

International Criminal Judicial Assistance Law of the PRC

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Contents

Table of Contents	1
Chapter I — General Provisions	1
Chapter II — Scope of Criminal Judicial Assistance	2
Chapter III — Request for Criminal Judicial Assistance	2
Chapter IV — Examination and Handling of Requests for Criminal Judicial Assistance Received	3
Chapter V — Supplementary Provisions	4

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Table of Contents

- Chapter I — General Provisions
- Chapter II — Scope of Criminal Judicial Assistance
- Chapter III — Request for Criminal Judicial Assistance
- Chapter IV — Examination and Handling of Requests for Criminal Judicial Assistance Received
- Chapter V — Supplementary Provisions

Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of promoting international criminal judicial assistance, strengthening international cooperation in the effective combatting of crime, and protecting the lawful rights and interests of individuals and organizations.

Article 2 — This Law shall apply to international criminal judicial assistance provided between the PRC and foreign states. For the purposes of this Law, "international criminal judicial assistance" refers to assistance provided in criminal matters between the PRC and foreign states, including service of documents, taking of evidence, arrangements for the appearance of witnesses or experts to assist in investigations, seizure, freezing and confiscation of property and proceeds of crime, transfer of sentenced persons, and other forms of assistance.

Article 3 — The PRC shall provide international criminal judicial assistance in accordance with international treaties concluded or acceded to by the PRC or in accordance with the principle of reciprocity. Where the PRC provides international criminal judicial assistance to a foreign state, it shall not infringe upon the sovereignty, security or social and public interests of the PRC, and shall not violate the basic principles of the laws of the PRC.

Article 4 — The PRC and foreign states shall carry out international criminal judicial assistance in accordance with the principles of equality and mutual benefit. International criminal judicial assistance shall not be used to interfere with the internal affairs of other states, nor shall it be provided for the purpose of political persecution or racial, religious, nationality, sex, political opinion or social status discrimination.

Article 5 — Where the PRC and a foreign state have concluded an international treaty on criminal judicial assistance, such treaty shall apply. Where no such treaty exists, criminal judicial assistance may be provided on the basis of the principle of reciprocity through diplomatic channels.

Article 6 — State organs for international criminal judicial assistance shall be designated by the State. The Ministry of Justice and other relevant departments shall be responsible for examining requests for international criminal judicial assistance and organizing the implementation thereof in accordance with the division of duties prescribed by the State. The Supreme People's Procuratorate, the Supreme People's Court, the Ministry of Public Security, the Ministry of State Security and other departments shall, in accordance with their respective functions and duties and the division of work, examine requests for international criminal judicial assistance and be responsible for organizing the implementation thereof.

Chapter II — Scope of Criminal Judicial Assistance

Article 7 — Service of documents refers to the service by the state receiving a request of judicial documents and other relevant documents of a foreign state on persons involved in the proceedings. The request for service of documents shall state the name and address of the person to be served and the nature of the documents to be served.

Article 8 — Taking of evidence refers to the assistance provided by the state receiving a request to a foreign state in obtaining testimony, statements, physical evidence, documentary evidence, expert opinions, inspection records, and other evidentiary materials, and in the conduct of inspection and examination. A request for the taking of evidence shall state the factual and legal summary of the case, the purpose of taking evidence, and the relevance of the evidence to the case.

Article 9 — Arrangements for the appearance of witnesses or experts to assist in investigations refers to the assistance provided by the state receiving a request with respect to the appearance of a witness or expert within its territory to provide testimony or to assist in investigations in a foreign state. A witness or expert who agrees to appear in a foreign state to provide testimony or to assist in investigations shall not be investigated, detained, arrested or otherwise deprived of his or her personal liberty in respect of acts or convictions that occurred before his or her departure from the state receiving the request, except as otherwise permitted under this Law.

Article 10 — Seizure, freezing and confiscation of property and proceeds of crime refers to the seizure, freezing and confiscation of property and proceeds of crime located within the territory of the state receiving the request in accordance with the request of a foreign state. In confiscation matters, the legitimate rights and interests of bona fide third parties shall not be prejudiced.

Article 11 — Transfer of sentenced persons refers to the transfer of a sentenced person from the state receiving the request to the state making the request, or to a third state, for the purpose of serving the remainder of his or her sentence. The transfer of a sentenced person shall be carried out with the consent of the sentenced person, or with the consent of his or her legal representative if the sentenced person is unable to express his or her will.

Article 12 — Other forms of assistance include, but are not limited to, the exchange of information on criminal records, the identification of persons, and other assistance that is not prohibited by the laws of the PRC.

Chapter III — Request for Criminal Judicial Assistance

Article 13 — A request for international criminal judicial assistance made by the PRC to a foreign state shall be submitted by the case-handling organ to the state organ for international criminal judicial assistance for examination. Upon approval, the state organ for international criminal judicial assistance shall be responsible for transmitting the request to the foreign state and for subsequent communication.

Article 14 — A request for criminal judicial assistance made by the PRC to a foreign state shall include the following: (1) the name of the organ making the request; (2) the purpose of the request and a description of the assistance sought; (3) a summary of the facts of the case and a description of the applicable law; (4) information on the person who is the subject of the request; and (5) any other information that may facilitate the execution of the request.

Article 15 — A request for international criminal judicial assistance and the documents attached thereto shall be in the Chinese language and accompanied by a translation in the language of the requested state or a language acceptable to the requested state. A request for assistance that is made on an urgent basis may be made by means such as fax or email, provided that the original written request is transmitted as soon as practicable thereafter.

Article 16 — The state organ for international criminal judicial assistance shall, upon receipt of a request, examine whether the conditions for making the request are satisfied under this Law. If the conditions are satisfied, the state organ shall decide to transmit the request to the foreign state. If the conditions are not satisfied, it shall decide not to transmit the request and shall notify the case-handling organ of the reasons.

Chapter IV — Examination and Handling of Requests for Criminal Judicial Assistance Received

Article 17 — A request for criminal judicial assistance received by the PRC from a foreign state shall be examined by the state organ for international criminal judicial assistance. The state organ for international criminal judicial assistance shall decide to accept or reject the request within 30 days after receipt of the request, or within a longer period if the circumstances so require.

Article 18 — A request for criminal judicial assistance received by the PRC from a foreign state may be rejected in any of the following circumstances: (1) the PRC has no treaty obligation with respect to the requested assistance, and the foreign state has not provided a reciprocal guarantee; (2) the request concerns an act that does not constitute a crime under the laws of the PRC; (3) the request is related to a political offense or a military offense; (4) the acceptance of the request would prejudice the sovereignty, security or social and public interests of the PRC; (5) the request relates to a case in which criminal proceedings have been instituted or concluded in the PRC, or in which a final judgment has been rendered in a third state; (6) the request may result in discrimination against any person on the grounds of race, religion, nationality, sex, political opinion or social status; or (7) other circumstances provided for by the laws of the PRC or by international treaties concluded or acceded to by the PRC.

Article 19 — Where the state organ for international criminal judicial assistance determines that a request for criminal judicial assistance satisfies the conditions for acceptance, it shall transmit the request to the relevant case-handling organ for execution. The case-handling organ shall execute the request in accordance with the laws of the PRC and shall report the results of execution to the state organ for international criminal judicial assistance.

Article 20 — In executing a request for international criminal judicial assistance, the case-handling organ may, to the extent not prohibited by the laws of the PRC, follow the special procedures or methods requested by the foreign state. The costs of executing a request for international criminal judicial assistance shall be borne in accordance with the international treaty concerned or the principle of reciprocity.

Article 21 — The foreign state shall bear the following costs: (1) the travel expenses and other expenses of witnesses or experts traveling to the foreign state; (2) the expenses of experts providing opinions or

assistance in the foreign state; (3) the expenses of translating documents; and (4) other expenses subject to agreement between the PRC and the foreign state. The costs of executing a request, other than those mentioned in the preceding paragraph, shall be borne by the PRC, unless otherwise provided for by international treaties concluded or acceded to by the PRC.

Article 22 — The PRC may, in accordance with international treaties or the principle of reciprocity, permit a foreign state to transfer evidence and other materials obtained through criminal judicial assistance to a third state for use in criminal proceedings, provided that the PRC gives its consent in advance.

Article 23 — Evidence and other materials obtained through international criminal judicial assistance shall be used only for the purposes specified in the request for assistance. Where the state making the request needs to use such evidence and materials for other purposes, it shall seek the prior consent of the PRC.

Article 24 — A foreign state may be requested to keep the request for assistance and the content thereof confidential. If the request for assistance cannot be executed without breaching the requirement of confidentiality, the state receiving the request shall so inform the state making the request, which shall decide whether the request should nevertheless be executed.

Article 25 — In the course of executing a request for criminal judicial assistance, the PRC may postpone the provision of assistance if such provision would interfere with an ongoing criminal investigation, prosecution or trial in the PRC. The state making the request shall be informed of the reasons for such postponement.

Chapter V — Supplementary Provisions

Article 26 — The relevant state organs of the PRC may, on the basis of practical needs, enter into cooperative arrangements with the relevant organs of foreign states for the provision of international criminal judicial assistance. Such arrangements shall not contravene the laws of the PRC.

Article 27 — This Law shall apply to criminal judicial assistance between the PRC and the Hong Kong Special Administrative Region or the Macao Special Administrative Region, with such variations as may be necessitated by the specific circumstances of those regions.

Article 28 — Criminal judicial assistance provided by the PRC to international tribunals shall be handled in accordance with the provisions of this Law.

Article 29 — The provisions of this Law in respect of the transfer of sentenced persons shall be implemented in accordance with international treaties concluded or acceded to by the PRC or in accordance with the principle of reciprocity.

Article 30 — This Law shall enter into force on the date of its promulgation.

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