

Ministry of Justice of the Republic of Korea
International Criminal Affairs Division

STEP-BY-STEP GUIDE FOR ASSET RECOVERY
[REPUBLIC OF KOREA]
2020

I. INTRODUCTION

The Republic of Korea (“Korea”) regulates the act of disguising criminal proceeds as legitimately acquired or concealing such proceeds (i.e. money laundering), and recovers assets based upon relevant laws including the ‘Act on Regulation of Punishment on Criminal Proceeds Concealment’. Korea also prevents criminals from concealing or disposing properties with a ‘preservation order for the purpose of confiscation’ allowing freezing of assets prior to conviction or indictment.

Korea has traced and confiscated criminal proceeds and exchanged relevant information with foreign countries pursuant to the ‘Act on International Mutual Legal Assistance in Criminal Matters’. Currently, Korea has bilateral MLA treaties with 30 countries and acceded to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters thereby forming a mutual legal assistance network with 74 countries. In addition, Korea has enhanced international cooperation in retrieving criminal proceeds by joining the United Nations Convention against Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Egmont Group and APG (Asia- -Pacific Group on Money Laundering), and kept its efforts to adopt good models from other countries.

In Korea, many government authorities are taking part in the efforts of asset recovery. The International Criminal Affairs Division (ICAD), Ministry of Justice (MOJ) is the central authority for MLA requests and manages laws related to asset recovery and supports investigative authorities in mutual legal assistance with their counterparts in other countries.

The Supreme Prosecutors’ Office (SPO) established ‘The Task Force on Money Laundering Investigation and Asset Forfeiture’ for effective asset tracing and recovery in 2006, and expanded the TF into the ‘Criminal Proceeds Confiscation Center’ in 2010. The SPO also created a criminal proceeds confiscation unit in major prosecutors’ offices nationwide.

In 2018, SPO established Criminal Asset Recovery Division and Seoul Central District Prosecutors’ Office established Criminal Asset Recovery Team to further enhance Korea’s capacity in asset recovery. Also, in 2018. 6., an inter-governmental team; Joint Investigation Team for Recovery of Overseas Illegal Assets was launched to trace and recover illegal assets overseas.

The Korea Finance Intelligence Unit (KoFIU) provides investigators with specific financial records such as STR and CTR and engages in international mutual legal assistance.

II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM REPUBLIC OF KOREA

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Korea, the following steps should be followed:

1. IDENTIFICATION OF THE ASSET

In order to recover proceeds of corruption held within Korea, the requesting country should submit an official request via relevant channels. Then Korea will review the need for the request carefully. In order to assist identifying assets in Korea, the following mechanisms are available:

Mutual Legal Assistance Request

A country may request mutual legal assistance in criminal matters based on the principle of reciprocity even without a bilateral or multilateral treaty in force pursuant to the Act on International Mutual Legal Assistance in Criminal Matters of Korea.

The mutual legal assistance that Korea can provide may differ by requesting state, but generally speaking, Korea offers assistance for investigation into persons or objects, provision of documents or records, collection of evidence, seizure/search or verification, transfer of objects (e.g. evidence), hearing of statements, or taking measures to have witnesses testify in the requesting state or cooperate on investigation.

The terms of each treaty and relevant laws such as the Act on International Mutual Legal Assistance in Criminal Matters and the Act on Regulation of Punishment on Criminal Proceeds Concealment provide the required information in a mutual legal assistance request. Generally, the following information must be provided in a request seeking assistance from Korea.

- Government authorities in charge of investigation and legal proceedings related to the request
- Facts of crime for which assistance is requested
- Objectives and contents of the request
- Other matters required for mutual legal assistance

Korea receives a letter of mutual legal assistance through a diplomatic channel or by direct mail. Once request is received, the Ministry of Justice reviews the case, mainly with regard to the requirement of dual criminality or necessity to assist. After that, the Ministry of Justice orders the District Prosecutors' Office to proceed with mutual legal assistance, unless any supplementary documents are required. The District Prosecutors' Office proceeds with mutual legal assistance and sends the results to the Ministry of Justice. The Ministry of Justice then reviews the results and sends a reply to the requesting country, unless any additional requests are made.

As the primary contact for mutual legal assistance from Korea, the International Criminal Affairs Division in the Ministry of Justice works with the competent authority of the requesting state as well as Korean prosecutors or law enforcement officials to successfully execute the request for mutual legal assistance.

Access to Database of the Property Registry System Managed by the Court

The Office of Court Administration operates the registry of real estates and vessels held in Korea. The registry information is computerized so that anybody around the world can search and read the information online. Please refer to www.iros.go.kr. The registry provides information such as stake holders (e.g. owner, security holders, etc.) of real estates and vessels so as to help identify and trace relevant properties.

Egmont Requests

As a member of the Egmont Group, Korea can exchange information with foreign FIUs for criminal investigations. Korea also laid the foundation for information exchange between KoFIU and foreign FIUs by enacting the 'Financial Transaction Reports Act'. In response to the Egmont requests by foreign FIUs, KoFIU can provide specific financial transaction records such as STR and CTR and other relevant information, provided that the following requirements are met:

- Specific financial transaction records provided to foreign FIUs shall not be used for other purpose than the one specified on the request;
- The fact that specific financial transaction records have been provided shall be kept confidential; and
- Specific financial transaction records provided to foreign FIUs shall not be used for criminal investigation or legal proceedings of foreign countries without prior consent of the Commissioner of KoFIU.

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

When assets have been identified, MLA may be provided through regulations and procedures of Act on Regulation of Punishment on Criminal Proceeds Concealment. Article 11 and 12 of the Act on Regulation of Punishment on Criminal Proceeds Concealment serves as the basis for MLA requests concerning confiscation of property relating to foreign offences, and through those provisions Articles 64 through 78 of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc. applies mutatis mutandis. If other legislation prescribe any procedures relevant with foreign requests on asset confiscation/collection, the aforementioned provisions of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc. is applied mutatis mutandis.

Korea offers the following means of assistance to recover the assets:

Restraining, Freezing or Seizing Assets

The requesting state may request mutual legal assistance for seizure or preservation of properties for confiscation. The court orders seizure or preservation of properties in case that the court determines there are reasonable grounds to believe that the properties may be confiscated and such order is necessary to confiscate the properties, either upon request from the prosecutor or by authority of the court, even before indictment. The seizure/preservation order for confiscation can prevent disposal of such properties until the court decision on confiscation is rendered.

Therefore, seizure and preservation of properties for confiscation can be based on foreign arrest or charge, a suspicion/belief that a person has committed a foreign serious offense and holds assets, or foreign orders and judgements. As for the enforcement of foreign orders and judgements, various forms of orders and judgements (e.g. pecuniary, substitute value, etc.) may be executed, however, the enforcement of orders or judgements not compatible with the Korean legal system may be restricted. Generally final orders and judgements are considered appropriate.

The request for mutual legal assistance in seizure and preservation of properties for confiscation should include the name of the suspect, charges, facts of crime, relevant laws supporting confiscation, properties of which disposal is banned, rights, the name of the owner of the properties/rights, date of issuance, etc.

For urgent matters in cases such as where loss of assets is imminent, requesting countries may request preservation for confiscation or collection in their MLA requests. Upon receipt of such request, the prosecutor shall request a judge to issue an order of preservation for confiscation or collection.

Confiscating Assets, Proceeds and/or Instrumentalities

To confiscate the proceeds and/or instrumentalities of a foreign offence through the enforcement of foreign orders and judgements, mutual legal assistance in criminal matters may be sought.

The prosecutor shall request a court to review the request for cooperation regarding the execution of foreign order or judgement. The court shall allow such request for cooperation if meets the requirements specified under Article 67 of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

The request for mutual legal assistance in confiscation should include the similar information as specified in the previous paragraph. Upon request of the prosecutor based on foreign orders and judgements, the Korean court decides on the execution and then the enforcement authorities (Penalty Enforcement Division of Prosecutors' Offices) may execute the

confiscation request for the asset.

Limitation

In accordance with Article 11 of the ‘Act on Regulation of Punishment on Criminal Proceeds Concealment,’ mutual legal assistance for restraining, freezing, seizing or confiscating assets from a requesting state may be limited in any of the following cases:

- Where activities related to the crimes that require mutual legal assistance take place in Korea and such activities are not regarded as specific crimes subject to asset recovery, money laundering or receiving criminal proceeds according to the Korean laws;
- Where there is no assurance of the requesting state providing assistance for similar requests made by Korea;
- Where the offense that requires mutual legal assistance is not punishable pursuant to the Korean laws;
- Where the offense that requires mutual legal assistance is still in trial or has a final verdict rendered, or the property for which mutual legal assistance is requested has been already ordered to be preserved for the purpose of confiscation or collection;
- Where the property relevant to the request for assistance in executing the final judgment on confiscation/collection or in preserving the property for confiscation/collection may not be subject to the legal proceedings or preservation for confiscation/collection;
- Where a third party with reasons to be believed to have the ownership of the property that requires mutual legal assistance for the execution of the final judgment on confiscation or have the superficies, hypothec, or any other right on the property was not able to claim for his/her rights during the court proceedings for the reasons not attributable to him/her; or
- Where the court determines that confiscation/collection is not required

In addition, mutual legal assistance in corruption crimes specified by the ‘Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices’ may not be provided in any of the following cases.

- Where an act involved in the offence for which cooperation is requested was committed in the territories of Korea and it is held that the act does not constitute a corruption offense under the relevant acts of Korea;
- Where the requesting state has not made a guaranty to the extent that it will accept and respond to a request for cooperation of the same kind if Korea makes such a request;
- Where the requesting state has not made a guaranty that the property subject to execution, etc. will be conveyed to the original owner of the property subject to execution, etc., the victim of the offence or any other person who has a legitimate right; or

- Other cases where the request for execution of the final judgment on confiscation/collection, or for preservation of property for the purpose of confiscation/collection may not be made in accordance with Article 64(1) of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

3. DISPOSAL/RETURN OF ASSETS

When a foreign country requests disposal or return of assets, the assets may be returned based upon the Act on International Mutual Legal Assistance in Criminal Matters or the bilateral treaty on international mutual legal assistance. The properties shall be disposed or returned in the ways specified in the request or the agreement made between Korea and the requesting state.

The Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices prescribes that if it is the property of the victim of an offence but it is deemed exceedingly difficult for the victim to recover damages because he/she is not able to exercise his/her right against the offender seeking return of the property or compensation for his/her damages on the property, such property may be confiscated or an equivalent value thereof may be collected. If the prosecutor keeps the property to be returned to the victim after confiscation/collection, the prosecutor shall notify the victim thereof immediately, and the victim shall request the return of the property. Then, the prosecutor shall decide on whether to return the property as early as possible and return the property upon decision without delay.

In addition to returning of assets through MLA requests, the procedures above can also be applied to foreign entities if the foreign entity is identified and specified as a victim and property was confiscated or an equivalent value was collected.

III. ASSET RECOVERY AGENCIES – CONTACT INFORMATION

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<http://www.spo.go.kr/spo/major/restitution/act/restitution04.jsp>