

## **International cooperation procedures manual**

This manual aims to establish a clear mechanism for receiving, transmitting , implementing mutual legal assistance requests in a timely manner and arrange the priorities in light of provisions of amended criminal procedures code No. 23 of 1971 particularly the articles from (352-356)

And the rules of article (5/tenthly) from public prosecution law No. 49 of 2017.

And rules of the articles (27,28,32) of money laundering and terrorist financing law No. 39 of 2015 and laws, bilateral and multilateral international conventions relevant , in accordance of following articles :

## **1- The competence of the supreme judicial council / public prosecution in International cooperating**

Supreme judicial council / public prosecution service is a competence authority in international cooperation in the matters about the of money laundering, terrorist financing and predicate crimes

## **2- Validity of the provision of the manual**

This manual shall apply about international cooperation between Republic of Iraq and other countries in accordance of Iraqi laws, provisions of the agreement of anti- corruption, international conventions and treaties multi- parties relevant, the rules of general international law and principle of reciprocity

## **3- International cooperation procedures**

### **(Firstly ) – Formality required for mutual legal assistance requests**

- 1- Applications submitted about the international cooperation shall be written in any form can include a written register according to the conditions for proof of authenticity
- 2- All the applications and supporting documents should be in Arabic language , if it weren't , the translation in Arabic shall be attached with it also with the documents and subjects which are considered the part of it
- 3- The submitted application about international cooperation shall be contained as following data:

- a- Determination the agreement or convention or principle that is based in submitting the application
- b- The subject and natural of investigation or the accusing or judicial procedures that relevant in application and the function of authority which are investigating or the judicial procedure in demand State
- c- The legal describing of the committed crime and the summary of the case relevant
- d- Describing the required assistance and the purpose that is required for it especially:
  - Describing of required data like ( the status of bank accounts , relevant establishment data and the type and numbers of accounts )
  - Details information about the places that is required to inspect it or the funds that are required to seize or confiscation it
  - Details of documents which reinforce the applications of seizing or confiscation the criminal assets
  - Notifying that if the applicant State wants to send a persons who represents it while the statement
  - Determining the nationality and any other information of the person which the international legal assistance has been required about him and his situation from the procedures
  - The supreme judicial council / public prosecution can request addition information if it necessary to implement the request in accordance of Iraqi law or to facilitate implementation of the procedures

(Secondly) content of the applications of mutual legal assistance shall be :

- a- The content of statement and information that is requested and the persons who is required to write down their statement and information
- b- Details information about the accused and condemned persons who required to deliver them in the money laundering and terrorist financing and predicate crimes
- c- Check the persons an places
- d- Implementation of judicial subsidies
- e- Submitting the information , proofing evidences and assigning experts
- f- Submitting original or adopted of documents in relevant including that financial , establishing and commercial registers
- g- Recognizing the proceeds of crime or the finance or the tools or other things and pursuing it
- h- Facilitating the optional attendance of persons to the requesting State for international cooperation
- i- Supervised delivering
- j- Objection of communications
- k- Any other assistance that does not object with the valid laws in Republic of Iraq

(Thirdly)- Supreme judicial council / public prosecution is facilitating the submitting of mutual legal assistance and not to prevent it or to subject it to unreasonable or restrictive conditions without justification and observing the following:

(1) : do not reject the applications of legal cooperation in the following cases:

A- the applications of legal cooperation that just the crime is related in tax and financial matters

B- requests for international cooperation on the basis of confidentiality and privacy requirements of financial institutions and limited non- financial businesses and professions

C- the requests of mutual legal assistance are subject to the principle of dual criminality except for non – coercive assistance

D- dual criminality isn't required to matching the items , phrases and criminal classification

E- International mutual legal assistance shall be provided on the basis of non-conviction-based confiscation procedures and related provisional measures in the absence of the perpetrator (such as his death, flight, absence, or absence of knowledge), unless the assistance is contrary to the basic principles of local law.

F- Any other requests that do not conflict with the provisions of Iraqi laws and relevant international agreements.

**(2)International cooperation requests may be rejected in the following cases:**

a- If the crime for which international cooperation is required is of a political, religious or ethnic nature.

b- In the state of that the request does not comply with the procedures stipulated in these rules.

c- - In the state that the Supreme Judicial Council / Public Prosecution considers that the implementation of the request may affect the sovereignty, security, public system, or other basic interests of the State.

D - In the state of that the implementation of the request is contrary to the legal system or the laws of the Republic of Iraq.

#### **4. Rejection of extradition requests**

If the Judicial Council / Public Prosecution decides to reject requests for extradition of criminals based on the provisions of the Code of Criminal Procedure and other relevant laws, the matter is referred by itself or at the request of the requesting country to the competent court to proceed with investigation procedures.

## **5-Information exchange**

A- The Supreme Judicial Council / Public Prosecution shall exchange requests for international cooperation through clear procedures for the purpose of protecting information and its integrity.

B - The Supreme Judicial Council / Public Prosecution may reject the request for assistance referred to in Article (3) in the event that the competent authority requesting the information is unable to protect the information and maintain its confidentiality.

C - The Supreme Judicial Council / Public Prosecution shall provide information to the country whose cooperation is requested at an appropriate time about the use of that information and its usefulness.

D - The information exchanged with the foreign competent authorities will be used only for the purpose for which it was submitted, unless otherwise authorized by them.

E - Local information can be collected on behalf of any foreign counterpart, provided that it exchanges the information obtained with the competent Iraqi authorities.

F - The Supreme Judicial Council / Public Prosecution may exchange information for the purposes of combating money laundering and financing terrorism and predicate offenses with the central authority in the requesting country, directly or indirectly, after fulfilling all the principles contained in these rules.

G- The Supreme Judicial Council / Public Prosecution may, on its own initiative and without prejudice to national laws and without prejudice to any criminal investigations or procedures, with or without conditions, refer information related to criminal matters to the central authority of any country if it deems that such information can help in combating money laundering and financing Terrorism and associated predicate offenses

H- National authorities related to combating money laundering and terrorist financing may exchange information for the purposes of combating money laundering and financing terrorism and predicate offenses, directly or indirectly, after fulfilling all the principles contained in this manual, with counterpart bodies, whether those counterpart bodies are of an administrative nature or enforcement authority. Law or any other nature.

## **6. Confidentiality of requests**

A- The contents of the application shall not be disclosed except with the relevant authorities.

b- If confidentiality requires the impossibility or difficulty of executing the request, the requesting countries shall be consulted through the Supreme Judicial Council / Public Prosecution.

## **7. Expenses**

In the event that the expenses incurred by the request are costly or unusual, consultations take place between the Supreme Judicial Council / Public Prosecution and the requesting country for international cooperation to determine the conditions and controls according to which the request is implemented in addition to determining the party that bears the expenses.

## **8. Financial transactions for criminal investigation purposes**

(First): Special requests relating to bank or non-bank accounts may be submitted on behalf of persons or entities that are subject to criminal investigation in the requesting country. The Judicial Council may request information about the account or activity from the concerned financial institution, professions and specified non-financial businesses, or order monitoring.

(Second): In addition to what was stated in (form of the application above), the application must contain information according to the following:

A- The specific crime committed in the requesting country and notifying that the person mentioned in the request is subjected to criminal investigation in connection with that crime.

b- Any information is submitted regarding the application will not be used for any purpose other than what was mentioned in the application without the prior approval of the Public Prosecution.

C - The reasons upon which the requesting country may consider that the requested information is likely to have substantial value for the purposes of criminal investigations.

d- The reasons upon which the requesting authority can consider that the financial institution or institutions in the Republic of Iraq have the relevant accounts and the name or names of that institution or institutions.

e- The maximum penalty period according to the law of the specific country that punishes the crime.

f - Any other information that may facilitate the execution of the request.

### **9. Intercept communications**

First: A request may be submitted to the Republic of Iraq for the purpose of intercepting calls or messages in the event that the investigation is ongoing in the requesting country, and that there is a legal decision to intercept issued by the requesting country, and that the person concerned is inside the Republic of Iraq and that the interception can be implemented in Iraq.

Second: The request to intercept calls and messages requires the following:

A- Determine the name of the competent authority in the country requesting cooperation.

b- Confirming the legality of the decision regarding the objection and that it is related to the ongoing criminal investigation in the requesting country, with a copy of it attached to the application.

C- Provide sufficient information and documents about the person whose communications the State intends to intercept.

d- Determine the crime being investigated.

e- Clarify the relevant technical details, including (contact number, contact address), to verify the fulfillment of the request.

### **10. Refer foreign seizure orders to the Republic of Iraq for implementation**

A- A certified copy of the seizure order, a statement of the basis for its issuance, and data stating that the money or related tools are subject to the seizure order must be attached to the attachment requests.

B- Documents related to requests for executing external seizure orders must be in a form that can result in written information that can be documented through any means that can be agreed upon.

### **11- Recognition and enforcement of external seized orders**

A- The Supreme Judicial Council / Public Prosecution shall refer to the competent court the order of external seizure of funds, tools and related documents to issue an order to implement the seizure, unless this is inconsistent with the provisions of Iraqi laws.

B- The procedures stipulated in the Iraqi laws regarding seizure shall be applied to funds and instruments seized according to the order issued in Paragraph (a) above.

## **12. Receipt of foreign confiscation orders for the Republic of Iraq**

1- The following external confiscation order must be attached:

A - A certified copy of the confiscation order.

B- A certificate prepared by the court or the competent authority that the order is enforceable and not subject to appeal or cassation.

C - A brief description of the acts that constituted the crime in question.

2- The confiscation order shall be sent to the Supreme Judicial Council / Public Prosecution, which in turn refers it to the competent court for implementation.

3- The Supreme Judicial Council / Public Prosecution, in coordination with the competent authorities, shall ensure that the process of sharing confiscated funds, proceeds, or tools with the requesting country is carried out based on bilateral or international multilateral agreements.

## **13. Provisions for requesting a statement**

A- Requests for recording the statement shall be sent to the Supreme Judicial Council / Public Prosecution.

b- The Public Prosecution shall refer the request for recording the statement to the competent court.

C - Upon receiving a request for assistance in taking a statement in the Republic of Iraq for the purpose of criminal investigation procedures, the Public Prosecution shall refer the request to the competent court to record the statement.

D - It is permissible to obtain confirmation from the requesting country that any statement submitted to it will be used only for the purpose permitted by the international document related to or specified in the request.

C- The procedures stipulated in the Code of Criminal Procedure No. (23) for the year 1971 are followed in recording the testimony, provided that the information is taken into account by the Public Prosecution in the event that the testimony belongs to an Iraqi employee in a manner that does not affect the security of the state.

#### **14. Transfer of accused or convicted persons**

A- The Supreme Judicial Council may authorize the transfer of any arrested or convicted person for the purposes of investigation or trial, or to serve his sentence in the Republic of Iraq for the benefit of the requesting country, for the purposes of identification, diagnosis, testimony, or other assistance, in coordination with the Ministry of Justice.

B - The Supreme Judicial Council determines the period during which the person transferred from the Republic of Iraq must be returned.

C - The requesting country must provide sufficient guarantees to return the transferred person within the specified time period.

D - The period spent by the transferred person in the requesting country is included in the period of imprisonment or punishment imposed on him.

E - The transferred person should be informed of the transfer process and its procedures.

F - In the event that any person arrested or sentenced in another country is transferred to the Republic of Iraq for the purposes of identification, diagnosis, testimony, or provision of any assistance, the Supreme Judicial Council shall return the transferred person to the country from which he was transferred according to what is agreed upon without delay.

### **15. Inspection to obtain a statement**

1- Requests for search orders shall be sent to the Supreme Judicial Council / Public Prosecution, which shall refer the matter to the competent court for implementation in accordance with the Code of Criminal Procedure No. (23) of 1971.

2- The request should include information related to criminal proceedings or a criminal investigation, along with a brief description of the relevant behavior.

3- The request may not be sent for execution unless the requesting country provides an assurance that any information submitted to it will not be used for a purpose other than the purpose permitted by international agreements or the purpose specified in the request and that the information will be returned if it is no longer needed.

4- The Supreme Judicial Council / Public Prosecution may, in coordination with the competent national authorities, authorize the requesting state to inspect any ship flying the Iraqi flag, and if evidence is

found proving involvement in illegal trade, it may authorize the requesting state to take the necessary measures against the ship. The people and goods carried by the ship.

### **16. monitored Delivery**

- 1- The Supreme Judicial Council / Public Prosecution may coordinate with the competent authorities in the requesting country to allow the use of the controlled delivery method across the Republic of Iraq.
- 2- It is permissible to agree with the requesting country to inspect and verify shipments subject to controlled delivery and then pass them on.
- 3- It is permissible to agree with the requesting country to replace the funds agreed upon for their passage with similar materials, or to destroy them or dispose of them in any way during transportation.

### **17. Joint Investigations**

The Supreme Judicial Council / Public Prosecution has the right to approve the formation of joint teams to conduct investigations in cooperation with other counterpart central authorities, while making the necessary arrangements for the purpose of achieving the enforcement of these joint investigations.

## **18. Request to obtain documents**

The country requesting the documents must indicate in its request the following:

- A- The requested document is likely to have substantial value in the investigation.
- b- That the document is not subject to legal immunity.
- c- the public benefit obligate to submit the documents

## **19. Refund request**

A- The request may be submitted regarding funds in the Republic of Iraq that were obtained by criminal means to place them at the disposal of the requesting authority in the relevant country for the purpose of returning them, in accordance with bilateral and international multilateral agreements.

B- The request shall be sent in writing to the Judicial Council and the Public Prosecution Office, and it must include the following information:

- 1- Information about the specific person who obtained money by committing a crime punishable under the law of the requesting country.
- 2- To return the money to its owner and not to prejudice the rights of bona fide third parties with regard to him.
- 3- Description of money.
- 4- Money site.
- 5- The name and address of the owner of the money.
- 6- Any other information likely to facilitate the execution of the request.

7- An order may not be issued to return the money if the money is required as evidence in criminal or civil proceedings, or if the person claiming ownership of the money is not given the opportunity to present his defenses against issuing the order.

## **20. Priority for international cooperation requests**

A- Requests for international cooperation related to money laundering and terrorist financing crimes and related predicate offenses shall have priority over other crimes.

b- If there are many requests for cooperation from several different countries for one crime, priority is given to the country with which it has memorandums of understanding or a bilateral agreement with the Republic of Iraq.

C - In the event that the conditions are equal in the requests for cooperation, the priority shall be given to the country that first submitted the request for cooperation.

D - If there are many requests for international cooperation for multiple crimes, priority will be given to the most serious crime, according to its circumstances and the place where it was committed.

**21. The presence of the representative of the requesting country  
when executing the request**

A- The Supreme Judicial Council / the Public Prosecutor may approve the presence of the representative of the requesting country when implementing its request in the Republic of Iraq.

b- The representative of the concerned country who is present during the execution of the request shall be subject to the direction of the public prosecutor and may not divulge confidential information that results from his presence at the execution of the request, except to the competent authority to which he is affiliated.

**22. Local coordination**

The Supreme Judicial Council / Public Prosecution works to provide channels of communication with the national authorities, in order to help exchange information as soon as possible.

## **Registers**

The Supreme Judicial Council / Public Prosecution Service and the competent national authorities maintain a record of statistics related to requests for international cooperation, information exchange and extradition.