

JAPAN

Practical Guide for Assets Recovery

-How to return the assets concerned

September 2023

Overview

Japan may assist other countries which request Japan to return assets (proceeds of crime derived from certain offences) to its prior legitimate owners on a case-by-case basis.

Japan is a State Party to the United Nations Convention against Corruption, and United Nations Convention against Transnational Organized Crime and other bilateral treaties. If the request is made based on the treaty, the request should align with the treaty.

This guide provides basic information on Japan's assistance in recovering assets, basically to other countries that have not concluded mutual legal assistance treaty/agreement (hereinafter MLAT/MLAA) with Japan.

Main Agencies Supporting Asset Recovery Cases

- International Investigative Operations Division, National Police Agency
- International Affairs Division, Criminal Affairs Bureau, Ministry of Justice
- International Safety and Security Cooperation Division, Foreign Policy Bureau, Ministry of Foreign Affairs

Steps for returning the assets concerned

1. The First Step: Identifying assets concerned

< Via INTERPOL >

After receiving a request from the International Criminal Police Organization (ICPO-INTERPOL), the Japanese Police can make requests to banks for providing information on the targeted bank accounts. (Article 18 of the Act on International Assistance in Investigation, hereinafter referred to as "AIAI").

=procedure=

- Please follow the procedure as provided by the ICPO.
- The requests via ICPO channel are received by International Investigative Operations Division, National Police Agency, which serves as the Japanese National Central Bureau (NCB), i.e. INTERPOL Tokyo. Upon receiving the requests, INTERPOL Tokyo directs Prefectural Police to make requests to the banks concerned for providing information on their bank accounts.

< via FIU Cooperation >

The Japan Financial Intelligence Center (hereinafter JAFIC), the Japanese FIU, collects, arranges and analyses Suspicious Transaction Reports (STRs) and disseminates them to investigative authorities as well as foreign FIUs. By using the FIUs network, a foreign jurisdiction may ask JAFIC to provide STRs which may relate to assets concerned.

Article 14 of the Act on Prevention of Transfer of Criminal Proceeds stipulates that JAFIC may disseminate information on suspicious transactions to foreign FIUs on condition that there is an appropriate measure, such as a framework for information exchange, so called "Statement of Cooperation". The framework shall be set to ensure that the provided information will not be used for other purposes than for performing the duties of foreign agencies which conduct duties equivalent to those of the National Public Safety Commission of Japan and that it will not be used for the investigation into criminal cases (limited to cases where the fact of a crime has already been specified) or inquiries in foreign countries without Japan's prior consent. JAFIC has established such frameworks with the FIUs of 110 countries. If a foreign FIU in your country has a wish to establish such a framework with JAFIC, please contact either;

Japan Financial Intelligence Center

https://www.npa.go.jp/sosikihanzai/jafic/index_e.htm

or

Japanese Embassies

<http://www.mofa.go.jp/region/index.html>

< via Mutual Legal Assistance >

Bank records can be sought through request for mutual legal assistance (hereinafter MLA) to Japan through diplomatic channel.

2. The Second Step : Securance of property

Based on a MLA requests from other countries through diplomatic channel, after identifying assets concerned, Japan can provide assistance as follows;

-Securance (freezing) of Asset

-Confiscation of Asset

To confiscate the assets by request, a final court order for confiscation in the requested country is needed.

3. The Third Step: Returning of the assets concerned

Japan may transfer all or part of the confiscated asset to the requesting country which asked for assistance in execution of their final court order for confiscation, in accordance with its domestic law. Such request should be sent through diplomatic channel.

Outline of Japan's MLA requirements

Here provides practical information on procedures for sending a request to Japan.

(1) Introduction / Overview

MLA in Japan is primarily governed by the AIAI. AIAI applies to all MLA proceedings, and Japan may provide MLA if a requesting State provides an assurance of reciprocity even in the absence of a MLAT. In addition, MLA requests involving confiscation are also dealt with under the Act on Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (so-called "Anti-Organized Crimes Act (AOCA)").

(2) General Procedure

A request for assistance in the absence of an MLAT is received by the Minister for Foreign Affairs via diplomatic channels.

(3) Requirements

Under AIAI, an MLA request must meet the following requirements:

- Reciprocity - the requesting state must guarantee that it will honor requests of the same sort from Japan;
- The offense for which assistance is sought is not a political offense, and the request for assistance is not made with a view to investigating a political offense;
- Dual criminality is a requirement. The act constituting the offense for which assistance is requested would constitute a crime under the laws and regulations of Japan were it to be committed in Japan;
- With respect to a request for the examination of a witness or provision of articles of evidence, the requesting State clearly demonstrates in writing that the evidence is essential to the investigation; and
- The Minister of Justice finds it appropriate to honor the request.

Additional requirements;

If a court of another country renders a final adjudication on a criminal case to confiscate assets located in Japan as proceeds of crime, this country can make a

request of MLA to execute such confiscation order and the transfer of such assets, which is subject to confiscation (asset recovery).

The additional requirements for execution of foreign confiscation order based on a final adjudication are stipulated in AOCA, which include the following;

- Under the laws and regulations of Japan, if the act constituting the offense for which assistance is requested were to be committed in Japan,
 - (1) the said act would be subject to certain penalties, and
 - (2) the said property would be subject to confiscation/preservation; and
- There should be neither a criminal case pending before a Japanese court nor a final and binding judgment by a Japanese court that involves the offense for which assistance is requested.

Upon execution of the request, a public prosecutor will apply to the court for an examination of whether such a request falls under a case for which assistance may be provided. If the court decides that the case is of which assistance may be provided, the foreign adjudication of confiscation will be deemed to be adjudication pronounced by a Japanese court in the context of MLA.

It may be granted, if the Minister of Justice finds it appropriate to grant the transfer of whole or part of the executed assets to the requesting country.

(4) Supplementary Explanation on Dual Criminality Requirement

As mentioned above, dual criminality is one of the legal requirements for providing assistance. At the same time, Japan does not examine the requirement of dual criminality by superficially comparing the constituent elements of crimes of both countries. Rather, Japan seeks whether the facts constituting the offense for which mutual assistance is requested, and other facts related thereto contain, as a whole, a constituent element of a crime prescribed in the Japanese laws, regardless of whether such offense is categorized in the same manner or denominated by the same terminology. In this way, Japan examines and applies the requirement of dual criminality as flexibly as possible. Thus, there are few cases in which Japan refuses to render mutual legal assistance on the grounds that the dual criminality requirement is not met.

Also, note that assistance involving confiscation/preservation (executed in accordance with AOCA) requires “concrete” dual criminality. In other words, “punishability” under the applicable laws of Japan, which may be judged from such factors as “self defense,” “legitimate conduct,” “insanity,” and “lapse of time”, is to be taken into account in

determining whether or not dual criminality requirement is met.

List of Abbreviations

-AOCA:

The Act on Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (so-called “Anti-Organized Crimes Act”)

-Criminal Proceeds Act:

Act on Prevention of Transfer of Criminal Proceeds

-JAFIC:

The Japan Financial Intelligence Center

-AIAI:

The Act on International Assistance in Investigation

Contact Information

- International Safety and Security Cooperation Division, Foreign Policy Bureau, Ministry of Foreign Affairs (TEL: +81-3-5501-8000)
- Inquiries regarding Treaty-based MLA requests: International Affairs Division, Criminal Affairs Bureau, Ministry of Justice (TEL: +81-3-3580-4111)