

Cybercrime legislation – country profile

PEOPLE'S REPUBLIC OF CHINA

This profile has been prepared within the framework of the Council of Europe's capacity building projects on cybercrime in view of sharing information and assessing the current state of implementation of the Convention on Cybercrime under domestic legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

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Country:	People's Republic of China
Signature of Convention:	No
Ratification/accession:	No
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>
Chapter I – Use of terms	
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”: For the purposes of this Convention: a “computer system” means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs	Art.2 of Regulations on Safeguarding computer Information Systems, Feb.1996. The computer information systems referred to in these regulations are man-machine systems, composed of computers and their allied and peripheral equipment and facilities (including networks), that collect, process, store,

<p>automatic processing of data;</p> <p>b “computer data” means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;</p> <p>c “service provider” means:</p> <p>i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and</p> <p>ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;</p> <p>d “traffic data” means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication’s origin, destination, route, time, date, size, duration, or type of underlying service</p>	<p>transmit, and retrieve information according to prescribed goals and rules of application.</p>
<p>Chapter II – Measures to be taken at the national level</p>	
<p>Section 1 – Substantive criminal law</p>	
<p><i>Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems</i></p>	
<p>Article 2 – Illegal access</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Art.285 of Criminal Law of the People’s Republic of China</p> <p>Whoever in violation of State regulations, invades the computer information system in the fields of State affairs, national defence construction or sophisticated science and technology shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention.</p>
<p>Article 3 – Illegal interception</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Art.252 of Criminal Law of the People’s Republic of China</p> <p>Whoever conceals, destroys or unlawfully opens another person’s letter, thereby infringing upon the citizen’s right to freedom of correspondence, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than one year or criminal detention.</p>

<p>Article 4 – Data interference</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.</p> <p>2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p>Art.286 of Criminal Law of the People’s Republic of China</p> <p>Whoever in violation of States regulations, deletes, alters, adds or jams the functions of the computer information system, thereby making it impossible for the system to operate normally, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.</p> <p>Whoever, in violation of State regulations, delete, alters or adds the data stored in or handled or transmitted by the computer information system or its application program, if the consequences are serious, shall be punished in accordance with the provision of the preceding paragraph.</p> <p>Whoever intentionally creates or spreads destructive programs such as the computer viruses, thus affecting the normal operation of the computer system, if the consequences are serious, shall be punished in accordance with the provision of the first paragraph.</p>
<p>Article 5 – System interference</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p>Art.286 of Criminal Law of the People’s Republic of China</p> <p>Whoever in violation of States regulations, deletes, alters, adds or jams the functions of the computer information system, thereby making it impossible for the system to operate normally, if the consequences are serious, shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than five years.</p> <p>Whoever, in violation of State regulations, delete, alters or adds the data stored in or handled or transmitted by the computer information system or its application program, if the consequences are serious, shall be punished in accordance with the provision of the preceding paragraph.</p> <p>Whoever intentionally creates or spreads destructive programs such as the computer viruses, thus affecting the normal operation of the computer system, if the consequences are serious, shall be punished in accordance with the provision of the first paragraph.</p>

Article 6 – Misuse of devices

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:
a the production, sale, procurement for use, import, distribution or otherwise making available of:

i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;

ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and

b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.

2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.

3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.

There is no provision related in China legislation

Title 2 – Computer-related offences

Article 7 – Computer-related forgery

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when

Art. 287 “or other crimes” of Criminal Law of the People’s Republic of China.

Whoever uses computers to commit the crimes such as financial fraud, theft,

<p>committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>	<p>embezzlement, misappropriation of public funds, theft of State secrets, or other crimes shall be convicted and punished in accordance with the relevant provisions of this Law.</p>
<p>Article 8 – Computer-related fraud Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <ul style="list-style-type: none"> a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>	<p>Art. 287 “or other crimes” of Criminal Law of the People’s Republic of China. Whoever uses computers to commit the crimes such as financial fraud, theft, embezzlement, misappropriation of public funds, theft of State secrets, or other crimes shall be convicted and punished in accordance with the relevant provisions of this Law.</p>
<p><i>Title 3 – Content-related offences</i></p>	
<p>Article 9 – Offences related to child pornography 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:</p> <ul style="list-style-type: none"> a producing child pornography for the purpose of its distribution through a computer system; b offering or making available child pornography through a computer system; c distributing or transmitting child pornography through a computer system; d procuring child pornography through a computer system for oneself or for another person; e possessing child pornography in a computer system or on a computer-data storage medium. <p>2 For the purpose of paragraph 1 above, the term “child pornography” shall</p>	<p>Art.363, 364, 366, 367 of Criminal Law of the People’s Republic of China Section 9 Crimes of Producing, Selling or Dissemination Pornographic Materials Article 363. Whoever, for the purpose of profit, produces, duplicates, publishes, sells or disseminates pornographic materials shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstance are serious, he shall be sentenced to fixed-term imprisonment of not less than three year but not more than 10 years and shall also be fined; if the circumstance are especially serious, he shall be sentenced to fixed-term imprisonment of more than 10 years or life imprisonment, and shall also be fined or sentenced to confiscation of property.</p> <p>Whoever provides book numbers for another person to publish pornographic books or periodicals shall be sentenced to fixed-term imprisonment of not more</p>

include pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct

3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

than three years, criminal detention or public surveillance and shall also, or shall only, be fined; whoever knowingly provides books numbers to another person who will use them for publishing pornographic books or periodicals shall be punished in accordance with the provisions of the preceding paragraph.

Article 364. Whoever disseminates pornographic materials including books, periodicals, movies, video-audio tapes and pictures, if the circumstance are serious, shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance.

Whoever arranges for shows of pornographic audio-video products including movies and video-tapes shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also be fined; if the circumstance are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.

Whoever produces or duplicates pornographic audio-video products including movies and video-tapes and arranges for their show shall be given a heavier punishment in accordance with the provisions of the second paragraph of this Article.

Whoever disseminates pornographic materials to a minor under the age of 18 shall be given a heavier punishment.

Article 366. Where a unit commits any of the crimes mentioned in Articles 363, 364 and 365 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the offence shall be punished in accordance with the provisions of the Articles respectively.

Article 367. For purpose of this Law, pornographic materials refer to obscene books, periodicals, movies, video-audio-tapes, pictures, etc. that explicitly portray sexual behaviour or undisguisedly publicize pornographic materials.

Scientific works on human physiology or medical knowledge are not pornographic materials.

Literary and art works of artistic value which contain erotic contents shall not be

	regarded as pornographic materials.
<i>Title 4 – Offences related to infringements of copyright and related rights</i>	
<p>Article 10 – Offences related to infringements of copyright and related rights</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.</p>	<p>Art.217,218,220 of Criminal Law of the People’s Republic of China.</p> <p>Section 7 Crime of Infringing on Intellectual Property Rights</p> <p>Article 217 Whoever for the purpose of making profits, commits any of the following acts of infringement on the copyright shall, if the amount of illegal gains is relatively large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years of criminal detention and shall also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:</p> <ol style="list-style-type: none"> (1) reproducing and distributing a written work, musical work, motion picture, television programme or other visual works, computer software or other works without permission of the copyright owner; (2) publishing a book of which the exclusive right of publication is enjoyed by another person; (3) reproducing and distributing an audio or video recording produced by another person without permission of the producer; (4) producing or selling a work of fine art with forged signature of another painter. <p>Article 218 Whoever, for the purpose of making profits, knowingly sells works reproduced by infringing on the copyright of the owners as mentioned in Article 217 of this law shall, if the amount of illegal gains is huge, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.</p> <p>Article 220 Where a unit commits any of the crimes mentioned in the Article</p>

from 213 through 219 of this Section, it shall be fined, and the person who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provision of the Article respectively.

Art.1 "protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests" of Copyright Law of the People's Republic of China.

Article 1. This Law is enacted, in accordance with the Constitution, for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science.

Art.3 Copyright Law of the People's Republic of China

For the purposes of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi', choreographic and acrobatic works;
- (4) works of fine art and architecture;
- (5) photograPh1c works;
- (6) cinematographic works and works created by virtue of an analogous method of film production;
- (7) drawings of engineering designs, and product designs; maps, sketches and other graphic works and model works;

(8) computer software;

(9) other works as provided for in laws and administrative regulations.

Art. 9 Copyright Law of the People's Republic of China

The term "copyright owners" shall include:

(1) authors;

(2) other citizens, legal entities and other organizations enjoying copyright in accordance with this Law.

Art. 10(5) "by any other means", (6) "the right of distribution" of Copyright Law of the People's Republic of China

The term "copyright" shall include the following personality rights and property rights:

(5) the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work or by any other means;

(6) the right of distribution, that is, the right to make available to the public the original or reproductions of a work through sale or other transfer of ownership;

For Art. 10(2)

Art.10(11-12), (15) of Copyright Law of the People's Republic of China.

Article 10. The term "copyright" shall include the following personality rights and property rights:

(11) the right of broadcast, that is, the right to publicly broadcast or communicate to the public a work by wireless means, to communicate to the public a broadcast work by wire or relay means, and to communicate to the public a broadcast work by a loudspeaker or by any other analogous tool used to

transmit symbols, sounds or pictures;

(12) the right of communication of information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them;

(15) the right of translation, that is, the right to translate a work in one language into one in another language;

Art.12 “adaptation, translation” of Copyright Law of the People’s Republic of China

Where a work is created by adaptation, translation, annotation or arrangement of a preexisting work, the copyright in the work thus created shall be enjoyed by the adapter, translator, annotator or arranger, Provided that the exercise of such copyright shall not prejudice the copyright in the original work.

Also Art.11 “the copyright in a work shall belong to its author” and Art. 20 of Copyright Law of the People’s Republic of China

Article 11. Except where otherwise provided in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who has created the Work.

Where a work is created according to the intention and under the supervision and responsibility of a legal entity or other organization, such legal entity or organization shall be deemed to be the author of the work.

The citizen, legal entity or other organization whose name is mentioned in connection with a work shall, in the absence of proof to the contrary, be deemed to be the author of the work.

Article 20. The rights of authorship, alteration and integrity of an author shall be unlimited in time.

Art.24(2) of Copyright Law of the People’s Republic of China.

	<p>Except where otherwise provided in the Copyright Law of the People's Republic of China, these Regulations, or other laws or administrative regulations, anyone who, without the authorization of the software copyright owner, commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, eliminating ill effects, making an apology, or compensating for losses; where such act also prejudices the public interest, the copyright administration department may order to cease infringements, confiscate illegal income, confiscate or destroy the infringing copies, and may impose a fine concurrently; where the circumstances are serious, the copyright administration department may confiscate the material, tools and equipment mainly used to produce infringing copies; and where the act violates the Criminal Law, criminal liability shall be investigated for the crime of infringing upon copyright or selling infringing copies in accordance with the provisions of the Criminal Law:</p> <p>(2) to distribute, rent or communicate to the public through information network a piece of software of the copyright owner;</p>
<i>Title 5 – Ancillary liability and sanctions</i>	
<p>Article 11 – Attempt and aiding or abetting</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.</p> <p>3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.</p>	<p>Art.22,23,24,27,29 of Criminal Law of the People’s Republic of China</p> <p>Section 2 Preparation for a Crime, Criminal Attempt and Discontinuation of a Crime</p> <p>Article 22 Preparation for a crime refers to the preparation of the instruments or the creation of the conditions for a crime.</p> <p>An offender who prepares for a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment or be exempted from punishment.</p> <p>Article 23 A criminal attempt refers to a case where an offender has already started to commit a crime but is prevented from completing it for reasons independent of his will.</p> <p>An offender who attempts to commit a crime may, in comparison with one who completes the crime, be given a lighter or mitigated punishment.</p>

Article 24 Discontinuation of a crime refers to a case where, in the course of committing a crime, the offender voluntarily discontinues the crime or voluntarily and effectively prevents the consequences of the crime from occurring.

An offender who discontinues a crime shall, if no damage is caused, be exempted from punishment or, if damage is caused, be given a mitigated punishment.

Section 3 Joint Crimes

Article 27 An accomplice refers to any person who plays a secondary or auxiliary role in a joint crime.

An accomplice shall be given a lighter or mitigated punishment or be exempted from punishment.

Article 29 Anyone who instigates another to commit a crime shall be punished according to the role he plays in a joint crime. Anyone who instigates a person under the age of 18 to commit a crime shall be given a heavier punishment.

If the instigated person has not committed the instigated crime, the instigator may be given a lighter or mitigated punishment.

<p>Article 12 – Corporate liability</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ul style="list-style-type: none"> a a power of representation of the legal person; b an authority to take decisions on behalf of the legal person; c an authority to exercise control within the legal person. <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	<p>Art.30,31 of Criminal Law of the People’s Republic of China</p> <p>Section 4 Crimes Committed by a Unit</p> <p>Article 30 Any company, enterprise, institution, State organ, or organization that commits an act that endangers society, which is prescribed by the law as a crime committed by a unit, shall bear criminal responsibility.</p> <p>Article 31 Where a unit commits a crime, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be given criminal punishment. Where it is otherwise provided in the Specific Provision of this law or in other laws, those provisions shall prevail.</p>
<p>Article 13 – Sanctions and measures</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.</p> <p>2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	<p>Art.32,33,34 of Criminal Law of the People’s Republic of China</p> <p>Article 32 Punishment are divided into principal punishments and supplementary punishments.</p> <p>Article 33 The principal punishments are as follows:</p> <ul style="list-style-type: none"> (1) public surveillance; (2) criminal detention; (3) fixed-term imprisonment; (4) life imprisonment; and (5) the death penalty. <p>Article 34 The supplementary punishments are as follows:</p> <ul style="list-style-type: none"> (1) fine; (2) deprivation of political rights; and (3) confiscation of property. <p>Supplementary punishments may be imposed independently.</p>

Section 2 – Procedural law	
<p>Article 14 – Scope of procedural provisions</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.</p> <p>2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:</p> <ul style="list-style-type: none"> a the criminal offences established in accordance with Articles 2 through 11 of this Convention; b other criminal offences committed by means of a computer system; and c the collection of evidence in electronic form of a criminal offence. <p>3 a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.</p> <p>b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:</p> <ul style="list-style-type: none"> i is being operated for the benefit of a closed group of users, and ii does not employ public communications networks and is not connected with another computer system, whether public or private, <p>that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20</p>	<p>There is no provision related in China legislation</p>

and 21	
<p>Article 15 – Conditions and safeguards</p> <p>1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international human rights instruments, and which shall incorporate the principle of proportionality.</p> <p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	There is no provision related in China legislation
<p>Article 16 – Expedited preservation of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p> <p>2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person’s possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p>	There is no provision related in China legislation

<p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p>Article 17 – Expedited preservation and partial disclosure of traffic data</p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:</p> <p>a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and</p> <p>b ensure the expeditious disclosure to the Party’s competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Art.14 of Regulation on Internet Information Service of the People’s Republic of China</p> <p>Internet information service providers, which provide news and publishing services as well as services such as electronic bulletin, shall record and provide the content of the information published, the time of publishing, the internet address or domain name of publishing; the internet access service providers shall record the information of the users such as their online time, their user names, internet address or domain names, calling telephone number and other information. Both Internet information service providers and internet access service providers shall keep the records for 60 days, and provide the records to relevant State authority when it is inquired.</p> <p>Art.19 of Working Rules on Interim Regulation of International Networking of Computer Information Network</p> <p>The units which provide access service to international network as well as the units which connect and access to international network shall keep all the relevant information and documents related to the service they provide; shall in time provide relevant information and documents during inspections by the Information Work Leading Office of the State Council and other competent authorities. The units which provide access service to international network and connect to international network shall submit the reports about the network operation, business development as well as the administration work of last year to the Information Work Leading Office of the State Council in February every year.</p> <p>Art.10 of Regulations on Internet Surfer Service Sites</p> <p>The operator of internet surfer service sites shall fulfill his duties: ...</p>

	<p>(3) record the internet surfer information, keep the record for 60days and provide this information when inquired by relevant authority in accordance with the laws...</p> <p>Art.14,15 of Provisions for the Administration of Internet Electronic Bulletin</p> <p>Article 14 The electronic bulletin service provider shall record the information content published in the electronic bulletin service system as well as the time of publishing, the internet address or domain names of publishing. The record shall be kept for 60 days and provide to relevant State authority when inquired in accordance with the laws.</p> <p>Article 15 The internet access service provider shall record the information of the users, such as the online time, user names, internet address or domain names, calling telephone number and other information. The record shall be kept for 60 days and provided to relevant State authority when inquired in accordance with the laws.</p>
<p>Article 18 – Production order</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:</p> <p>a a person in its territory to submit specified computer data in that person’s possession or control, which is stored in a computer system or a computer-data storage medium; and</p> <p>b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider’s possession or control.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p> <p>3 For the purpose of this article, the term “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:</p> <p>a the type of communication service used, the technical provisions taken thereto and the period of service;</p>	<p>There is no provision related in China legislation</p>

<ul style="list-style-type: none"> b the subscriber’s identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement; c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement. 	
<p>Article 19 – Search and seizure of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:</p> <ul style="list-style-type: none"> a a computer system or part of it and computer data stored therein; and b a computer-data storage medium in which computer data may be stored <p style="padding-left: 40px;">in its territory.</p> <p>2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:</p> <ul style="list-style-type: none"> a seize or similarly secure a computer system or part of it or a computer-data storage medium; b make and retain a copy of those computer data; c maintain the integrity of the relevant stored computer data; d render inaccessible or remove those computer data in the accessed computer system. <p>4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable,</p>	<p>Art. 116 of Criminal Procedure Law of the People’s Republic of China Chapter II Investigation Section 6 Seizure of Material Evidence and Documentary Evidence</p> <p>If the investigators deem it necessary to seize the mail or telegrams of a criminal suspect, they may, upon approval of a public security organ or a People’s Procuratorate, notify the post and telecommunications offices to check and hand over the relevant mail and telegrams for seizure.</p> <p>When it becomes unnecessary to continue a seizure, the post and telecommunications offices shall be immediately notified.</p> <p>Art. 188, 192 of People's Procuratorate Rules of Criminal Procedure Chapter VII Reconnaissance Section 5 Investigation, Seizure of Material Evidence, Documentary Evidence and audio-visual materials</p> <p>Article 188 The documentary evidence and audio-visual materials obtained shall be original. If it is really difficult to obtain the original one or for confidentiality requirement, the copy or copies of the original one can be obtained instead.</p> <p>The material evidence obtained shall be original. If the original one is not suitable for moving or maintaining, or in accordance with the laws it shall be returned to the victim, or for confidentiality requirement it cannot be obtained, the photo or video of the original one can be taken. The photo or video taken shall be sufficient to reflect the original shape and content.</p> <p>Obtaining the copy or copies of the documentary evidence and audio-visual materials or obtaining the photo or video of the material evidence shall attach the notes to explain the reason why the original one cannot be obtained, the process of making this copy or photo or video and the place where the original</p>

<p>the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.</p> <p>5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>one is stored. Together with the notes, there shall be the signature or seal of the holder of the original evidence and the staff who makes the copy or photo or video.</p> <p>Article 192 If the investigators deem it necessary to seize the mail or telegrams or email of a criminal suspect, they may, upon approval of a Chief Prosecutor, notify the post and telecommunications offices or the internet service unit to check and hand over the relevant mail, telegrams or email for seizure. When it becomes unnecessary to continue a seizure, the post and telecommunications offices or the internet service unit shall be immediately notified</p> <p>Art. 57,58 of Procedural Rules for Criminal Cases by Public Security Organs Chapter V Evidence</p> <p>Article 57 The documentary evidence collected and obtained shall be the original one. If it is really difficult to obtain the original one or for confidentiality requirement, the copy or copies of the original one can be obtained instead.</p> <p>The material evidence collected and obtained shall be the original one. If the original one is not suitable for moving or maintaining, or in accordance with the laws it shall be returned to the victim, the photo or video that can sufficiently reflect the original shape or content can be taken.</p> <p>Article 58 The copy or copies of the documentary evidence and audio-visual evidence, or the photo or video of the material evidence shall attach the notes to explain the process of making this copy or photo or video and the place where the original one is stored. Together with the notes, there shall be the signature or seal of the holder of the original evidence and the staff who makes the copy or photo or video.</p>
<p>Article 20 – Real-time collection of traffic data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on</p>	<p>Art. 10 of State Security Law of the People's Republic of China Chapter II Functions and Powers of the State Security Organs in the Work of State Security</p> <p>Where the reconnaissance of an act endangering State security requires, a State</p>

<p>the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p>i to collect or record through the application of technical means on the territory of that Party; or</p> <p>ii to co-operate and assist the competent authorities in the collection or recording of, traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>security organ may, in accordance with the relevant provisions of the State and after going through strict approval procedures, employ technological means of reconnaissance.</p> <p>Art. 16 of People's Police Law of the People's Republic of China Chapter Functions and Powers As necessitated by investigation of a crime, public security organs may, in accordance with relevant regulations of the State, take technical reconnaissance measures after strictly following approval formalities.</p>
<p>Article 21 – Interception of content data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:</p> <p>a collect or record through the application of technical means on the territory of that Party, and</p> <p>b compel a service provider, within its existing technical capability:</p> <p>i to collect or record through the application of technical means on the territory of that Party, or</p> <p>ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.</p> <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure</p>	<p>Art. 10 of State Security Law of the People's Republic of China Chapter II Functions and Powers of the State Security Organs in the Work of State Security Where the reconnaissance of an act endangering State security requires, a State security organ may, in accordance with the relevant provisions of the State and after going through strict approval procedures, employ technological means of reconnaissance.</p> <p>Art. 16 of People's Police Law of the People's Republic of China Chapter Functions and Powers As necessitated by investigation of a crime, public security organs may, in accordance with relevant regulations of the State, take technical reconnaissance measures after strictly following approval formalities.</p>

the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.

3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Section 3 – Jurisdiction

Article 22 – Jurisdiction

1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:

- a in its territory; or
- b on board a ship flying the flag of that Party; or
- c on board an aircraft registered under the laws of that Party; or
- d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.

2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.

3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.

4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.

When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

Art.6, 7, 8, 9, 10, 11, 12 of Criminal Law of the People’s Republic of China

Chapter I The Aim, Basic Principles and Scope of Application of the Criminal Law

Article 6 This Law shall be applicable to anyone who commits a crime within the territory and territorial waters and space of the People’s Republic of China, except as otherwise specifically provided by law.

This Law shall also be applicable to anyone who commits a crime on board a ship or aircraft of the People’s Republic of China.

If a criminal act or its consequence takes place within the territory or territorial waters or space of the People’s Republic of China, the crime shall be deemed to have been committed within the territory and territorial waters and space of the People’s Republic of China.

Article 7 This Law shall be applicable to any citizen of the People’s Republic of China who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People’s Republic of China; however, if the maximum punishment to be imposed is fixed-term imprisonment of not more than three years as stipulated in this Law, he may be exempted from investigation for his criminal responsibility.

This Law shall be applicable to any State functionary or serviceman who commits a crime prescribed in this Law outside the territory and territorial waters and space of the People's Republic of China.

Article 8 This Law may be applicable to any foreigner who commits a crime outside the territory and territorial waters and space of the People's Republic of China against the State of the People's Republic of China or against any of its citizens, if for that crime this Law prescribes a minimum punishment of fixed-term imprisonment of not less than three years; however, this does not apply to a crime that is not punishable according to the laws of the place where it is committed.

Article 9 This Law shall be applicable to crimes which are stipulated in international treaties concluded or acceded to by the People's Republic of China and over which the People's Republic of China exercises criminal jurisdiction within the scope of obligations, prescribed in these treaties, it agrees to perform.

Article 10 Any person who commits a crime outside the territory and territorial waters and space of the People's Republic of China, for which according to this Law he should bear criminal responsibility, may still be investigated for criminal responsibility according to this Law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated punishment.

Article 11 The criminal responsibility of foreigners who enjoy diplomatic privileges and immunities shall be solved through diplomatic channels.

Article 12 If an act committed after the founding of the People's Republic of China and before the entry into force of this Law was not deemed a crime under the laws at the time, those laws shall apply. If the act was deemed a crime under the laws in force at the time and is subject to prosecution under the provisions of Section 8, Chapter IV of General Provisions of this Law, criminal responsibility shall be investigated in accordance with those laws. However, if according to this Law the act is not deemed a crime or is subject to a lighter punishment, this Law shall apply.

	Before the entry into force of this Law, any judgement that has been made and has become effective according to the laws at the time shall remain valid.
Chapter III – International co-operation	
<p>Article 24 – Extradition</p> <p>1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.</p> <p>b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.</p> <p>2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.</p> <p>3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.</p> <p>4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.</p> <p>5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.</p> <p>6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting</p>	<p>Article 3,4,5,7,8,9 of Extradition Law of the People's Republic of China</p> <p>Chapter I General Provisions</p> <p>Article 3 The People's Republic of China cooperates with foreign states in extradition on the basis of equality and reciprocity. No cooperation in extradition may impair the sovereignty, security or public interests of the People's Republic of China.</p> <p>Article 4 The People's Republic of China and foreign states shall communicate with each other through diplomatic channels for extradition. The Ministry of Foreign Affairs of the People's Republic of China is designated as the communicating authority for extradition. Where in an extradition treaty there are special provisions to govern the communication authority, the provisions there shall prevail.</p> <p>Article 5 In handling cases of extradition, compulsory measures including detention, arrest and residential surveillance may, depending on the circumstances, be taken against the person sought.</p> <p>Chapter II Request Made to the People's Republic of China for Extradition</p> <p>Section 1 Conditions for Extradition</p> <p>Article 7 Request for extradition made by a foreign state to the People's Republic of China may be granted only when it meets the following conditions:</p> <p>(1) the conduct indicated in the request for extradition constitutes an offence according to the laws of both the People's Republic of China and the Requesting State; and</p> <p>(2) where the request for extradition is made for the purpose of instituting criminal proceedings, the offence indicated in the request for extradition is,</p>

Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.

b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure

under the laws of both the People's Republic of China and the Requesting State, punishable by a fixed term of imprisonment for one year or more or by any other heavier criminal penalty; where the request for extradition is made for the purpose of executing a criminal penalty, the period of sentence that remains to be served by the person sought is at least six months at the time when the request is made.

If the request for extradition concerns miscellaneous offences which conform to the provisions of subparagraph (1) of the preceding paragraph, as long as one of the offences conforms to the provisions of subparagraph (2) of the preceding paragraph, extradition may be granted for all of those offences.

Article 8 The request for extradition made by a foreign state to the People's Republic of China shall be rejected if:

- (1) the person sought is a national of the People's Republic of China under the laws of the People's Republic of China;
- (2) at the time request is received, the judicial organ of the People's Republic of China has rendered an effective judgement or terminated the criminal proceedings in respect of the offence indicated in the request for extradition;
- (3) the request for extradition is made for a political offence, or the People's Republic of China has granted asylum to the person sought;
- (4) the person sought is one against whom penal proceedings instituted or punishment may be executed for reasons of that person's race, religion, nationality, sex, political opinion or personal status, or that person may, for any of those reasons, be subjected to unfair treatment in judicial proceedings;
- (5) the offence indicated in the request for extradition is a purely military offence under the laws of the People's Requesting of China or the laws of the Requesting State;
- (6) the person sought is, under the laws of the People's Republic of China or the laws of the Requesting State, immune from criminal responsibility because, at the time the request is received, the limitation period for prosecution the

	<p>offence expires or the person is pardoned, or for other reasons;</p> <p>(7) the person sought has been or will probably be subjected to torture or other cruel, inhuman or humiliation treatment or punishment in the Requesting State;</p> <p>(8) the request for extradition is made by the Requesting State on the basis of a judgement rendered by default, unless the Requesting State undertakes that the person sought has the opportunity to have the case retried under conditions of his presence.</p> <p>Article 9 The request for extradition made by a foreign state to the People's Republic of China may be rejected if:</p> <p>(1) the People's Republic of China has criminal jurisprudence over the offence indicated in the request and criminal proceedings are being instituted against the person or preparations are being made for such proceedings; or</p> <p>(2) extradition is incompatible with humanitarian considerations in view of the age, health or other conditions of the person sought.</p>
<p>Article 25 – General principles relating to mutual assistance</p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p> <p>2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.</p> <p>3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.</p>	<p>There is no provision related in China legislation</p>

<p>4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.</p> <p>5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.</p>	
<p>Article 26 – Spontaneous information</p> <p>1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.</p> <p>2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	<p>There is no provision related in China legislation</p>
<p>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements</p> <p>1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and</p>	<p>There is no provision related in China legislation</p>

requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.

2 a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.

b The central authorities shall communicate directly with each other;

c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;

d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.

3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.

4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b it considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the

<p>execution of the request or are likely to delay it significantly.</p> <p>8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.</p> <p>9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.</p> <p>b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).</p> <p>c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.</p> <p>d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.</p> <p>e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency, requests made under this paragraph are to be addressed to its central authority.</p>	
<p>Article 28 – Confidentiality and limitation on use</p> <p>1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p>	<p>There is no provision related in China legislation</p>

<p>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</p> <p>b not used for investigations or proceedings other than those stated in the request.</p> <p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	
<p>Article 29 – Expedited preservation of stored computer data</p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p> <ul style="list-style-type: none"> a the authority seeking the preservation; b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts; c the stored computer data to be preserved and its relationship to the offence; d any available information identifying the custodian of the stored computer data or the location of the computer system; e the necessity of the preservation; and f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data. <p>3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.</p> <p>4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or</p>	<p>There is no provision related in China legislation</p>

similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5 In addition, a request for preservation may only be refused if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

4 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

Article 30 – Expedited disclosure of preserved traffic data

1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.

2 Disclosure of traffic data under paragraph 1 may only be withheld if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or

b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

There is no provision related in China legislation

<p>Article 31 – Mutual assistance regarding accessing of stored computer data</p> <p>1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.</p> <p>2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.</p> <p>3 The request shall be responded to on an expedited basis where:</p> <ul style="list-style-type: none"> a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation. 	<p>There is no provision related in China legislation</p>
<p>Article 32 – Trans-border access to stored computer data with consent or where publicly available</p> <p>A Party may, without the authorisation of another Party:</p> <ul style="list-style-type: none"> a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the data to the Party through that computer system. 	<p>There is no provision related in China legislation</p>
<p>Article 33 – Mutual assistance in the real-time collection of traffic data</p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	<p>There is no provision related in China legislation</p>
<p>Article 34 – Mutual assistance regarding the interception of content</p>	<p>There is no provision related in China legislation</p>

<p>data The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	
<p>Article 35 – 24/7 Network 1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures: a the provision of technical advice; b the preservation of data pursuant to Articles 29 and 30; c the collection of evidence, the provision of legal information, and locating of suspects. 2 a A Party’s point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis. b If the point of contact designated by a Party is not part of that Party’s authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis. 3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.</p>	<p>There is no provision related in China legislation</p>
<p>Article 42 – Reservations By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation</p>	

may be made.