

Korea: Act on International Judicial Mutual Assistance in Criminal Matters

ACT ON INTERNATIONAL JUDICIAL MUTUAL ASSISTANCE IN CRIMINAL MATTERS

CHAPTER I GENERAL PROVISIONS

Article 1 (Purpose)

The purpose of this Act is to promote an international cooperation in the repression and prevention of crimes, by providing the scope, procedure, etc. of mutual assistance made at the request of, and requesting to, any foreign country in connection with any investigation or trial of a criminal case.

Article 2 (Definitions)

For the purpose of this Act, the definitions of terms shall be as follows:

1. The term “mutual assistance” means to give or receive any cooperation necessary for the investigation or trial of a criminal case between the Republic of Korea and a foreign country;
2. The term “mutual assistance treaty” means any treaty, convention, etc. relating to mutual assistance, which are concluded between the Republic of Korea and a foreign country;
3. The term “requesting country” means a country requesting mutual assistance to the Republic of Korea; and
4. The term “crime under mutual assistance” means a crime which is the object of mutual assistance.

Article 3 (Relation with Mutual Assistance Treaty)

In a case where a mutual assistance treaty includes different provisions from those of this Act, with respect to mutual assistance, the provisions of the treaty shall prevail over the provisions of this Act.

Article 4 (Reciprocity)

Even in a case where a mutual assistance treaty is not concluded, if there is a guarantee of a requesting country to comply with any request of the Republic of Korea for mutual assistance, with respect to the same or similar matters, this Act shall be applicable.

CHAPTER II SCOPE OF AND RESTRICTION ON MUTUAL ASSISTANCE

Article 5 (Scope of Mutual Assistance)

The scope of mutual assistance shall be as follows:

1. Investigation on where a person or object is;
2. Presentation of documents and records;

3. Service of documents, etc.;
4. Gathering of evidence, seizure, search and verification;
5. Delivery of objects, such as evidence, etc.; and
6. Hearing of statements, and other measures to make any person testify or cooperate with the investigation in the requesting country.

Article 6 (Restriction on Mutual Assistance)

It may not be required to give any mutual assistance, in a case which falls under any of the following subparagraphs:

1. Where it might be detrimental to the sovereignty, national security, public peace and order, or public morals, of the Republic of Korea;
2. Where it is deemed that the criminal might be punished, or subject to an unfavorable penal disposition, due to the race, nationality, sex, religion, social status, or the fact that he is a member of a specified social organization, or by the reason that he has a different political view;
3. Where it is deemed that the crime under mutual assistance is one of a political nature, or the request for mutual assistance is made for the purpose of an investigation or trial on another crime of a political nature;
4. Where the crime under mutual assistance does not constitute a crime, or it is a crime against which no public action may be instituted, under the Act of the Republic of Korea; and
5. Where this Act prescribes that the requesting country should give a guarantee, but the requesting country fails to comply with it.

Article 7 (Postponement of Mutual Assistance)

If a request for mutual assistance is made by a foreign country with respect to a crime the investigation of which is in progress, or the trial of which is pending, in the Republic of Korea, the mutual assistance may be postponed until the procedure of such investigation or trial is closed.

Article 8 (Delivery of Objects)

- (1) Any object which was or is to be offered as evidence of a crime under mutual assistance, which was produced or acquired by such crime, or which has been acquired as compensation therefor, maybe delivered to the requesting country: Provided, That it is not allowed to prejudice any rights of the third party on such object.
- (2) In delivering an object under paragraph (1), the requesting country shall guarantee the return of such object, unless the Republic of Korea waives the right to it.

Article 9 (Cooperation in Requesting Country)

- (1) If a requesting country makes a request that the Republic of Korea makes any person, etc. involved in a crime under mutual assistance, cooperate with the procedure of an investigation or trial, it shall be permitted to have such person, etc. cooperate in the requesting country, only when such person, etc. consents to it in writing.

(2) In a case as provided in paragraph (1), it shall be guaranteed by the requesting country that the party to such request for cooperation be exempted from any indictment or punishment, and any restriction on freedom, in the requesting country, for any act committed before.

(3) Notwithstanding the provisions of paragraph (2), if a person serving a sentence in a correctional institution (hereinafter referred to as “prisoner”) is the very party of the request as provided in paragraph (1), the guarantee of the requesting country that it will keep on detaining the prisoner, and repatriate him to the Republic of Korea in a detained condition, as the Republic of Korea may request, shall be done. In this case, the period of detention in the requesting country shall be counted as the number of days of detention to be executed in the Republic of Korea.

Article 10 (Detention for Repatriation to Foreign Country)

(1) If a person who has been detained in a foreign country, is extradited to the Republic of Korea by mutual assistance, he may be arrested by a warrant issued by a judge of a district court having the jurisdiction over the place where mutual assistance is requested, to repatriate him to the foreign country.

(2) The warrant of detention as provided in paragraph (1) shall include the name, residence and nationality of the person to be repatriated to a foreign country, facts constituting the crime under mutual assistance, object and contents of the request for mutual assistance, place in which he is under custody and in detention, issue date and validity term, and the effect that no execution may be undertaken and the warrant should be returned, if such term has expired, and it shall be signed and sealed by the judge.

(3) The provisions of Chapters 4 (Extradition and Arrest of Criminal) and 5 (Extradition of Criminals) of the Extradition Act shall be applied mutatis mutandis to repatriation as provided in paragraph (1), unless it is contrary to its nature.

CHAPTER III MUTUAL ASSISTANCE PERTAINING TO INVESTIGATION AT REQUEST OF FOREIGN COUNTRY

Article 11 (Acceptance of Request for, and Sending of Materials of, mutual Assistance)

The acceptance of a request for mutual assistance, and the sending of materials of mutual assistance to the requesting country shall be made by the Minister of Foreign Affairs: Provided, That if there is any urgent or special circumstances, the Minister of Justice may do it with the consent of the Minister of Foreign Affairs.

Article 12 (Written Request for Mutual Assistance)

(1) Any request for mutual assistance shall be made in writing specifying matters falling under the following subparagraphs (hereinafter referred to as “written request for mutual assistance”):

1. Agency taking charge of the investigation or trial related to the request for mutual assistance;
2. Summary of the case for which mutual assistance is required;
3. Object and contents of the request for mutual assistance; and
4. Other matters necessary for carrying out mutual assistance.

(2) In case of a request for mutual assistance, such as examination of a witness, delivery of objects, testimony in the requesting country, etc., the requesting country shall explain that it is a requisite for the investigation or trial.

Article 13 (Forms of Mutual Assistance)

Any mutual assistance to a requesting country shall be carried out in the form as prescribed by the Acts of the Republic of Korea: Provided, That if the form of mutual assistance requested by the requesting country, is not contrary to the Act of the Republic of Korea, such form may be used.

Article 14 (Action taken by Minister of Foreign Affairs)

The Minister of Foreign Affairs shall, upon receiving a request for mutual assistance pertaining to an investigation of a criminal case from a requesting country, send the written request for mutual assistance to the Minister of Justice together with related materials and his opinion.

Article 15 (Action taken by Minister of Justice)

(1) Except for a case as provided in paragraph (2), if the Minister of Justice deems after receiving the written request for mutual assistance, that it is reasonable to comply with the request, he shall take action falling under any of the following subparagraphs:

1. To send related materials to the director of the district public prosecutor's office (hereinafter referred to as "the chief public prosecutor") deemed necessary for mutual assistance, and to order him to take any measure necessary for mutual assistance; and
2. In the case as provided in Article 9 (3), to order the head of a correctional institution in which the person under sentence is intended to take any measure necessary for transferring the person.

(2) If the request for mutual assistance concerns the presentation of documents of a lawsuit which the court or public prosecutor keeps in custody, the Minister of Justice shall send the written request for mutual assistance to such court or public prosecutor.

(3) If it is impossible to give mutual assistance under this Act or a mutual assistance treaty, or if it is deemed reasonable not to give any mutual assistance, or if it is desirable to postpone mutual assistance, the Minister of Justice shall consult with the Minister of Foreign Affairs.

Article 16 (Action taken by Chief Public Prosecutor)

The chief public prosecutor who has received an order as provided in Article 15 (1) 1, shall order any public prosecutor under his control to collect materials necessary for mutual assistance, or to take other necessary measures.

Article 17 (Measures Action taken by Public Prosecutor, etc.)

(1) In order to collect materials necessary for mutual assistance, the public prosecutor may demand any interested person to attend for stating his opinion, entrust any person with an appraisal, interpretation or translation, demand the owner, holder or keeper of documents or other things to present them, inquire of any public office, public or private organization about the facts thereof, or demand such office or organization to make a report on necessary matters.

(2) If it is required for mutual assistance, the public prosecutor may make any seizure, search or verification by a warrant issued by a judge at his request.

(3) If the evidence, etc. to be delivered to the requesting country are presented to the court, the public prosecutor shall obtain a decision of the court to the effect that it permits the delivery thereof.

(4) A public prosecutor may direct a judicial policemen to make a search as provided in paragraph (1), and the judicial police officer may make any seizure, search or verification as referred to in paragraph (2) by a warrant issued by a judge at a request of the public prosecutor who has received such request from the judicial police officer.

Article 18 (Request for Examination of Witness)

In a case where any request for mutual assistance is related to an examination of a witness, or an interested person refuses the attendance or statement as provided in Article 17 (1), the public prosecutor may request an examination of the witness, to the judge.

Article 19 (Documents to be Appended at Time of Request for Warrant, etc.)

When the public prosecutor requests a warrant, permission on delivery or examination of witness for mutual assistance, he shall append an attested copy of the written request for mutual assistance as provided in Article 14.

Article 20 (Competent Court)

(1) The request for a warrant under Article 17 (2), and that for an examination of a witness under Article 18, shall be made by the public prosecutor to the judge of a district court corresponding to the district public prosecutor's office to which the public prosecutor belongs.

(2) A request for permission on delivery of evidence, etc. under Article 17 (3) shall be made to the court to which such evidence, etc. are presented.

Article 21 (Sending, etc. of Mutual Assistance Materials)

(1) When the chief public prosecutor who received the order as provided in Article 15 (1) 1, has completed the measures necessary for mutual assistance, he shall collect the mutual assistance materials and send them without delay to the Minister of Justice.

(2) When the head of the correctional institution who received the order as provided in Article 15 (1) 1, has completed the measures necessary for transferring a person under sentence, he shall report it without delay to the Minister of Justice.

(3) The court or public prosecutor who received a written request for mutual assistance under Article 15 (2), shall send without delay the documents of a lawsuit or copy thereof to the Minister of Justice with his opinion, and if it is impossible to send them, he shall return such written request for mutual assistance to the Minister of Justice with the reason specified.

Article 22 (Sending, etc. of Mutual Assistance Materials by Minister of Justice)

(1) When the Minister of Justice receives such mutual assistance materials, etc. or such reports, as provided in Article 21, he shall send the materials necessary for mutual assistance to the Minister of Foreign Affairs.

(2) The Minister of Justice may, upon sending materials under paragraph (1), request the Minister of Foreign Affairs to determine matters to be observed by the requesting country with

respect to the use, return, maintenance of secret, etc. of such materials, and to demand from the requesting country a guarantee of the fulfillment thereof.

(3) The Minister of Foreign Affairs shall, upon receiving the request as provided in paragraph (2) from the Minister of Justice, take any proper measures, and notify the results to the Minister of Justice.

CHAPTER IV MUTUAL ASSISTANCE AS TO CRIMINAL TRIAL BY REQUEST OF FOREIGN COUNTRY

Article 23 (Action Taken by Minister of Justice)

(1) When the Minister of Justice receives a written request for mutual assistance as to a criminal trial to be administered by the court, he shall send it to the Director of the Court Administration Office, except in a case where it is impossible to give any mutual assistance under this Act or a mutual assistance treaty, or it is deemed necessary not to give any mutual assistance.

(2) If it is deemed necessary not to give mutual assistance under the proviso of paragraph (1), the Minister of Justice shall consult with the Director of the Court Administration Office.

Article 24 (Action taken by Director of Court Administration Office)

When the Director of the Court Administration Office receives a written request for mutual assistance as provided in Article 23 (1) from the Minister of Justice, he shall send it to the president of a competent district court (hereinafter referred to as “president of the court”).

Article 25 (Competent Court)

Any mutual assistance concerning a criminal trial shall be administered by the district court having the jurisdiction over the place to which service is made, in the case of a request for the service of documents, etc.; and by the district court having the jurisdiction over the seat of the residence of the witness, etc., or that of the evidence or the object of verification or appraisal, in the case of a request for the investigation of evidence.

Article 26 (Transfer)

If the requested matters are not under the jurisdiction of the court which has received a written request for mutual assistance, the court shall transfer it by decision to a competent court, and notify it to the Director of the Court Administration Office.

Article 27 (Sending of Evidence, etc.)

(1) The president of a court shall, upon receiving a written request for mutual assistance under Article 24, send a certificate pertaining to the result of service to the Director of the Court Administration Office, in the case of a request for the service of documents, etc.; and a protocol of the witness examination or specifying the result of an evidence investigation, or a written report in which is specified the reason why the investigation on the evidence is impossible, in case of a request for the investigation of evidence.

(2) The Director of the Court Administration Office shall, upon receiving materials as provided in paragraph (1) from the president of the court, send it to the Minister of Justice.

Article 28 (Applicable Provisions)

The provisions of Articles 11 (Reception of Request for, and Sending of Materials of Mutual Assistance), 12 (Written Request for Mutual Assistance), 13 (Forms of Mutual Assistance), 14 (Action Taken by Minister of Foreign Affairs), 15 (Action Taken by Minister of Justice) (3), and 22 (Sending, etc. of Mutual Assistance Materials by Minister of Justice) shall apply mutatis mutandis to any Mutual Assistance as to a criminal trial at the request of a foreign country.

CHAPTER V REQUEST FOR MUTUAL ASSISTANCE AS TO INVESTIGATION OF FOREIGN COUNTRY**Article 29 (Request for Mutual Assistance by Public Prosecutor)**

In a case where a public prosecutor makes a request for mutual assistance as to any investigation of a foreign country, he shall send a written request for mutual assistance to the Minister of Justice, and the judicial police officer shall make a request to the public prosecutor to send it to the Minister of Justice.

Article 30 (Action Taken by Minister of Justice)

In a case where the Minister of Justice deems, after receiving a written request for mutual assistance under Article 29, that it is necessary to request the mutual assistance of a foreign country, he shall send it to the Minister of Foreign Affairs: Provided, That if there is any urgent or special circumstances, he may send it directly to the foreign country with the consent of the Minister of Foreign Affairs.

Article 31 (Action taken by Minister of Foreign Affairs)

The Minister of Foreign Affairs shall, upon receiving the written request for mutual assistance under Article 30 from the Minister of Justice, send it to the foreign country: Provided, That if it is deemed unnecessary to make a request for mutual assistance in view of diplomatic relations, he shall consult with the Minister of Justice about it.

Article 32 (Appending of Translation)

In the case of making a request for mutual assistance to a foreign country, the translation of the written request for mutual assistance and other related documents in the official language of the foreign country shall be appended: Provided, That if the official language of the foreign country is not known, a translation in English may be appended.

CHAPTER VI REQUEST FOR MUTUAL ASSISTANCE AS TO CRIMINAL TRIAL OF FOREIGN**Article 33 (Request for mutual assistance by Court)**

- (1) In a case where the court makes a request for mutual assistance to a foreign country with respect to any criminal trial, it shall send a written request for mutual assistance to the Director of the Court Administration Office. In this case, the court shall notify it to the public prosecutor.
- (2) The Director of the Court Administration Office shall, upon receiving a written request for mutual assistance under paragraph (1), send it to the Minister of Justice.

Article 34 (Consultation with Director of Court Administration Office)

If the Minister of Justice deems, after receiving a written request for mutual assistance as provided in Article 33 (2), it unnecessary to make a request for mutual assistance to the foreign country, he shall consult with the Director of the Court Administration Office.

Article 35 (Applicable Provisions)

The provisions of Articles 30 (Action taken by Minister of Justice), 31 (Action taken by Minister of Foreign Affairs) and 32 (Appending of Translation) shall apply mutatis mutandis to a request for mutual assistance as to any criminal trial of a foreign country.

CHAPTER VII SUPPLEMENTARY PROVISIONS**Article 36 (Expenses)**

(1) The expenses needed for a request for mutual assistance by a foreign country shall be borne by the requesting country, unless there is a special agreement with the requesting country: Provided, That any expense incurred in the territory of the Republic of Korea, may be borne by the Republic of Korea.

(2) In a case where the expenses needed for mutual assistance is to be borne by the requesting country under this Act or a mutual assistance treaty, the requesting country shall guarantee the payment of such expenses.

Article 37 (Through Prosecutor General)

The sending of any order or documents from the Minister of Justice to the chief public prosecutor or public prosecutor, or the sending of any report or documents from the chief public prosecutor or public prosecutor to the Minister of Justice, under this Act, shall go through the Public Prosecutor General.

Article 38 (Cooperation with International Criminal Police Organization)

(1) In a case where the Minister of Home Affairs receives or makes any request for cooperation as to any investigation on a criminal case of a foreign country, from or to the international criminal police organization, he may take the necessary measures falling under any of following subparagraphs:

1. Exchange of any information and materials on any international crime;
2. Certification of the identity of any international crime, and the inquiry as to any previous conviction; and
3. Fact-finding and investigation on any international crime.

(2) If any request for cooperation, except for those as provide in the subparagraphs of paragraph (1), is related to mutual assistance as prescribed by this Act, it shall be subject to the provisions of this Act.

Article 39 (Application of Criminal Procedure Act)

Except as prescribed otherwise by this Act, the provisions of the Criminal Procedure Act shall apply mutatis mutandis to any trial proceeded by a court or judge, any issue of warrant or witness examination by a judge, or any disposition taken by a public prosecutor or judicial police officer, pursuant to the provisions of this Act, and any procedure of objection, unless it is contrary to its nature.

Article 40 (Supreme Court Regulations)

Matters necessary for the procedure for the issuing of a warrant, a decision on permission on delivery of evidence, witness examination, etc. under this Act, shall be determined by the Supreme Court Regulations.

ADDENDUM

This Act shall enter into force on the thirtieth day following the date of its promulgation.