apply; a deadline for the reception of the missing elements shall be established, such deadline may be deferred if the requesting party invokes due reasons.
2. If the information requested in accordance with the provisions of the preceding paragraph is not made available, the surrender of fugitive offender procedure may be discontinued when the deadline expires, without prejudice to the possibility of the procedure being re-opened when such information is made available.
3. If the request concerns a person who is already detained for surrender purposes, the discontinuation mentioned in the preceding paragraph entails the immediate release of the person concerned; the provisions of paragraphs 6 and 7 of Article 39 shall apply *mutatis mutandis*.

Article 48

Procedure

1. The surrender of fugitive procedure shall comprise of one administrative stage and one judicial stage.
2. The administrative stage is of the competence of the Chief Executive and aims to assess the surrender of fugitive offender request for the purpose of deciding, *inter alia*, taking into account the applicable undertakings, on the basis of political reasons or on discretionary grounds, whether the request is admissible or non-admissible.
3. The judicial stage rests under the competence of the Court of Second Instance which, after a hearing with the person concerned, shall undertake a legal assessment of the form and substance of the facts in relation to the legal requirements, for the purpose of deciding whether the surrender of a fugitive offenders shall be granted or not; no

evidentiary material on the alleged conduct of the person sought shall be taken into consideration.

Article 49

Participation of the requesting party in the procedure

1. Any requesting party on a surrender request that so requests to the MSAR may participate in the judicial stage of the surrender procedure, through a representative appointed to that effect.
2. If the request to participate in the procedure does not accompany the request for the surrender of fugitive offender, it shall be addressed to the Court of Second Instance via the Procuratorate.
3. Any request to participate must be submitted to the Chief Executive, with an opinion of the Procuratorate, in view of its admissibility; without prejudice of Paragraph 5 of Article 3, the request shall be refused if reciprocity is not ensured.
4. Participation mentioned in Paragraph 1 above allows the requesting party to have direct contact with the criminal proceedings file, in conformity with the rules of confidentiality of the procedure, and to provide any information that the court may require.

Article 50

Administrative procedure

1. Upon receiving the request for the surrender of a fugitive offender, the Procuratorate shall assess the formal aspects of the request and issue an opinion, within a maximum period of 20 days; the opinion shall be submitted together with the request to the Chief Executive for consideration.
2. The Chief Executive shall decide on the admissibility or non-admissibility of the request.
3. If the request is declared inadmissible the procedure shall be filed, without further formalities.
4. The Procuratorate shall take the necessary measures in order to ensure the surveillance of the person sought.

Article 51

Beginning of the judicial procedure

1. The request for the surrender of a fugitive offender that is declared admissible, along with any documents available and the decision taken upon shall be forwarded to the representative of the Procuratorate attached to the Court of Second Instance.
2. The Procuratorate, within the following 48 hours, shall take the steps to carry out the request.

Article 52

Preliminary ruling and detention of the person sought

1. Once a case is referred to a chamber and within that chamber to a judge rapporteur, the procedure shall immediately be submitted to the latter who, within 10 days, must produce a preliminary decision on whether the information available suffices and on its viability.
2. If the judge rapporteur deems that the procedure should be filed, he/she shall submit a written document with his/her written opinion to the other judges in the chamber, during a period of 10 days, to be examined; the request shall be decided in the chamber the next meeting.
3. If the case should proceed, the judge rapporteur shall submit to the representative of the Procuratorate, attached to the Court of Second Instance, the detention order of the person sought in order to carry out its execution.
4. Whenever additional information is deemed to be necessary, the competent authorities shall be instructed only to keep the person requested under surveillance, however, when it is deemed to be necessary and there are serious reasons for believing that the surrender of fugitive offender request will proceed, the immediate detention of the person concerned may take place.

Article 53

Duration of the detention

1. The detention of the person requested shall cease and be replaced by another procedural coercive measure if the final decision of the Court of Second Instance does not occur within 65 days of the detention date.
2. If a non-custodial coercive measure is not admissible, the period mentioned in the preceding paragraph shall be extended for a maximum of 25 days; a final decision must be taken within that period of time.
3. The custodial measure shall continue even when an appeal is made against the decision of the Court of Second Instance ordering the surrender of the fugitive offender; however, the period of detention pending a decision on the appeal may not go beyond a period of 80 days from the date of the appeal.

Article 54

Appearance of the person sought

1. The authority that carries out the detention of the person sought shall entrust the person concerned, together with any property seized, to the representative of the Procuratorate attached to the Court of Second Instance; the person sought must appear before the court for the purpose of being heard within 48 hours of his/her detention.

2. The judge rapporteur shall hear the person sought; an appointed legal counsel shall be nominated for that person in case the latter has no legal counsel.
3. The person shall be personally summoned to the hearing and informed of his/her right to be assisted by both a legal counsel and an interpreter.

Article 55

Hearing of the person sought

1. In the hearing, the judge rapporteur shall proceed to the identification of the person and shall inform him/her of the right to object to his/her surrender or to give consent, and under which conditions.
2. The hearing mentioned in the preceding paragraph shall be carried out in the presence of the Procuratorate attached to the Court of Second Instance, of the legal counsel of the person concerned and, if necessary, with the assistance of an interpreter.
3. If the person sought declares that he/she consents to be surrendered to the requesting party, the provisions of paragraphs 2 to 5 of Article 41 shall apply *mutatis mutandis*.
4. If the person sought declares that he/she objects to be surrender to the requesting party, the judge shall assess the grounds for such objection, should the concerned person wishes to state his/her reasons and produces a written record of the hearing.
5. Both the Procuratorate and the legal counsel of the person concerned may suggest questions for the judge to ask to the detainee, if he/she deems it to be relevant.

Article 56

Objections of the person requested

1. After the hearing of the person sought, the criminal file shall be entrusted to his/her legal counsel who may, within 10 days, present in writing the person's objections to the surrender request, along with the grounds for the objections, and indicate ways and means of evidence compatible with the MSAR law; the number of witnesses, however, cannot exceed 10.
2. Objections shall only be admitted on the grounds that the person detained is not the person sought or whenever the conditions to the surrender of a fugitive offender are not meet.
3. Once the objections are put forward, or once the deadline for that procedure has expired, the criminal file shall be submitted, during a period of no longer than 10 days, to the Procuratorate in order to request what it deems to be appropriate; the limitation on the number of witnesses mentioned in paragraph 1 above shall apply.
4. If property is seized, both the person sought and Procuratorate may put forward their views on the matter.

5. The means of evidence indicated by the parties may, no later than the day before being produced, be replaced by other means, if such replacement does not entail any adjournment.

Article 57

Production of evidence

1. Any steps requested or taken at the initiative of the judge rapporteur, in particular steps taken in order to decide on the property seized, must be done within 15 days, in the presence of the person concerned, his/her legal counsel, of the Procuratorate and, if necessary, of an interpreter.
2. After the production of evidence, the Procuratorate and the legal counsel of the person requested may consult the criminal file, for a period of 10 days, in order to elaborate statements.

Article 58

Final decision

1. If the person sought has not objected in writing, or after the statements have been produced in accordance with the provisions of paragraph 2 of the preceding Article, the judge rapporteur shall, within 10 days, examine the file and forward it to each of the other two judges in chamber, for their examination, for a period of 10 days.
2. The file shall then be submitted to the next session of the chamber of the Court of Second Instance, with priority over other matters pending, for final decision; the final decision shall be made in accordance with the criminal procedural law.

Article 59

Appeal of the judicial procedure

1. Within the judicial procedure for the surrender of a fugitive offender, appeal from the final decision is admissible to the Court of Last Instance.
2. Appeal of the decision to grant the surrender shall suspend the procedural deadlines.

Article 60

Right to appeal and content of the appeal

1. Both the Procuratorate and the person requested are entitled to appeal within 10 days of the decision.
2. The appeal shall include any statements of the person concerned, without which the appeal shall be dismissed.
3. The other party shall have 10 days to reply to the appeal.

4. The file shall be submitted to the Court of Final Appeal as soon as the last statement from the parties is received or as soon as the deadline mentioned in the preceding paragraph is met.

Article 61

Decision on the appeal

1. Once the file is sent to the Court of Final Appeal, the judge rapporteur shall have a period of 10 days to elaborate a draft decision; the file shall then be forwarded simultaneously to all the other judges in chamber, for 10 days.
2. The file shall be submitted to the next session of the chamber, as soon it has been examined by all the judges and with priority over other matters pending.

Article 62

Surrender of the person

1. A certificate of the final decision ordering the surrender of the fugitive offender shall be required and shall be the only document required in order to surrender the person sought.
2. Once the decision to surrender becomes final, the representative of the Procuratorate attached to the Court of Second Instance shall transmit that decision to the Secretary responsible for the Macao Prison Establishment for the purposes of Article 28; the date of the surrender shall be fixed not later than 20 days after the date in which the decision to surrender became final.
3. Temporary surrender provided for in paragraph 1 of Article 37 may be granted by means of the surrender of the fugitive offenders procedure, upon a favourable opinion of the judge in charge of the file involving the person requested to be surrender.

Article 63

Date of the surrender

1. The person concerned shall be transferred from MSAR at the date agreed in accordance with the provisions of preceding Article.
2. If anyone fails to appear to receive the person at that date, he/she shall be set free 20 days after that date.
3. The deadline mentioned in the preceding paragraph shall be deferred for another 20 days, inasmuch as the particular circumstances of the case so require, if reasons of force majeure, *inter alia*, illness as described in paragraph 3 of Article 36 preclude the surrender within that deadline.

4. Any new request for the surrender of a fugitive offender, whose surrender did not take place within the deadline mentioned in paragraph 2 above, or within the deferred deadline, may not be accepted.
5. Once the person is surrendered, both the court and the Procuratorate shall be informed accordingly.

Section III

Special procedural rules for provisional detention cases

Article 64

Powers and formalities

1. For the purposes of Article 39, provisional detention shall be ordered by the judge rapporteur of the Court of Second Instance; and, after the examination of the authenticity, the regularity and the admissibility of the request, a detention warrant shall be handed over to the Procuratorate.
2. The authority who carries out the detention of the person concerned shall produce him/her before the representative of the Procuratorate attached to the Court of Second Instance for the purposes of being heard; a decision to validate the detention and to allow for its continuation shall be taken within a maximum period of 48 hours after the detention.
3. The provisional detention of a person shall be immediately transmitted to the Chief Executive, and, whenever, in accordance to the provisions of paragraph 5 of Article 39, the provisional detention should terminate, an order for the release of the person shall be issued.

Article 65

Time Limits

1. Once the surrender of fugitive offender request of a person provisionally detained is received, the procedure provided for in Article 50 shall be completed within a maximum of 18 days.
2. If the decision of the Chief Executive deems to be favourable, the request shall be immediately forwarded to the representative of the Procuratorate attached to the Court of Second Instance in order to execute the request.
3. The detention of the person requested shall cease and be replaced by another procedural coercive measure, if the request is not submitted to the court within the next 60 days of the date of the detention.

4. The file shall be immediately submitted to the Court of Second Instance; the deadlines mentioned in paragraphs 1 and 2 of Article 52 shall be reduced to 5 days and the deadlines mentioned in paragraph 1 of Article 53 shall run as from the date of receipt of the request by the court.
5. Any decision of the Chief Executive that refuses the request shall immediately be transmitted in accordance with the provisions of paragraph 2 above, for the purpose of releasing the detained person.

Article 66

Indirect request for detention

1. Any authority that carries out a detention in accordance with provisions of Article 40 shall bring the person before the representative of the Procuratorate attached to the Court of Second Instance, for the purposes of being heard, within a maximum of 48 hours from the date of the detention.
2. If the detention is upheld, it shall immediately be brought to the attention of both the Procuratorate and, through the most expeditious channels, to the State or Territory concerned; the latter shall be requested to inform urgently and through the same channels, whether it will submit a surrender request.
3. The person detained shall be released after 18 days from the detention date, unless a reply is received with the information mentioned in the preceding paragraph or if, after 40 days from the detention date, a positive reply is received but not followed by a surrender request.
4. The provisions of Article 53 shall apply *mutatis mutandis* to the preceding.

Article 67

Non-custodial coercive measures and power

The Court of Second Instance shall be competent to decide upon any non-custodial coercive measures, whenever such measures are admissible under the provisions of Articles 39 and 66.

Section IV

Re-surrender

Article 68

Detention of the surrendered person following an escape

1. The detention warrant mentioned in Article 44 shall be submitted to the Procuratorate, through the channels mentioned in this law, and shall contain or be accompanied by the information that are deemed to be necessary in order to assess if it concerns a person that

has escaped, after being previously surrendered by the MSAR, before the end of the criminal proceedings against him/her, or before serving the sentence imposed on him/her.

2. The detention warrant shall be forwarded to representative to the Procuratorate attached to the Court of Second Instance in order to execute the request for the surrender of fugitive offender.

Article 69

Execution of the request

1. Once the execution of the detention request has been requested, the judge rapporteur shall order its execution, after verifying if it was properly done and if the person in question is the same person that was previously surrendered.
2. Within 10 days from the date of the detention, the person concerned may object in writing to his/her re-surrender to the requesting party, on grounds that the requesting party violated the conditions under which surrender had been granted, indicating promptly his/her evidentiary material; the number of witnesses is limited to 8.
3. If there is objection, the provisions of paragraphs 3 and 5 of Article 56 and the provisions of Articles 57 and 58, shall apply *mutatis mutandis*.
4. Any appeal against the final decision on the request shall be dealt in accordance with the provisions of Articles 59 and 60.

Article 70

Re-surrender

1. In accordance with the provisions of Article 62, the representative of the Procuratorate attached to the Court of Second Instance shall ensure the re-surrender of the previously surrendered person, whenever there are no objections or refusal to that request.
2. The certificate mentioned in Article 62 shall be replaced by the detention warrant as soon as executed.

CHAPTER II

Request for the surrender of a fugitive offender submitted by the MSAR

Article 71

Powers and procedure

1. The Procuratorate shall be empowered to initiate the surrender of fugitive offender procedure, based on a request from its representative attached to the competent court; the file shall be submitted to the Chief Executive for decision.

2. If the decision of the Chief Executive deems to be favourable, the request, accompanied with the necessary elements, shall be transmitted to the Sate or Territory where the fugitive offender may be found, through the channels provided for in this law.
3. The Chief Executive may request to the requested party to allow a representative appointed for that purpose to participate in the surrender procedure.

Article 72

International circulation of the provisional detention request

1. The judicial warrant for the provisional detention with a view to surrender a fugitive offender shall be forwarded to the Procurator-General by the representative of the Procuratorate attached to the competent court.
2. The Procurator-General shall forward the warrant to Chinese National Central Office of the International Criminal Police Organisation – INTERPOL, and inform the court accordingly.

Article 73

Notification

Once the surrender of the fugitive offender is granted, the Chief Executive shall notify that fact to the MSAR judiciary authority that requested it.

CHAPTER III

Final provision

Article 74

Urgent nature of the surrender procedure

Surrender of fugitive offender procedures shall be regarded as urgent and shall not stop during the periods of judicial recess.

Part III

Transfer of criminal proceedings

CHAPTER I

Transfer of powers in criminal proceedings in favour of the MSAR judiciary authorities

Article 75

Principle

At the request of the requesting party, under the conditions and with the effects set out in the following Articles, criminal proceedings may be filed or continue to take place in the MSAR for an offence committed outside the MSAR territory.

Article 76

Specific requirements

1. Criminal proceedings may be filed or continue to take place in the MSAR for a fact committed outside the MSAR territory, subject to the general requirements provided for in this law, as well as the specific requirements that follow:
 - 1) The recourse to surrender of fugitive offenders procedure is excluded;
 - 2) The requesting party has provided an undertaking that it shall not take criminal proceedings against the suspect or accused, for the same facts, if a final judgement is rendered by a MSAR court in respect of the same person and for the same facts;
 - 3) The maximum period of the penalty or of the security measure involving deprivation of liberty that is applicable with respect to the facts must be at least one year, or the maximum level of the pecuniary sanction involved must be at least the equivalent of 30 units of account in criminal procedure;
 - 4) The person concerned must be a MSAR resident; and
 - 5) The acceptance of the request must be justified in terms of either the interest of good administration of justice or the adequate social rehabilitation of the suspect or accused, in case the person concerned shall be convicted.
2. When the requirements laid down in the preceding paragraph are met, criminal proceedings may also be taken or continued in the MSAR, if:
 - 1) Criminal proceedings have already been filed in the MSAR against the same person for other facts, the latter being punishable with a penalty or a the security measure involving deprivation of liberty equal or above than those mentioned in the sub-paragraph 3 of the preceding paragraph;
 - 2) When the surrender of fugitive offender has been refused;
 - 3) The requesting party deems that the presence of the person concerned cannot be ensured before its courts but can be ensured before the MSAR courts; or
 - 4) The requesting party deems that circumstances do not allow the enforcement of a possible conviction, even through the surrender of the fugitive offender, and circumstances do allow for such enforcement in the MSAR

3. The provisions of the preceding paragraphs shall have no effect if the offence, based on which the request is addressed, falls under the jurisdiction of the MSAR courts by virtue of any other legal provision concerning the territorial jurisdiction of the MSAR criminal law.

Article 77

Applicable Law

Unless the law of the requesting party is more favourable, the criminal reaction provided for in the MSAR law shall be applicable to the fact for which criminal proceedings have been filed or continued in the MSAR, under the conditions mentioned in the preceding Article.

Article 78

Effects on the requesting party

1. The acceptance by the MSAR authorities of a request addressed by a requesting party implies that the latter renounces further proceedings in relation to the same facts.
2. Once criminal proceedings have been filed or continued in the MSAR, the requesting party, after been duly notified that the person concerned is absent from the MSAR territory, resumes the right to prosecute the person for the same facts

Article 79

Procedure for the request

1. The request made by the requesting party shall include the original or an authenticated copy of the criminal file, if it exists.
2. In case the Chief Executive decides that the request is admissible, the file shall be submitted to the Court of Second Instance; the latter shall summon the suspect or the accused to appear in court, and, if applicable, his/her legal counsel.
3. If the suspect or accused fails to appear in court, the court shall ensure that the summons were legally carried out and, if the person concerned is not represented by a legal counsel or, if represented, the legal counsel failed to appear, an appointed legal counsel shall be nominated; all acts shall be recorded in writing.
4. The judge may, *ex officio* or at the request of the Procuratorate, the suspect, accused or that person's legal counsel, order that the summons mentioned in paragraph 2 above shall be repeated.
5. The suspect, accused or his/her legal counsel shall be invited to state any reasons for or against the acceptance of the request; the Procuratorate shall enjoy the same right.

6. If necessary, the judge, at his/her own initiative or at the request of the Procuratorate, suspect, accused or his/her legal counsel, shall carry out or order the measures that he/she deems to be essential for gathering of evidence; for this purpose he/she shall establish a deadline that cannot exceed 30 days.
7. Once such measures have taken place or once the deadline mentioned in the preceding paragraph has expired, the file shall be handed over, to the Procuratorate and to the suspect or accused for consideration; each shall be given 10 days to state in writing, the issues that they deem to be relevant.
8. The judge shall then make a decision within a period of 10 days; the decision may be, under the law, appealed against.
9. Whilst the pending of the request, the judge may decide to impose any provisional coercive measures, including pecuniary guarantees, provided for in the criminal procedural law.

Article 80

Effects of the decision with respect to the request

When the decision is in favour of the request, the judge, as appropriate, either:

- 1) Orders the file to be forwarded to the competent judiciary authority that is competent to take or continue proceedings, or
- 2) Takes the necessary measures to continue with the criminal proceedings, if it is within his/her powers to do so.

Article 81

Declaration of validation of the procedural acts taken abroad by the requesting party

The judicial decision with an effect of continuing criminal proceedings, automatically shall give the same validity to the procedural acts taken abroad, as if they were taken before a MSAR judiciary authority, unless such acts would be considered inadmissible under the terms of the MSAR criminal procedural law

Article 82

Revocation of the favourable decision upon the request

1. At the request of the Procuratorate, suspect, accused or his/her legal counsel, the court may revoke the decision while the proceedings are pending:
 - 1) Any of the grounds justifying inadmissibility or refusal to cooperate provided for in this law is disclosed by the parties;

- 2) The presence of the accused for the trial or for the purpose of enforcing a sentence involving deprivation of liberty cannot be ensured.
2. The above decision may be appealed against.
3. Once such a decision becomes final and enforceable, it puts an end to the jurisdiction of the MSAR judiciary authority and implies the return of the criminal file to the requesting party.

Article 83

Notification

1. The following shall be communicated to the Procuratorate for the purpose of notifying the requesting party:
 - 1) The decision on the admissibility of the request;
 - 2) The decision that revokes the former;
 - 3) The sentence imposed in the criminal proceedings;
 - 4) Any other decision that terminates the criminal proceedings.
2. Notification to the requesting party shall include a certificate or an authenticated copy of the decisions mentioned in the preceding paragraph.

CHAPTER II

Transfer of competence in criminal proceedings in favour of the requested party

Article 84

Principle

The power to file criminal proceedings or to continue criminal proceedings pending in the MSAR, for a fact that constitutes a crime under the MSAR law may be transferred to a State or Territory that accepts it, subject to the requirements laid down in the following Articles.

Article 85

Specific requirements

1. Transfer of the MSAR authorities in favour of a State or Territory with the powers to file or to continue criminal proceedings shall be subject to the general requirements provided for in this law, as well as the specific requirements as follows:
 - 1) The maximum period of the penalty or of the security measure, involving deprivation of liberty that is applicable must be at least one year, or the maximum level of the pecuniary sanction involved must be at least the equivalent of 30 units of account in criminal procedure; and
 - 2) The suspect or the accused must either be a national of the State involved or, if he/she is either a national of a third State or a stateless person, must have his/her usual place of residence in that former State;
2. Transfer of powers may also take place if:
 - 1) The suspect or accused is serving a sentence in the that State or Territory, for a crime which is more serious than the crime committed in the MSAR;
 - 2) The person concerned has his/her usual place of residence in that State or Territory and the surrender of the suspect or accused, either cannot be obtained in conformity with the national law of that State or Territory, or when the requested surrender was refused;
 - 3) The person, suspect or accused has been surrendered to the State or Territory for facts other than the ones under consideration and it is deemed that the transfer of powers allows an adequate social rehabilitation of the person concerned.
3. The transfer of powers may also take place, regardless of the nationality or usual place of residence of the suspect or accused, when the MSAR authorities deem that the presence of the person concerned for the court hearing cannot be ensured, while his/her presence for the court hearing can be ensured in another State or Territory.

Article 86

Procedure for the transfer of powers

1. At the request of the Procuratorate, the suspect or accused, and after hearing objections and reasons for and against the use of the transfer of powers, the competent court which has jurisdiction over the facts involved shall assess the need for the transfer or continue the criminal proceedings.
2. The Procuratorate, suspect or accused shall each be given a period of 10 days to state the reasons for and against the use of the transfer of powers; after that period, the judge shall decide, within 10 days, to grant or to refuse such request.

3. If the suspect or the accused is outside of the MSAR, the person concerned, or by a person who legally represents him/her or by his/her legal counsel, may request the transfer of the criminal proceedings directly or before an authority of that State or Territory.
4. The judicial decision on the request is subject to appeal.
5. Without prejudice to any acts or measures of urgent nature, any favourable *res judicata* decision on the request shall suspend the limitation period and the discontinuation of the proceedings; that decision shall be transmitted to the Chief Executive.
6. In case of admissibility of the Chief Executive of the request for the transfer of powers, the request shall be transmitted to the requesting party through the channels provided for in this law.
7. Once communication from the requesting party related to the acceptance of the request is received, a certified copy of the file of the criminal proceedings initiated in the MSAR, at its actual state, including in relation to the transfer of powers procedure, shall be forwarded.

Article 87

Effects of the transfer of powers

1. Once the transfer of powers to file or to continue criminal proceedings has been accepted, no new proceedings shall be filed in the MSAR for the same facts.
2. The limitation period shall be suspended until the termination of the criminal proceedings within the requested party, including the enforcement of the sentence, if any.
3. The MSAR shall, however, re-acquire the right to file criminal proceedings for the facts if:
 - 1) The requested party involved notifies that it cannot conclude the proceedings transferred to it, or
 - 2) Any reason is disclosed that, according to this law, would have precluded the request for transfer from being granted.
4. Any sentence involving a penalty or a security measure, imposed in the requested party upon proceedings that were transferred thereto, shall be recorded in the criminal record and shall have the same effects as if it has been imposed by a MSAR court.
5. The provision of the preceding paragraph shall apply to any decision that terminates the criminal proceedings in the requesting party.

CHAPTER III

Common provisions

Article 88

Legal costs and other expenses

1. Any legal costs and other expenses due for proceedings abroad, before the acceptance of the request of MSAR to transfer such proceedings, shall add to the legal costs due for the proceedings in the MSAR and shall be charged together with latter; such costs shall not be reimbursed to the requested party, except by agreement, on a case-by case basis, as regards sharing of the costs.
2. The MSAR shall inform the requested party of the amount of legal costs and other expenses due for the proceedings, before the latter accepts the request for transfer the proceedings; the MSAR shall not require the reimbursement of such legal costs, except by agreement, on a case-by case basis, as regards sharing of the costs.

Part IV

Enforcement of criminal sentences

CHAPTER I

Transfer of powers of the enforcement of criminal sentences to the MSAR

Article 89

Principle

At the request of the sentencing party, the MSAR may enforce *res judicata* criminal sentences imposed by the courts of the sentencing party under the conditions laid down in this law.

Article 90

Specific requirements

1. Any request for the enforcement in the MSAR of a criminal sentence pronounced in the sentencing party shall be admissible only subject to the general requirements provided for in this law, as well as the following requirements:
 - 1) The sentence imposes a criminal reaction for facts that constitute a crime in respect of which the courts of the sentencing party have jurisdiction;

- 2) If the conviction was pronounced during an *in absentia* trial, the defendant has been given the legal right to request a new trial or to appeal the sentence;
 - 3) The sentence is compatible with the fundamental principles of the MSAR legal system;
 - 4) The facts involved are not subject to criminal proceedings in the MSAR;
 - 5) The sentenced person must be a MSAR resident, or otherwise have his/her usual place of residence in the MSAR;
 - 6) The enforcement of the sentence in the MSAR is justified upon the interest of an adequate social rehabilitation of the sentenced person, or in the interest of compensation for damages caused by the crime;
 - 7) The sentencing party provided guarantees that, once the sentence has been enforced in the MSAR, it shall consider the criminal liability of the person concerned to be extinguished;
 - 8) The term to be served under the sentence must not be less than one year or, in case of a pecuniary sanction, it should correspond at least to the equivalent of 30 units of account in criminal procedure;
2. Without prejudice to the provisions of the preceding paragraph, a sentence of the sentencing party may also be enforced in the MSAR, if the person concerned is already in the MSAR serving a sentence for any fact other than the fact for which the sentence was imposed.
 3. The enforcement in the MSAR of a sentence of the sentencing party that imposes a penalty or a security measure involving deprivation of liberty shall also be admissible, even if the requirements provided for in sub-paragraphs 5) and 6), of paragraph 1, above are not met, when, in case of escape to the MSAR or in other situation in which the person is present in the MSAR, the surrender of the sentenced person to the sentencing party, for the facts for which he/she was sentenced, has been refused.
 4. The requirement mentioned in sub-paragraph 8) of paragraph 1 may be dispensed with in special cases, *inter alia* having regard to the health of the sentenced person, or when family or professional reasons so dictate.

Article 91

Limits to the enforcement

1. The enforcement of a criminal sentence pronounced in the sentencing party shall be limited to:
 - 1) The enforcement of a penalty or security measure involving deprivation of liberty;

- 2) The enforcement of a pecuniary sanction, if the assets belonging to the sentenced person are found in the MSAR and are enough to, partially or fully ensure such enforcement;
 - 3) The confiscation of proceeds, objects or instrumentalities of the crime; or
 - 4) The enforcement of any decision concerning civil compensation, in case the claimant requests it.
2. Settlement of legal costs shall be limited to the costs due to the sentencing party.
 3. The enforcement of a pecuniary sanction implies the conversion of the amount thereof into patacas at the rate of exchange prevailing at the day when the decision to review and confirm the sentence was made.
 4. Accessory sanctions and disqualifications shall be enforced only if enforcement can have practical effects in the MSAR.

Article 92

Documents and procedure

1. The request of the sentencing party shall be accompanied by a certificate or an authenticated copy of the criminal sentence to be enforced, as well as information concerning the duration of pre-trial detention or the length of the criminal reaction already served.
2. If the judgement concerns more than one person or imposes several criminal reactions, the request shall be accompanied by a certificate or an authenticated copy of that part of the sentence in respect of which enforcement is sought.
3. In case the Chief Executive deems the request to be admissible, the file shall be forwarded to the representative of the Procuratorate attached to the Court of Second Instance in order to carry out the review and confirmation procedure of the sentence.
4. The Procuratorate attached to the Court of Second Instance shall request the hearing of the sentenced person, or his/her legal counsel, to state his/her views on the request, unless the transfer of powers to enforce the sentence was requested by sentenced person.

Article 93

Review and confirmation

1. Criminal sentences of the sentencing party shall be enforceable only after they are reviewed and confirmed by a judicial decision of the Court of Second Instance.
2. Provisions of Articles 218 to 223 of Criminal Procedure Code shall apply to the review and confirmation procedure mentioned in the preceding paragraph, as well as the following:

- 1) The Court shall be bound by the findings as to the facts, insofar as they are deemed to be proved by the sentence;
- 2) The court shall not convert a sanction involving deprivation of liberty into a pecuniary sanction;
- 3) The Court shall in no circumstances aggravate the criminal reaction imposed by the sentence.
3. The condition mentioned in sub-paragraph c), paragraph 1, of Article 220 of the Criminal Procedure Code shall be exempted in a situation provided for in sub-paragraph 2), paragraph 1, of Article 7 of this law.
4. If the court deems that the facts are not clear, or are insufficient, or that there are missing facts, it shall request the necessary supplementary information to the sentencing party; confirmation of the sentence shall be denied whenever it is not possible to obtain the mentioned information.
5. The cooperation procedure provided for in this Chapter shall be of an urgent nature and shall not be interrupted during periods of judicial recess.
6. If the request concerns a detained person, a decision must be taken within 6 months of the date in which the request was submitted to the court.
7. If the request concerns the enforcement of a sentence involving deprivation of liberty, in the cases mentioned in paragraph 4 of Article 90, the deadline mentioned in the preceding paragraph shall be shortened to 2 months.
8. If an appeal is made, the deadlines mentioned in paragraphs 6 and 7 above shall be extended by 3 months and 1 month, respectively.

Article 94

Applicable law and effects of enforcement

1. Criminal sentences of the sentencing party shall be enforced in conformity with the MSAR criminal procedural law.
2. Criminal sentences of the sentencing party enforced in the MSAR shall produce the same effects that the MSAR law confers to sentences imposed by the MSAR courts.
3. Only the sentencing party that requests the enforcement of a sentence shall have the right to decide on any application for review of that sentence.
4. Both the sentencing party and the MSAR may exercise the right of amnesty, pardon or commutation.
5. The MSAR court which is empowered to enforce the sentence shall terminate the enforcement, when:

- 1) It is disclosed that the sentenced person benefit from an amnesty, pardon or commutation that terminates the enforcement of the sentence and the accessory sanctions;
 - 2) It is disclosed that an appeal to review the sentence or of any other decision that might render the sentence to be unenforceable, was lodged;
 - 3) If the sentence concerns a pecuniary sanction and the sentenced person paid the amount of the sanction in the sentencing party.
6. Partial pardon, commutation and the replacement of the penalty for another shall be taken into consideration.
 7. The sentencing party must inform the court of any facts mentioned in paragraphs 5 above that might result in the end of the enforcement.
 8. As soon as enforcement begins in the MSAR, the sentencing party must renounce its right to enforce the sentence; the right of enforcement shall, however, revert to the latter when the sentenced person escapes or when, it concerns a pecuniary sanction, from the moment that it is informed that the due amount cannot be totally or partially enforced.

Article 95

Taking to the Prison establishment to enforce de sanction

When a decision to the effect of confirming the sentence of the sentencing party becomes final and enforceable, and if that sentence imposes a penalty or a security measure involving deprivation of liberty, the Procuratorate shall take the measures to ensure that the sentenced person is brought to the prison establishment.

Article 96

Court competent for the enforcement

1. The Court of First Instance shall be empowered to enforce the sentence, as reviewed and confirmed.
2. For the purposes of the preceding paragraph, the Court of Second Instance shall forward the file to the Court of First Instance.

CHAPTER II

Transfer of powers of the enforcement of MSAR criminal sentences to another state or territory

Article 97

Requirements

1. The powers to enforce a criminal sentence imposed by a MSAR court may be transferred to a another State or Territory only if, other than the general requirements provided for in this law, the following are met:
 - 1) The sentenced person is either a national or has his/her usual place of residence in the requested party;
 - 2) It is not possible to obtain the surrender of the fugitive offender to enforce the MSAR sentence;
 - 3) There are good reasons to believe that the transfer of powers will provide an adequate social rehabilitation of the person concerned; and
 - 4) The term to be served under the sentence must not be less than one year or, in case of a pecuniary sanction, it should correspond at least to the equivalent of 30 units of account in criminal procedure
2. If the requirements provided for in the preceding sub-paragraphs 1) and 2), as applicable, are met, transfer of powers shall also be admissible if the person concerned is serving a sentence involving deprivation of liberty in the requested party for facts other than those for which he/she was convicted in the MSAR.
3. The enforcement abroad of a MSAR sentence involving deprivation of liberty shall also be admissible, even where the requirements provided for in paragraph 1, sub-paragraph 3) above are not met, if the sentenced person is present on the territory of the requested party and the surrender of the fugitive offender for the facts mentioned in the sentence is not possible or has been refused.
4. The requirement mentioned in sub-paragraph 4) of paragraph 1 above, may be dispensed with, in special cases, *inter alia*, having regard to the health of the sentenced person, family or professional reasons or any other, upon agreement with the requested party.
5. Transfer of powers shall be made subject to the condition that the requested party shall not aggravate the criminal reaction imposed by the MSAR court.

Article 98

Provisions applicable

1. The provisions of paragraphs 1, 2 and 4 of Article 91 on limits to the execution, and the provisions of paragraphs 2 to 7 of Article 94 on the effects of the execution, shall apply *mutatis mutandis*.
2. Whenever the sentenced person does not have enough assets in the MSAR to guarantee the full enforcement of a pecuniary sanction, transfer of powers of the enforcement of the remaining part of the sanction to the requested party shall be admissible.

Article 99

Effects of the transfer of powers

1. Acceptance by a State or Territory to enforce the MSAR sentence shall discontinue the enforcement of such sentence as from the date of the beginning of enforcement in the requested party, until enforcement is concluded or until the requested party informs the MSAR authorities that it cannot ensure the enforcement of the sentence.
2. At the time of the transfer of the sentenced person from the MSAR, the requested party that accepted the transfer of powers shall be informed both of the period of the deprivation of liberty already served in MSAR and the period of deprivation of liberty that remains to be served; the period that has been already served shall be deducted from.
3. The provisions of paragraph 8 of Article 94 shall apply *mutatis mutandis*.

Article 100

Procedure for transfer of powers

1. Requests for the transfer of powers of enforcement of a MSAR criminal sentence shall be submitted to the Chief Executive by the requesting party or by the representative of the Procuratorate attached to the Court of Second Instance, at his/her own initiative or upon application of the sentenced person, "assistant" or a party claiming damages; parties claiming damages shall be limited in scope to the execution of that part of the sentence that imposes the payment of damages.
2. In case the Chief Executive deems the request to be admissible, he/she shall immediately forward the file, via the representative of the Procuratorate attached to the Court of Second Instance, to execute the applicable procedure.
3. When the consent of the sentenced person is necessary, such consent, if given, must be given before the Court of Second Instance, unless the person is in abroad, in which case consent may be given before a judiciary authority of a State or Territory where that person is found.
4. If the sentenced person is present in the MSAR and he/she did not request for the transfer, the Procuratorate shall request the notification of the concerned person to state the issues that he/she deems to be relevant, within 10 days.
5. In case the sentenced person abstains from stating his/her views, silence shall be understood as agreement to the request; the notification act shall inform the concerned person accordingly.
6. For the purposes mentioned in paragraphs 3 and 5 above, a rogatory letter shall be forwarded to the requested party, and a deadline shall be fixed.
7. The Court of Second Instance shall take the measures as it deems necessary in order to be in a position to take a decision, including requesting the submission of the criminal file related to the sentence.

8. The provisions of paragraphs 5 to 8 of Article 93 shall apply *mutatis mutandis* for the case provided for in this Article.

Article 101

Following procedures to a favourable decision

1. Following any decision in favour of the transfer of powers to enforce a MSAR criminal sentence, a request shall be submitted by the Chief executive to the requested party, accompanied by the following documents:
 - 1) A certificate or an authenticated copy of the sentence, mentioning the date as from which it became final and enforceable;
 - 2) A declaration mentioning the period of the deprivation of liberty already served until the date of the request;
 - 3) The declaration of the consent of the person concerned, if applicable.
2. A certified copy of the criminal file may also be forwarded, upon request.
3. If the requested party notifies that the request is accepted, the Procuratorate shall request to be kept informed of the enforcement of the sentence until it is completed.
4. Any information received, such as provided for in the previous paragraph, shall be forwarded to the court that imposed the sentence.

CHAPTER III

Fines, confiscated property and provisional measures

Article 102

Fines and confiscated property

1. The amount of any pecuniary sanctions as a result of a sentence of a requesting party enforced in the MSAR, shall revert to the MSAR.
2. If, however, the sentencing party so requires, such proceeds may be handed over to it on the condition that under the same circumstances reciprocity shall apply.
3. The provisions of both preceding paragraphs shall apply *mutatis mutandis* when the enforcement of a MSAR sentence is transferred.
4. Property confiscated shall revert to the party that enforces the sentence, however, it may be handed over to the sentencing party, upon request and if the property is of special interest to it and reciprocity is ensured.

5. Objects subject of being declared lost in favour of the MSAR or in favour of that State or Territory, as well as, any amount related to the execution of any pecuniary sanction may be shared among parties, by agreement, on a case-by-case basis.

Article 103

Coercive measures

1. At the request of the representative of the Procuratorate attached to the Court of Second Instance and within the framework of the procedure to review and confirm a sentence from the sentencing party for the purpose of enforcing a sentence involving deprivation of liberty, the Court of Second Instance may decide to impose on the sentenced person any coercive measures that it deems to be appropriate, if that person is in the MSAR.
2. If pre-trial detention is the coercive measure imposed, that measure shall be revoked after the deadlines provided for in paragraphs 6 and 8 of Article 93 have lapsed, if by that time the decision of confirmation is still not pronounced.
3. Pre-trial detention may in such a case be replaced by another coercive measure, in conformity with the criminal procedural law.
4. Any decision concerning coercive measures and to its replacement shall be, under the law, subject to appeal.

Article 104

Provisional measures

1. At the request of the representative of the Procuratorate attached to the Court of Second Instance, the Court of Second Instance may decide to impose the provisional measures that it deems to be necessary to safe-keep the property seized in order to ensure the enforcement of the sentence.
2. Decision that imposes such measures shall be subject to appeal; such appeals shall not suspend the execution of the measure.

Article 105

Coercive measures and provisional measures requested by the MSAR

1. The request for transfer of powers to enforce a MSAR sentence to a requested party may be accompanied by a request to apply coercive measures with respect to the sentenced person, should the latter be on the territory of the requested party.
2. The provisions of the preceding paragraph shall also apply to any provisional measures aimed at ensuring the enforcement of a sentence related to the objects or values derived from the offence.

CHAPTER IV

Transfer of sentenced persons

Section I

Common provisions

Article 106

Scope of application

1. This Chapter applies to the enforcement of criminal sentences when such enforcement implies the transfer of a person sentenced to a penalty or security measure involving deprivation of liberty and when the transfer results from the person's request or depends on the person's consent.
2. The provisions provided for in Chapters I and II of this part shall apply accordingly, whenever there is no other specific provision thereof.

Article 107

Principles

1. If the general requirements provided for in this law and in the following articles are met, any person sentenced by a State or Territory to a penalty or security measure involving deprivation of liberty may be transferred to the MSAR in order to serve the sentence imposed on him/her.
2. In the same way and for the same purposes, any person sentenced in the MSAR to a penalty or security measure involving deprivation of liberty may be transferred to another State or Territory.
3. The transfer may be requested either by the MSAR or by the State or Territory, in both cases, provided that it is with the express consent of the sentenced person.
4. The transfer is also subject to the existence of an agreement between the MSAR and State or Territory.

Section II

Transfer to another State or Territory

Article 108

Powers and proceedings

1. The representative of the Procuratorate attached to the court that imposed the sentence shall inform the sentenced person, without undue delay and after the sentence is final and

- enforceable, of the right to request his/her transfer to another State or Territory, in accordance with this law.
2. Transfer requests may be requested to a MSAR authority or submitted through an authority of another State or Territory.
 3. Transfer requests shall be forwarded to the Procuratorate to assess its formal aspects and elaborate an opinion, within 30 days; such opinion shall be submitted to the Chief Executive for consideration in view of its admissibility.
 4. The Chief Executive shall decide on the admissibility of the request.
 5. In case the Chief Executive decides in favour of the request, the request shall be transmitted to the representative of the Procuratorate attached to the Court of Second Instance that shall ensure that the person concerned is heard before the judge; for this purpose the provisions of the criminal procedural law concerning the hearing of an accused under detention shall apply.
 6. The court shall decide on the request, after ensuring that the person concerned voluntarily consented to his/her transfer and is fully aware of its legal consequences, in accordance with the provisions of paragraph 3 of Article 41.
 7. A consular agent or any official appointed with the agreement of the requesting party state shall be granted the possibility of verifying whether or not the consent was given in conformity with the provisions of the preceding paragraph.
 8. The person concerned shall be informed in writing of all the decisions that respect him/her.

Article 109

Information to be submitted by the MSAR

1. If the sentenced person requests or consents to the MSAR authorities for being transferred to another State or Territory, the MSAR shall so inform that State or Territory with a view to obtaining its agreement, accompanied with the following information:
 - 1) Name, date and place of birth, and nationality of the person concerned;
 - 2) His/her address in that State or Territory, if applicable;
 - 3) A statement of the facts upon which the sentence was based;
 - 4) The nature and period of and date in which the person started serving the penalty or measure.
2. The following information shall also be forwarded to State or Territory:
 - 1) A certificate or an authenticated copy of the sentence and of the text of the legal provisions that apply to the case;

- 2) A declaration indicating the period of the penalty or measure that was already served, period of pre-trial detention, reduction of the penalty or measure and any other facts pertaining to the enforcement or duration of the sentence;
- 3) The request or declaration of consent of the person concerned for the purposes of being transferred;
- 4) Any medical or social report related to the person concerned and in particular to any medical treatment undergone by that person in the MSAR and any recommendations as to the continuation of such treatment, if applicable

Article 110

Request submitted to another State or Territory

If the person expresses to an authority of another State or Territory that he/she wishes to be transferred thereto, that State or Territory shall submit, with the request, the following documents:

- 1) A declaration indicating that the sentenced person either is a national of that State or has his/her usual residence on its territory;
- 2) A copy of the legal provisions from which it can be assumed that the facts upon which the MSAR sentence was based also constitute a punishable offence according with the law of that State or Territory;
- 3) Any other documents that are deemed to be relevant for the decision on the request.

Article 111

Effects of transfer to other State or Territory

1. The transfer of the person to other State or Territory shall suspend the enforcement of the sentence in the MSAR.
2. When the State or Territory communicates, after the transfer of the sentenced person, that a judicial decision has deemed the sentence to be fully enforced, the MSAR shall be disqualified to enforce the sentence.
3. Whenever amnesty, pardon or commutation is granted, the State or Territory shall be informed accordingly.

Section III

Transfer to the MSAR

Article 112

Transfer request to the MSAR

1. When a MSAR resident sentenced to a penalty or a security measure involving deprivation of liberty in another State or Territory expresses his/her wish to be transferred to the MSAR, the Procuratorate shall, within 30 days, assess the request and submit his/her opinion to the Chief Executive for consideration in view of its admissibility.
2. For the purposes mentioned in the preceding paragraph, the Procuratorate shall also take into consideration, *inter alia*, all the information provided for by the sentencing party.
3. The Procuratorate may request additional information from the sentencing party, *inter alia*, the elements mentioned in Article 109 shall apply *mutatis mutandis*.
4. The Chief Executive shall decide on the admissibility of the request.
5. The MSAR authorities shall ensure that the person concerned voluntarily consented to his/her transfer and is fully aware of its legal consequences.
6. The person concerned shall be informed in writing of all the decisions that concerns to him/her.
7. Whenever the request is submitted by other State or Territory, the provisions set forth in paragraph 1 to 6 shall also apply.

Article 113

Review and confirmation of the sentence

1. After acceptance of the transfer request to the MSAR, the criminal file shall be forwarded to the representative of the Procuratorate attached to the Court of Second Instance for review and confirmation of the sentence of the sentencing party.
2. When the decision on the review and confirmation of the sentence of the sentencing party is final and enforceable, such decision shall be transmitted to the sentencing party in order to carry out the transfer.

Section IV

Information concerning enforcement and transit

Article 114

Information on the enforcement

1. All information concerning the enforcement of the sentence shall be transmitted to the sentencing party; that information shall include:

- 1) The date on which enforcement of the sentenced has been completed, as decided upon by way of a judicial decision;
 - 2) If applicable, notice of the escape of the person concerned prior to the sentence having been fully enforced.
2. At the request of the sentencing party, a special report on the way in which enforcement was carried out and the results thereof shall be submitted to it.

Article 115

Transit

Authorisation for the transit through the MSAR of a person being transferred from one jurisdictional area to another may be granted, at the request of any of the parties; the provisions of Article 45 shall apply *mutatis mutandis*.

Part V

Surveillance of sentenced persons or persons under parole

CHAPTER I

General provisions

Article 116

Principles

1. The sentencing party may, in accordance with the following provisions, request cooperation from the requested party to have under surveillance sentenced persons or persons under parole who normally resided on its territory.
2. Cooperation as mentioned in the preceding paragraph shall aim at:
 - 1) Facilitating the social rehabilitation of the sentenced person through the adoption of adequate measures;
 - 2) Supervising the behaviour of the person concerned in order to apply a possible criminal reaction on that person or to enforce it.

Article 117

Object

1. Cooperation provided for in this Part may consist one of the following modalities:
 - 1) Surveillance of sentenced person;

- 2) Surveillance and enforcement of a sentence; or
 - 3) Full enforcement of a sentence.
2. The request for cooperation under one of the above-mentioned modalities may be refused in favour of one of the other modalities, if deemed to be more adequate by the requesting party, taking into account the concrete case, and if such counter-proposal is accepted by the requested party.

Article 118

Optional refusal for cooperation

Notwithstanding the general requirements provided for in this law, the request for cooperation as provided for in this Part to the MSAR may be refused if:

- 1) The sentence with respect to which the cooperation request is made was taken *in absentia* and the right to request a new trial or an appeal was not guaranteed;
- 2) The sentence is not compatible with the fundamental principles of the MSAR law, *inter alia*, if in view of the age of the person concerned, that person should not have been subject to criminal proceedings.

Article 119

Information

1. The decision on the cooperation request shall be immediately communicated by the Procuratorate to the requesting party and, in case of total or partial refusal, relevant reasons shall be given.
2. If the request is accepted, the Procuratorate shall communicate to the requesting party of any circumstances that might affect either the execution of surveillance measures or the enforcement of the sentence.

Article 120

Contents of the request

1. Notwithstanding Article 24 (1), the request to have under surveillance sentenced persons or persons in parole shall include:
 - 1) Purposes for which the surveillance is requested;
 - 2) Detailed description of the surveillance measures adopted;
 - 3) Information related to the nature and duration of the surveillance measures, which are being requested to be applied;

- 4) Information related to the character of the sentenced person and his/her behaviour in the requested party, before and after the date of the surveillance decision.
2. Whenever after surveillance there is a request to enforce a sentence, such request must contained the original and certified copy of the sentence that imposed the criminal reaction and of the decision that revokes the suspension of the conviction or its enforcement.
3. The enforceable nature of the preceding paragraph shall be certified in the accordance with formalities prescribed by the law of the requested party.
4. Whenever the decision to be enforced has replaced an earlier one and does not contain a recital of the facts of the case, the decision containing such recital shall also be attached.

Article 121

Procedure and decision

1. The provisions of Part IV on the enforcement of criminal sentence, in particular those on the examination of requests by the Chief Executive, jurisdiction of the MSAR courts, procedure and effects of enforcement, shall apply *mutatis mutandis* to cooperation requests as provided for in this Part.
2. Whenever the request is deemed for the surveillance of a sentenced person alone, the provisions on consent of the person concerned shall not apply.

Article 122

Expenses and legal costs

1. Upon application of the requesting party, expenses incurred with, and legal cost resulting from the procedure for that party, if duly indicated, shall be collected from the sentenced person.
2. Whenever expenses or costs are collected, refund to the requesting State shall not be mandatory, with exception of experts' fees.
3. Expenses related to the surveillance of the sentenced person and to enforcement of sentence shall not be refunded by the requesting party.

CHAPTER II

Surveillance

Article 123

Surveillance measures

1. The requesting party that only requests to the MSAR authorities the surveillance of the sentenced person shall inform the conditions imposed on the concerned person and, if applicable, of the surveillance measures with which the latter must comply during the period of probation.
2. When the request is accepted, the prescribed surveillance measures shall, if necessary, be adapted by the court to the measures provided for in the MSAR law.
3. In no case may, the surveillance measures applied by the MSAR, as regards either their nature or their duration, be more severe than those prescribed in the decision taken in the requesting party.

Article 124

Consequences of accepting a request

1. Upon acceptance of a request for surveillance of sentenced person, the MSAR authorities shall inform the requesting party of all measures carried out and the outcome of their implementation.
2. In case the person concerned becomes liable to the revocation of the conditional suspension of his/her sentence, the necessary information shall be provided to the requesting party, *ex officio* and without delay.
3. When the surveillance period expires, the necessary information shall be provided to the requesting party upon request.

Article 125

Powers of the requesting party

The requesting party shall alone be competent to judge, on the basis of the information and comments supplied to it, whether or not the sentenced person has satisfied the conditions imposed upon him/her, and, on the basis of such appraisal, to take any further steps provided for in its own legislation; it shall inform the MSAR authorities of its decision.

CHAPTER III

Surveillance and enforcement of sentences

Article 126

Consequences of revocation of the conditional suspension of the conviction or of enforcement of the penalties

1. After revocation of the conditional suspension of the conviction or of enforcement of penalties by the requesting party, the MSAR shall become empowered to enforce the said sentence, upon an application by the requesting party.
2. The enforcement shall take place in accordance with the MSAR law, after verification of the authenticity of the request for enforcement and its compatibility with the terms of this law concerning the revision and confirmation of foreign sentences.
3. The court shall, if necessary, replace the criminal reaction imposed by the requesting party, for a penalty or security measure as provided for in the MSAR law for a similar offence.
4. In the cases mentioned in the preceding paragraph, the nature of the replaced penalty or security measure shall correspond as closely as possible to the criminal reaction prescribed by the sentence, without however exceeding the maximum penalty provided for by the MSAR law, nor may it be longer or more severe than that imposed by the requesting party.
5. The MSAR shall transmit to the requesting party, in due time, a document certifying that the sentence has been enforced

Article 127

Powers to grant parole

The MSAR courts alone shall be empowered to grant parole to the offender

Article 128

Amnesty, pardon and commutation

Amnesty, general pardon and commutation may be granted either by the requesting party or by the MSAR.

CHAPTER IV

Full enforcement of the sentence

Article 129

Applicable provisions

When the requesting party requests the full enforcement of the sentence, the provisions of paragraphs 2 to 5 of Article 126 and Articles 127 and 128 shall apply *mutatis mutandis*.

CHAPTER V

Request submitted by the MSAR

Article 130

Applicable regime

The provisions of the preceding Chapters shall apply, *mutatis mutandis*, to requests submitted by the MSAR.

Part VI

Other forms of legal assistance in criminal matters

CHAPTER I

Common provisions

Article 131

Principles and scope

1. Legal assistance in criminal matters provided for in this Part shall include: the communication of information; the communication of procedural acts and other public law acts, whenever deemed to be necessary for the purposes of criminal proceedings; as well as the necessary acts to enable the seizure or recovery of instrumentalities, objects or proceeds of an offence.
2. The assistance mentioned in the preceding paragraph shall include, *inter alia*, the following:
 - 1) Effecting service of judicial acts and handing over of documents;
 - 2) Gathering of evidence;
 - 3) Searches, seizures, examination of objects and sites and expert evaluations;
 - 4) Effecting service of accused persons, witnesses or experts and taking of testimony or statements;
 - 5) Transit of persons;

- 6) Providing information related to the criminal record of suspects, accused or sentenced persons;
 - 7) Providing information related to the MSAR law and any law of another State or Territory.
3. The authorisation of the Chief Executive shall be mandatory, whenever:
 - 1) The criminal police authorities carry out direct exchange of information in criminal matters with authorities of another State or Territory;
 - 2) The judiciary authorities and the criminal police authorities of another State or Territory are permitted to take part in criminal proceedings that shall take place on MSAR;
 - 3) The judiciary authorities and the criminal police authorities of the MSAR request to take part in criminal proceedings that shall take place in another State or Territory;
 - 4) The request involves the transfer of persons detained or imprisoned in the MSAR to another State or Territory in order to take part in criminal proceedings.
 4. The participation mentioned in sub-paragraph 2 shall be authorised only if its purpose is to assist the competent judiciary authorities or criminal police authorities of the MSAR in accordance with the provisions of the criminal procedural law; all acts must be recorded in writing.
 5. The participation mentioned in sub-paragraph 4 of paragraph 3 shall be subject to the adoption of the appropriate measures for the transit of the person concerned.
 6. The provision of Article 30 shall apply to any measures that are imposed under the competence of the criminal police authorities; such measures are undertaken under the conditions and within the limits provided for in the criminal procedural law.

Article 132

Applicable Law

1. Assistance requests addressed to the MSAR shall be carried out in conformity with the MSAR law.
2. At the request of the requesting party, the assistance requested may be given in conformity with the law of that party, as long as is not incompatible with the fundamental principles of law of the MSAR and does not carry out serious damages to the parties involved in the proceedings.
3. If the assistance requested implies measures that are banned under the MSAR law, the assistance requests shall be refused.

Article 133

Prohibition to use information obtained

1. Any information obtained to be used within the framework of the criminal proceedings mentioned in the request to the MSAR shall not be otherwise used.
2. At the request of the requesting party, the Chief Executive may, exceptionally, authorise, within the framework of other criminal proceedings, the use of the information mentioned in the preceding paragraph.
3. Any authorisation given to another State or Territory to consult a MSAR criminal proceedings file, which intervenes as an injured party in the referred proceedings, shall be subject to the conditions mentioned in the preceding paragraphs.

Article 134

Confidentiality

1. Upon application of the requesting party, the request for assistance, its purpose, the measures taken upon the request, as well as the documents involved, shall be kept confidential.
2. If the request cannot be executed without breaking the confidentiality requirement, the MSAR authorities shall inform the requesting party to confirm or annul its request.

CHAPTER II

Request for assistance

Article 135

Contents of the request and supporting documents

Other than the documents and statements mentioned in Article 24, assistance requests mentioned in this Part shall include:

- 1) The name, address and procedural capacity of the person to whom the document should be serviced, as well as specification of the nature of such document;
- 2) A statement to the effect of certifying that searches, seizure or handing of objects or values, as requested, are admissible under the law of the requesting party;
- 3) Any reference to particulars of the criminal proceeding file or to any additional requirements, including deadlines and confidentiality that the requesting party wishes to be met.

Article 136

Procedure

1. Assistance requests mentioned in this Part that take the form of rogatory letters shall be governed by the provisions of Articles 214 to 216 of the Criminal Procedure Code.
2. The provisions of Article 216 of the Criminal Procedure Code shall apply *mutatis mutandis* to requests that do not take the form of a rogatory letter.
3. Other requests, in particular requests related to criminal records, to the verification of the identity of a person or mere requests for information, may be directly transmitted to the competent authorities or entities for execution; once complied with, the results shall be communicated through the same channels used by the requesting party.
4. The Chief Executive may impose special conditions to the assistance request; the requesting party shall be informed thereupon.

CHAPTER III

Special forms of MSAR assistance

Article 137

Service of acts

1. The MSAR authorities shall service any procedural acts and judicial decisions as submitted by the requesting party upon request.
2. Service may be carried out by simple transmission of the documents to the person concerned by post or, if the requesting party expressly so requests, by any other manner consistent with the MSAR law.
3. Proof of the service shall be given either by means of a document dated and signed by the person concerned or by means of a statement made by the MSAR authority certifying the facts, the form and service date.
4. Documents shall be deemed to be serviced whenever acceptance or refusal is stated in writing.
5. If documents cannot be executed as requested, the requesting party shall be informed of the reasons thereof.

Article 138

Service of summons to take part in criminal proceedings

1. Summons to take part as a suspect or accused person, a witnesses or an expert in the criminal proceedings in another State or Territory is not mandatory.

2. At the time of the service, the person concerned shall be informed of his/her right to refuse to appear.
3. The MSAR authorities shall refuse to carry out the service, whenever the person concerned is threatened with sanctions for his/her non-appearance or whenever the necessary security measures for the person concerned are not safeguarded
4. Consent to appear shall be freely given by way of a written statement.
5. Summons shall indicate the amount of the remuneration and of the compensation, as well as the travelling and subsistence expenses to be paid of; such information must be transmitted to the MSAR authority in due time in order to receive the payment at least 50 days before the date that the person should appear.
6. In urgent cases, the deadlines indicated in the preceding paragraph may be shortened.

Article 139

Temporary surrender of persons in custody

1. A person detained or imprisoned in the MSAR may be temporarily surrendered to the authorities of another State or Territory for the purposes mentioned in the preceding Article, provided that the person concerned consents, and as long as there are guarantees for his/her custody and safe return, within the period stipulated by the MSAR authorities or when his/her presence is no longer necessary.
2. Temporary surrender of persons detained or imprisoned shall be refused if:
 - 1) The presence of the person concerned is needed for the purposes of criminal proceedings in the MSAR
 - 2) It implies the extension of the pre-trial detention of the person concerned; or
 - 3) According with the circumstances of the case, the Chief Executive, after consultation with the MSAR judiciary authorities, does not deem surrender to be convenient.
3. The period of custody during which the person remains out of the MSAR for criminal proceedings in another State or Territory shall be deducted from the pre-trial detention or any criminal reaction imposed by the MSAR.
4. If the criminal reaction imposed on the surrendered person expires while that person is in another State or Territory, that person shall be set free and shall from that moment enjoy the rights as persons who are not under custody.

Article 140

Transit

1. The provisions of Article 45 shall apply *mutatis mutandis* to the transit of a detained person from a jurisdictional area into another in order to take part in any criminal proceedings.
2. Detention of a person in transit shall not remain, if the party that authorised the transfer, in the meantime, requests the person to be set free.

Article 141

Handing over of objects, values, documents or files

1. At the request of the requesting party, objects, in particular, documents or values, which are possible to be seized under MSAR law, may be made available to those authorities if they are deemed to be relevant to their decision.
2. Criminal proceeding files or other records may be handed over under the condition that they shall be returned within the deadline established by the competent MSAR authorities; such request must be fully substantiated in the assistance request, wherein its relevance to a criminal proceedings file is invoked.
3. The handing over of objects, values, files or documents may be postponed if they are deemed to be necessary for the purposes of ongoing criminal proceedings in the MSAR.
4. Certified copies of the requested files or documents may be handed over instead of the originals; however, if the authority of the requesting party expressly requests the handed over of originals, the request shall as far as possible be granted; the return condition mentioned in paragraph 2 shall be complied with.

Article 142

Proceeds, objects and instrumentalities of an offence

1. At the request of the requesting party, the MSAR authorities may undertake actions in order to trace any proceeds, located in the MSAR, from an allegedly committed crime; the results thereof shall be communicated to the requesting authority.
2. Within the request, the authorities requesting party must inform the grounds to the MSAR authorities as to the extent it deems that such proceeds might be located in the MSAR.
3. In case the proceeds of a crime are located in the MSAR, the MSAR authorities shall undertake the necessary measures to enforce the court decision of the requesting party whereby a confiscation order of the proceeds of crime is imposed; the provisions provided in Part IV shall apply *mutatis mutandis*.
4. When the requesting party authorities communicates its intention to execute the decision

mentioned in the preceding paragraph, the MSAR authorities may take the measures permitted under MSAR law, to prevent any transfer or disposal of values which are or may be affected by that decision.

5. The provisions of this Article shall apply to objects and instrumentalities of a crime.

Article 143

Information on the law applicable

1. Any information requested by the judiciary authorities of another State or Territory related to the MSAR law applicable within the framework of specific criminal proceedings shall be granted by the Secretary responsible for the Justice Affairs.
2. If any information deemed to be necessary by MSAR judiciary authorities related to the law of another State or Territory, the Secretary responsible for the Justice Affairs shall provide the necessary assistance.

Article 144

Information related to criminal records

1. The Secretary, who is in charge of the Identification Department, shall provide all the information related with the criminal record of the person concerned for the purposes of criminal proceedings, upon request of the judiciary authorities of another State or Territory.
2. When the information related with the criminal record of a non-resident is deemed necessary for the purposes of criminal proceedings, the MSAR authorities may request such information at his/her usual place of residence or through any other appropriate channels.

Article 145

Information about criminal judgements

The requesting party may request any information about or copies of criminal judgements, as well as measures taken thereof.

Article 146

End of the assistance procedure

1. The MSAR authority in charge of executing a request shall hand over a written record as well other documents to the requesting authority as soon as it deems that the request has been fully complied with.

2. If, however, the requesting party does not deem that the request has been fully complied with, it may return it to the MSAR authorities in order to be full filled; the reasons for the return of the request must be specified.
3. If the MSAR authorities deem that such reasons are valid, it shall comply with the request.

Part VII

Final and transitory provisions

Article 147

Information for sentenced persons

The Head of the MSAR Prison Establishment shall, within 60 days, provide information to persons who were sentenced with an imprisonment penalty, who may benefit from the right to request his/her transfer to another State or Territory, in pursuant to this law.

Article 148

Cooperation in relation to administrative offences

1. The provisions of Part I, Chapter I to III of Part IV and of Part VI shall apply *mutatis mutandis* to cooperation in relation to administrative acts within the proceedings of an administrative offence and to *res judicata* sentences involving pecuniary sanctions as a result of the commission of administrative offences.
2. Whenever the enforcement of a pecuniary sanction is requested in another State or Territory, through a final administrative act, as a result of the commission in the MSAR of an administrative offence, the competent administrative authority shall issue a certificate of enforceability and submit it together with all the other relevant elements attached to the request; the Chief Executive shall decide on the admissibility of the request.
3. Whenever the enforcement of *res judicata* sentences involves pecuniary sanctions as a result of the commission of administrative offences in the MSAR, the procedures provided for in this law related to the transfer of powers to enforce criminal sentences imposed by the MSAR Courts shall be applicable.
4. In case of the admissibility of the request by the Chief Executive, the requests mentioned in the preceding paragraphs shall be transmitted through the channels mentioned in Article 23.
5. The enforcement of a *res judicata* sentence involving pecuniary sanctions as a result of the commission of administrative offences in another State or Territory, shall be conducted in accordance with the MSAR law; the authenticity of the request and its conformity with the conditions prescribed in this law related to the revision and confirmation of sentence shall be complied with.

6. In a case by case basis, and upon agreement between the MSAR and another State or Territory, the proceeds, objects and instrumentalities of administrative offences liable of being declared lost in favour of the MSAR or of that State or Territory, as well as the expenses to be charged for the enforcement of the pecuniary sanctions shall be shared among the parties.

Article 149

Transitory provision

Without prejudice to the suspect, accused or sentenced person, the provisions provided for in this law shall be applicable to ongoing cooperation requests.

Article 150

Entry into force

This law shall enter into force on the first day of November 2006.