

Ministry of Justice of the Russian Federation
Prosecutor General's Office of the Russian Federation

**ASSET RECOVERY:
PRACTICAL STEP-BY-STEP GUIDE
ON INTERNATIONAL COOPERATION**

INTRODUCTION

International cooperation by the Russian Federation in the field of combating corruption is one of the priority thrusts of state policy in the anti-corruption arena and is implemented as part of the fulfillment of Russia's obligations under the country's international treaties.

The Russian Federation is a party to such international multilateral treaties against corruption as the United Nations Convention against Corruption of October 31, 2003, the Council of Europe Criminal Law Convention of January 27, 1999, and the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions of November 21, 1997.

Russia has made a commitment to wage a comprehensive campaign against corruption and ensure that corrupt officials are prevented from concealing and maintaining illegally-obtained wealth – and to see to it that such assets are uncovered and returned to the victims of corruption.

The Russian Federation has been actively working and successfully cooperates with the UN Office on Drugs and Crime, the Group of States against Corruption of the Council of Europe, the Organization for Economic Cooperation and Development, the Financial Action Task Force to Combat Money Laundering (FATF), and the Eurasian Group on Combating Money Laundering and the Financing of Terrorism (EAG). One of Russia's key focus areas involves anti-corruption activities, carried out jointly with partner countries within the framework of the "Group of Eight" and the "Group of Twenty."

This guide has been prepared as a part of the implementation of the decisions and agreements reached at the summits of the "Group of Eight" at Camp David (May 18 – 19, 2012) and Lough Erne (June 17 – 18, 2013).

The guide contains practical information on how Russia can contribute to foreign states in the recovery of assets, as well as specific steps to be followed by foreign states and their competent authorities in establishing cooperation with the relevant government bodies of the Russian Federation in order to obtain their assistance.

INTERNATIONAL LEGAL ASSISTANCE IN ASSET RECOVERY

Interaction with the competent authorities of foreign countries with regard to legal assistance in criminal matters, including those related to the return of stolen assets, is carried out on the basis of the multilateral and bilateral treaties of the Russian Federation or based on the principle of reciprocity.

Request for legal assistance is a procedural document, the status of which is established in Chapter 53 of the Criminal Procedure Code of the Russian Federation and international treaties defining the scope, terms and conditions of mutual legal assistance between the Russian Federation and foreign states.

Requests made on the basis of an international treaty

The Russian Federation has special bilateral and multilateral international treaties governing the provision of legal assistance with more than 70 countries.

Legal assistance may also be provided in connection with investigation of the offenses covered by the United Nations Convention against Corruption of October 31, 2003, the United Nations Convention against Transnational Organized Crime of November 15, 2000, and the Convention on the Laundering, Search, Seizure and Confiscation of Proceeds from Crime of November 8, 1990, as well as other multilateral treaties containing provisions on mutual legal assistance in criminal matters.

Requests not based on an international treaty

In the absence of an agreement on legal assistance in criminal matters, legal assistance is rendered based on the principle of reciprocity.

The principle of reciprocity is confirmed by the written obligation of the competent authorities of the requesting state to render the Russian Federation similar legal assistance on the basis of reciprocity.

Upon ratification of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime, the Russian Federation announced that on the basis of reciprocity, it would henceforth be using these conventions as the necessary and sufficient legal and contractual basis for international cooperation for the purposes of confiscation.

The requirement of double criminality

If the act is not a crime under the laws of the Russian Federation, legal assistance can be rendered in the event that it is envisioned by an international treaty on legal assistance with the requesting state (for example, in Paragraph 3 of Article I of the Agreement between the Russian Federation and the United States of America on Mutual Legal Assistance in Criminal Matters of 1999).

However, execution of requests to conduct the search and seizure of property and/or confiscation of criminal proceeds is only possible if the offense motivating the requests is punishable both under the law of the requesting state and the laws of the Russian Federation.

CENTRAL AUTHORITIES

Requests for legal assistance, including the performance of procedural actions, shall be addressed to the central authority of the Russian Federation.

If there is a signed treaty with the requesting state providing for legal assistance in criminal matters, requests for legal assistance are sent to the authorities of the Russian Federation that are defined by this international treaty as the central authorities.

According to most bilateral treaties, the central authorities of the Russian Federation for affairs on legal assistance in criminal matters are identified as the Prosecutor General's Office of the Russian Federation and the Ministry of Justice of the Russian Federation.

The central authorities of the Russian Federation responsible for implementation of the provisions of the UN Convention against Transnational Organized Crime and the UN Convention against Corruption are the Ministry of Justice of the Russian Federation – for civil matters, including the civil law aspects of criminal matters, and the Prosecutor General's Office of the Russian Federation – for criminal matters.

In the absence of a treaty on legal assistance in criminal matters, requests for legal assistance related to the search and seizure of property are generally directed to the Prosecutor General's Office of the Russian Federation, and for the confiscation of property – to the Ministry of Justice of the Russian Federation.

The contact information for the central authorities of the Russian Federation is given at the end of this guide.

RULES THAT MUST BE FOLLOWED WHEN SUBMITTING A REQUEST TO THE RUSSIAN FEDERATION

In order to obtain legal assistance from the Russian Federation, it is recommended to follow the following steps:

STEP 1: CONSULT WITH THE CENTRAL AUTHORITIES BEFORE SENDING A REQUEST

If there is an international treaty in place between the Russian Federation and the state sending a request for legal assistance in criminal matters, then when sending requests, including those involving the recovery of stolen assets, prior consultation with the central competent authority is not generally practiced, since the basic requirements governing the form and content of the request for legal assistance are set out in the provisions of international treaties.

However, in the event that the requesting state has questions related to the content of the request, the central authorities of the Russian Federation will give the necessary advice.

STEP 2: SPECIFY THE BASIS ON WHICH LEGAL ASSISTANCE IS BEING SOUGHT

The request must specify the name of the international treaty between the Russian Federation and the state sending the request for legal assistance in criminal matters serving as the basis for the request.

In the absence of an agreement on legal assistance in criminal matters, legal assistance is rendered based on the principle of reciprocity. That said, the requesting state guarantees compliance with the principle of reciprocity by written obligation to render the Russian Federation similar legal assistance on the basis of this principle.

STEP 3: SPECIFY THE AUTHORITY CONDUCTING THE INVESTIGATION, CRIMINAL PROSECUTION OR JUDICIAL PROCEEDINGS

The request must specify the full and exact name of the requestor, i.e. the authority which is conducting investigation, criminal prosecution or judicial proceedings, and the number of the criminal case in which legal assistance is requested.

STEP 4: DESCRIBE THE CIRCUMSTANCES OF THE CASE

The contents of the request must include the following:

- 1) Qualification of the offense with reference to the relevant law of the requesting state;
- 2) Description of the factual circumstances of the offense;
- 3) Information on the amount of damage caused by the offense;
- 4) Complete background information on the persons concerning whom the request is being submitted (including date and place of birth, citizenship, occupation, place of residence or place of stay, and their procedural status in the criminal case). If complete information is not available, it should be noted that the requestor does not have any other information. For legal entities, their name, registered address and actual place of business shall be indicated. If the location of the persons concerning whom the request is being submitted is unknown, it is advisable to first take preliminary steps aimed at determining their information and addresses, for example, through Interpol, since most of the international treaties on legal assistance in criminal matters do not provide for any investigative activities;
- 5) If the recovery/seizure of documents (including banking/financial) is required, the request shall specify the location of the organization or bank where the documents are presumably being held, including the account number to which the documents relate, a list of the documents subject to seizure, and for what period the documents are to be seized;
- 6) If the request requires the execution of a search, it should specify the address of the person or entity where the search is to be conducted, including a list of the items/documents to be recovered during the search;
- 7) If the seizure of criminal proceeds is required, the location of this property shall be indicated, as well as justification for the request, explaining the relationship between the offense and the assumed proceeds;
- 8) For each requested measure, its justification and the goals being pursued should be indicated.

STEP 5: ATTACH EXTRACTS FROM APPLICABLE LEGISLATION

Attach extracts from all necessary legislation applicable to the investigation/prosecution, including a list of criminal sanctions.

STEP 6: DESCRIBE THE LEGAL ASSISTANCE BEING REQUESTED

The legal assistance being requested must be logically linked to the descriptive part of the request. Otherwise, the requesting state will be asked to provide additional information, which may substantially delay execution of the request.

It is advisable to present the legal assistance requested as separate items.

The text of the request must contain guarantees on the use of the obtained information and documents solely for the purposes specified in the request, as well as an obligation to return the original documents and physical evidence seized during execution of the request.

If the presence of representatives of the requesting state is necessary during execution of the request, the request shall include the corresponding petition stating the purpose of such presence, details of the officials whose presence is requested (full name, title, contact information), and the expected timing of their arrival.

Requests shall be executed in accordance with the procedures envisioned under applicable Russian Federation law. If an international treaty establishes rules other than those stipulated in Russian legislation, the rules of the international treaty shall be applied.

When executing a request, the procedural rules of the requesting state can be applied in accordance with an international treaty or on the basis of reciprocity, if the requesting state so requests, and provided they do not contravene the law and/or international commitments of the Russian Federation. In this case, the request must include the national procedural rules to be followed in executing the request and a justification of the need for their application.

Requests for legal assistance shall be accompanied with:

a) Decrees sanctioning execution of the requested legal proceedings (decree on recovery, search, seizure, etc.) issued under the law of the requesting state;

b) If the request requires the performance of proceedings requiring court judgment under applicable Russian Federation law, the corresponding court judgment shall be attached;

c) Extracts from legislative acts qualifying the offense according to the law of the requesting state.

The authenticity of the request and the documents attached thereto shall be certified with the official seal of the authorized authority of the requesting state and signed by the proper official.

Additional requirements governing requests for witness testimony

The request must specify:

a) The full details of the persons to be interrogated (including date and place of birth, citizenship, occupation, place of residence or place of stay, their procedural status in the criminal case). If complete information is not available, the respective remark shall be included to the effect that the requesting state does not have any other information;

b) The questions that should be put to the person from whom evidence is required.

Additional requirements governing requests for the transfer of documents

The request shall specify the title of the requested documents and their relation to the offense, including their value to the criminal investigation.

The Russian Federation may transfer certified copies or certified photocopies of the records or documents requested, unless the requesting state expressly requests the transfer of originals.

The Russian Federation may postpone the transfer of the requested items, materials or documents, if these items, materials or documents are required thereby in connection with pending criminal proceedings.

In its request for the transfer of original documents, the requesting state must indicate its commitment to ensure their return to Russia as soon as possible.

Original documents transferred pursuant to such requests are returned by the requesting state as soon as possible, unless the Russian Federation refuses them.

Additional requirements governing requests for search and seizure

The request must provide a precise description of the place or person to be searched and/or item to be seized, explain the significance of these items or documents to the criminal investigation, and justify these actions (search, seizure) in accordance with applicable Russian Federation law.

In accordance with the provisions of Article 183 of the Criminal Procedure Code of the Russian Federation, if the recovery of certain items and documents relevant to the criminal case is required, and if it is known exactly where they are being held and by whom, their seizure shall be executed. Seizure is executed on the basis of the respective investigator's order. The seizure of objects and documents containing state or other secrets protected by federal secrecy law, as well as objects and documents containing information on the deposits and accounts of citizens at banks and other credit institutions and items pledged to or deposited at pawn shops, is executed on the basis of the respective court judgment.

In this regard, if it is necessary to execute seizure of the aforementioned documents, and if the law of the requesting state also provides for court judgment, its copy must be attached to the request. If seizure of the aforementioned documents in the requesting state does not entail a ruling or court order, this shall be reflected in the request and attached thereto in the form of an extract from the state's criminal procedural law on the procedure for similar investigations within the territory of the requesting state.

If the seizure of documents is required, including banking and financial records, the location of the organization or bank where the documents are presumably held shall be specified, as well as the account number to which the documents relate, a list of the documents subject to seizure and for what period seizure of the documents is necessary.

If the request requires the execution of a search, the address of the person or entity where the search is to be conducted shall be specified, a list of the items and documents to be recovered during the search shall be indicated, and the corresponding resolution of the investigator or court judgment shall be attached (in the case of a search in a dwelling place).

The Russian Federation executes orders to conduct the search or seizure of property, provided that:

a) The offense motivating the request is punishable under both the law of the requesting state and the law of the Russian Federation;

b) The offense motivating the request in the Russian Federation is an offense punishable by a term of imprisonment of not less than one year or by a more severe punishment;

c) Compliance with the request does not contravene applicable Russian Federation law.

Additional requirements governing requests for the seizure of property obtained by criminal means, for the purposes of eventual confiscation

Requests must specify the location of the property to be seized. In order for the request for the seizure of property and freezing of accounts to be executed, the requesting state is required to prove the link between the property whose seizure is sought and specific illegal operations or criminal activities.

The request must be accompanied by the corresponding judicial decisions issued in the requesting state, or an explanation of the procedure for property seizure pursuant to applicable Russian Federation law.

Additional requirements governing requests for the confiscation of criminal proceeds

Under Russian law, the confiscation of property is only possible by court order or on the basis of another judicial decision issued on the outcome of the trial in the respective criminal matter.

In accordance with the provisions of Article 104¹ of the Criminal Code of the Russian Federation, the confiscation of property involves its compulsory uncompensated seizure and conversion into state property upon conviction for certain categories of crime.

According to Article 243 of the Civil Code of the Russian Federation, in those cases provided for by applicable law, property may be taken without compensation from its owner pursuant to a court judgment as a sanction for the commission of a crime or other offense (confiscation).

In order to enforce this category of requests, all possible measures are taken within the Russian legal system to proceed with execution to the extent specified in the request and to the extent that it relates to the proceeds of crime located in the Russian Federation.

STEP 7: SPECIFY THE NEED FOR CONFIDENTIALITY

If necessary, the request should include a request to maintain the confidentiality of the information provided, stating the reasons for which it is deemed necessary.

STEP 8: SPECIFY THE TIMEFRAME FOR EXECUTION OF THE REQUEST

It is advisable that the request indicate the expected timeframe of its execution, providing the rationale behind said timeframe.

STEP 9: PROVIDE A LIST OF CONTACTS IN THE REQUESTING STATE

The request should specify the full address and other information of the requestor (contact phone numbers, fax, e-mail) for the prompt resolution of issues arising during execution of the request.

STEP 10: TRANSLATE THE REQUEST

The request and the attached documents must be accompanied by their translation into Russian or any other language envisioned by the international treaty serving as the basis for request submission.

If there is no international treaty, the request and the accompanying documents must be translated into the Russian language.

STEP 11: RESTRICTIONS ON THE USE OF OBTAINED INFORMATION

The information obtained during execution of the request may only be used for the purposes specified therein. The possibility of using the materials for other purposes must be agreed with the relevant central authority of the Russian Federation.

STEP 12: NOTIFICATION ON THE COURSE OF REQUEST EXECUTION

On the basis of the submitted request, the competent authorities of the Russian Federation will take measures to ascertain whether or not the assets in question are located within its jurisdiction. The appropriate central body of the Russian Federation will then notify the initiator of the request as to the results of the search.

In the event of the discovery of the assets in question, the competent authorities of the Russian Federation, based on the submitted request, shall proceed with their seizure in accordance with applicable Russian Federation law for the purposes of preventing any actions involving said assets, including any transfer or disposal thereof, until such time as a ruling is entered by the competent authority of the Russian Federation with respect thereto. The initiator of the request shall similarly be notified to that effect.

STEP 13: ACCEPTANCE OR REJECTION OF A REQUEST

Based on the results of its comprehensive consideration of the request and other case materials, the central authority of the Russian Federation will notify the initiator of the request of the decision made in the matter.

In the event that the request is rejected, it would be advisable to consult with the central authority of the Russian Federation in order to address any shortcomings in the submitted request, and, where possible, submit the request again by following steps 2 – 12.

In the event that the request is accepted, the central authority of the Russian Federation will notify the initiator of the request to that effect.

STEP 14: EXECUTION OF THE RETURN OF ASSETS

Upon its receipt of notification that the request has been accepted, the requesting party is advised to consult with the central authority of the Russian Federation on the volume, terms and procedure of asset return.

Assets shall be returned to the initiator of the request in accordance with applicable Russian Federation law.

Please be advised that under the return of assets, the rights of third-party good-faith acquirers must be observed in accordance with the legislation of the Russian Federation.

Assets may be returned either in full or in part in due consideration, inter alia, of the possible need to reimburse the competent authorities of the Russian Federation for related expenses.

CONTACT INFORMATION

Prosecutor General's Office of the Russian Federation
General Directorate for International Legal Cooperation
15a Bolshaya Dmitrovka str., Moscow, GSP-3, 125993, Russia
Tel.: 007 495 692 3206
Fax: 007 495 692 2979, 007 495 692 1660
E-mail: transgprf@mail.ru; international@genproc.gov.ru

In November 2009, the General Prosecutor's Office of the Russian Federation established a national contact point for practical international cooperation in the detection, seizure, confiscation and recovery of assets derived from corruption. To support its activities, the following contact persons have been established:

Deputy Head of the Central Directorate for International Legal Cooperation, Head of the Extradition Unit, Alexander Sergeevich Kupriyanov, phone: 007 495 692 2904, fax: 007 495 692 8475;

Senior Prosecutor of the Legal Assistance Directorate at the Central Directorate for International Legal Cooperation, Nidzhat Rafaelevich Yusifov (English), phone: 007 495 982 7564, fax: 007 495 692 8380 and 007 495 692 1660;

Deputy Head of the Department for Supervision of the Implementation of Legislation on Combating Corruption, Aslan Shihzdaevich Yusufov (English), phone/fax: 007 495 692 1666, e-mail: a.yusufov@genproc.gov.ru.

Ministry of Justice of the Russian Federation
Department of International Law and Cooperation,
International Legal Assistance Office
14 Zhitnaya str., Moscow, GSP-1, 119991
Tel.: 007 495 980 1829
Fax: 007 495 677 0687
E-mail: dms-minjust@yandex.ru