

資料文件

《刑事事宜相互法律協助(印度)令》
小組委員會

二零一一年三月二十四日小組委員會會議上
所提事項的回應

目的

在二零一一年三月二十四日小組委員會會議上，委員要求當局就《刑事事宜相互法律協助(印度)令》提供補充資料。本文件提供委員要求的資料。

第十八條第(1)款及第(6)款

2. 委員要求當局提供有關法庭將不動產視為"犯罪工具"，相對於視為"罪案現場"的相關案例。根據《刑事事宜相互法律協助(印度)令》附表 1 第十八條第(6)(b)款，"犯罪工具"指任何用於或擬用於與犯罪有關的用途的財產。

3. 我們未能在本地法庭案例中找到相關案例，但若干相關的英聯邦案例現摘錄於**附件**(只備英文本)。就這些案件所作出的裁決，具體闡明一項原則，就是必須證明犯罪行為與有關的不動產兩者之間，真正有着一些密切關係，而釐定密切的程度基本上是以每宗案件的事實為根據。僅是有人在某一財產作了違法行為，不一定表示該財產用於與犯罪有關的用途，或該財產已成為"犯罪工具"。換言之，該財產必須被用於促成有關的犯罪行為，不論是基於該財產的性質或其使用的方式。

死因研訊相互法律協助

4. 就死因研訊提供相互法律協助法律框架的建議，當局會考慮委員的意見，並會就研究結果向立法會司法及法律事務委員會作匯報。

保安局

2011年4月

Taylor v AG (1991) 52 A Crim R 166

(Australian case)

A forfeiture order was made against a residential property from which the selling of cannabis had been conducted regularly and over a long period of time. It was also used by the defendants as their family home. The Court held that the property was used as the place in and from which trading in drugs was carried out. It could, in effect, be seen as a drug shop and was thus “used in connection with the sale of the relevant drugs”.

R v Rintel (1991) 3 WAR 527

(Australian case)

In relation to the house which was the subject of a forfeiture order, its use “as the place to store, prepare or supply the drugs” in question constituted a use of the premises in connection with the relevant drug offences. It was not merely the location of the offences. The Court pointed out that the ordinary meaning of the verb “to use” is “to employ for a purpose” and the ordinary meaning of “use” is “utilisation or employment for or with some aim or purpose”.

DPP v Farley (Supreme Court, unreported, 17 September 1996)

(Australian case)

The premises, in which sexual offenses against young boys were committed, had been used as a place in which activities “to which boys are naturally drawn such as fixing bicycle chains, doing woodwork and tying knots” were undertaken with a view to gradually seducing them. The Court considered that the premises were effectively an instrument or lure used by the defendant in connection with and for the purpose of his offences.

DPP v Garner (Supreme Court, unreported, 26 April 1999)

(Australian case)

It was held that the defendant had used the houseboat which was subject to a forfeiture order, to provide the boys on whom serious sexual assaults were committed “with a pleasurable environment and exciting activities” and that the use of the boat was not “a mere incident of the crimes or as providing a locus for them but as an efficient tool of seduction of the boys”.

DPP v King (2000) NSWSC 394

(Australian case)

The boat, where the minor had been indecently assaulted in an aggravated manner by the defendant during the course of sailing, was held to be “no more than the place where the alleged offence took place” since the necessary nexus between the commission of the alleged offence and the boat was lacking.

National Director of Public Prosecutions v RO Cook Properties and another [2004] SACLR 14

(South African case)

The kidnapped victims were held hostage and assaulted by the culprits in a suburban house which was leased out as a guest house. The Court found that the evidence showed mainly that the victims were taken and then detained and abused in the guest house. The nature, location, attributes or the appointment of the house itself played no distinctive role in the crimes, nor did any features of the house play a role in luring the victims there. The house provided only the venue for the crimes and therefore did not contribute an instrumentality of the offences.

The other property involved was operated as a hotel where drug dealers were frequented. The Court found no evidence that the persons arrested in various police raids and searches were the same people and that rooms were rented out or equipped or adapted for the purposes of drug dealing. The hotel was held to be merely the place where the drug offences were committed.

**Prophet v National Director of Public Prosecutions 2007 (2)
BCLR140 (CC) (South African case)**

A residential property which was subject to a forfeiture order had been adapted in almost every single room to facilitate the manufacture of drugs. Its use was planned and deliberate to the success of the illegal activities. The property was held to be instrumental in the commission of the offence and was not merely providing a location for the offence.