Extradition Law of the PRC

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Contents

Table of Contents 1

Chapter I — General Provisions 1

Chapter II — Extradition Requests Made to the People’s Republic of China 1

Chapter III — Extradition Requests Made by the People’s Republic of China 3

Chapter IV — Supplementary Provisions 4

Table of Contents

- Chapter I — General Provisions
- Chapter II — Extradition Requests Made to the People’s Republic of China
- Chapter III — Extradition Requests Made by the People’s Republic of China
- Chapter IV — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of ensuring the normal conduct of extradition, strengthening international cooperation in punishing crimes, protecting the lawful rights and interests of individuals and organizations, and safeguarding national interests and social order.

Article 2 — This Law shall apply to extradition between the People’s Republic of China and foreign countries. The People’s Republic of China shall handle extradition matters on the basis of equality and reciprocity, and shall not conduct extradition in the absence of an extradition treaty or a reciprocal arrangement unless otherwise consented to by the foreign country.

Article 3 — Extradition conducted by the People’s Republic of China with foreign countries shall be governed by this Law, except as otherwise provided in an extradition treaty to which the People’s Republic of China is a party. The relevant provisions of this Law shall apply to extradition-related matters not addressed in an extradition treaty to which the People’s Republic of China is a party.

Article 4 — The People’s Republic of China and foreign countries shall, in accordance with the provisions of extradition treaties or on the basis of the principle of reciprocity, request extradition from each other or provide extradition cooperation. Where a foreign country requests extradition from the People’s Republic of China, this Law shall apply. The relevant provisions of this Law may apply to requests for criminal judicial assistance involving the surrender of persons between the People’s Republic of China and foreign countries in the absence of an extradition treaty.

Chapter II — Extradition Requests Made to the People’s Republic of China

Section 1: Conditions for Extradition

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Article 5 — The People's Republic of China may grant extradition of a person sought by a foreign country where the act for which extradition is requested constitutes a criminal offense under the laws of both the People's Republic of China and the requesting country, and meets one of the following conditions:

(1) The maximum term of imprisonment that may be imposed for the offense is at least one year; or

(2) Where extradition is requested for the purpose of executing a criminal penalty, the remaining term of imprisonment to be served by the person sought is at least six months.

Article 6 — Extradition shall not be granted under any of the following circumstances:

(1) The person sought is a national of the People's Republic of China;

(2) The competent judicial authority of the People's Republic of China has already rendered a legally effective judgment on the offense for which extradition is requested, or has decided not to initiate criminal proceedings;

(3) The offense for which extradition is requested is a political offense, or the People's Republic of China has granted asylum to the person sought;

(4) The person sought was compelled to commit the offense in absentia, or the criminal proceedings against the person sought were conducted in absentia, unless the requesting country guarantees a retrial;

(5) The offense for which extradition is requested is a purely military offense;

(6) The person sought has been or is likely to be subjected to torture or other cruel, inhuman, or degrading treatment or punishment in the requesting country;

(7) The criminal proceedings against or the criminal penalty imposed upon the person sought are based on discrimination on grounds of race, religion, nationality, sex, political opinion, or personal status, or the person sought may be prejudiced for any of those reasons in the judicial proceedings;

(8) Under the law of the People's Republic of China, the person sought shall not be prosecuted due to the expiration of the limitation period for prosecution, or has been pardoned or otherwise exempted from criminal liability.

Article 7 — Extradition may be refused under any of the following circumstances:

(1) The People's Republic of China has criminal jurisdiction over the offense for which extradition is requested, and criminal proceedings have been or are about to be initiated against the person sought;

(2) Given the nature of the offense, the circumstances of the offender, and other factors, the grant of extradition would be incompatible with humanitarian considerations.

Section 2: Submission and Processing of Extradition Requests

Article 8 — An extradition request made by a foreign country to the People's Republic of China shall be submitted to the Ministry of Foreign Affairs of the People's Republic of China.

Article 9 — An extradition request shall include the following documents and materials:

(1) A letter of request for extradition;

(2) The arrest warrant, judgment, or other judicial documents relating to the person sought;

(3) A statement of the facts of the offense and the applicable legal provisions;

(4) Information on the identity, physical characteristics, and whereabouts of the person sought, as well as relevant evidentiary materials.

Article 10 — Upon receiving an extradition request, the Ministry of Foreign Affairs shall conduct an initial review. Where the request satisfies the requirements, the Ministry of Foreign Affairs shall forward it to the

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Supreme People's Court and the Supreme People's Procuratorate. Where the request fails to satisfy the requirements, it may request the requesting country to supplement or correct the materials.

Section 3: Judicial Review of Extradition Requests

Article 11 — Upon receiving an extradition request forwarded by the Ministry of Foreign Affairs, the Supreme People's Court shall designate a higher people's court to conduct a review.

Article 12 — The designated higher people's court shall examine whether the extradition request meets the conditions for extradition as provided in this Law and extradition treaties. The higher people's court shall form a collegial panel composed of three judges to conduct the review.

Article 13 — During the review process, the higher people's court shall hear the statements of the person sought and the opinions of the attorney representing the person sought.

Article 14 — Where the higher people's court considers that the extradition request meets the conditions for extradition, it shall submit its opinion to the Supreme People's Court for approval. Where the higher people's court considers that the extradition request does not meet the conditions for extradition, it shall submit its opinion to the Supreme People's Court for a decision.

Article 15 — The decision of the Supreme People's Court on whether to grant extradition shall be submitted to the State Council for a decision on whether to grant extradition.

Section 4: Provisional Arrest and Surrender

Article 16 — Where a foreign country requests provisional arrest of a person sought on the grounds of urgency, it may submit a provisional arrest request to the Ministry of Foreign Affairs before submitting a formal extradition request.

Article 17 — Upon receiving a provisional arrest request, the Ministry of Foreign Affairs shall forward it to the Ministry of Public Security. The Ministry of Public Security shall review the request and, where it considers the request justified, shall notify the relevant public security organ to take provisional arrest measures.

Article 18 — Where a formal extradition request is not received within 30 days from the date of provisional arrest, the Supreme People's Court shall notify the public security organ to terminate the provisional arrest measures.

Article 19 — Where the State Council decides to grant extradition, the Ministry of Foreign Affairs shall notify the public security organ to arrange for the surrender of the person sought. The requesting country shall take over the person sought within a time limit agreed upon with the People's Republic of China.

Chapter III — Extradition Requests Made by the People's Republic of China

Article 20 — Where the People's Republic of China requests extradition from a foreign country, the judicial authority, public security authority, or State security authority shall submit the extradition request and relevant materials to the Ministry of Foreign Affairs, which shall forward them to the requested country after review.

Article 21 — The extradition request and relevant materials submitted by the People's Republic of China to a foreign country shall comply with the provisions of the extradition treaty or the requirements of the law of the requested country.

Article 22 — Where, after an extradition request is made by the People's Republic of China, the person sought is surrendered by the requested country, the competent authority of the People's Republic of China shall receive the person sought within the agreed time limit.

Article 23 — The People's Republic of China shall undertake to the requested country that the person sought will not be prosecuted, tried, or punished for an offense other than the offense for which extradition is

requested, except with the consent of the requested country or under other circumstances provided for in the extradition treaty.

Chapter IV — Supplementary Provisions

Article 24 — Where the person sought has been surrendered to the People's Republic of China, no further extradition to a third country shall be permitted unless the requested country that initially surrendered the person sought gives its consent.

Article 25 — Where expenses are incurred in the course of extradition, they shall be borne in accordance with the provisions of the extradition treaty or through negotiation between the requesting and requested countries.

Article 26 — This Law shall apply mutatis mutandis to the surrender of fugitives between the People's Republic of China and the Hong Kong Special Administrative Region and the Macao Special Administrative Region.

Article 27 — This Law shall go into effect as of the date of promulgation.

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