

STEP-BY-STEP GUIDE FOR ASSET RECOVERY

FROM G20 COUNTRIES

China

I. INTRODUCTION

In China, the international cooperation on asset recovery shall accord with both the domestic laws and the multilateral and bilateral conventions, treaties and agreements China has signed. At present, China has signed Mutual Legal Assistance treaties with 50 countries, extradition treaties with 37 countries, as well as a series of international conventions such as UNCAC. The general principles on asset recovery are as follows.

1) Legal basis. The requesting country can request for assistance on asset recovery based on the regulations in the bilateral MLA treaties with China as well as in the international conventions China has ratified. If neither of those exists, the requesting country can ask for cooperation on asset recovery based on the promise of mutually beneficial principles and in accordance with the domestic laws and regulations.

2) Formal Procedures. The request for assistance on asset recovery is usually submitted through the formal MLA procedure. **Step I:** The requesting country sends MLA request to China's central authority; **Step II:** The central authority, together with competent authorities examines and reviews the MLA request, focusing on whether the request violates the legal principles and interests of China, whether it accords with the principle of dual criminality, whether there are situations invalidating the request, etc. A formal acceptance of the request will be sent to the requesting country after the MLA request passes the review. **Step III:** Based on the information the requesting country provides, competent authorities will help identify the assets in accordance with domestic laws, bilateral treaties or international conventions. **Step IV:** The competent authorities restrain, freeze and seize the assets according to domestic laws, such as the Criminal Law of P. R. China and the Criminal Procedure Law of P. R. China. **Step V:** Once the asset is restrained, frozen or seized, the requesting country shall send the official copy of the legal order and judgement for asset confiscation to China's central authority, which transfers the order to competent authorities for review before making any decisions on the confiscation of the asset as requested, according to specific situations. If involving the sharing of assets, it will be conducted on the basis of bilateral treaties, international conventions, or bilateral discussion and negotiation.

3) Other types. Besides the formal MLA request for asset recovery, the requesting country can also seek for assistance on a case-by-case basis through informal channels, such as the police or the anti-corruption authorities, depending on specific cases.

II. HOW TO SEEK RESTRAINT, SEIZURE AND FORFEITURE/CONFISCATION FROM [China]

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

1. IDENTIFICATION OF THE ASSET

In order to recover the proceeds of corruption held within [China], first identify whether the request is formal or informal. It will be necessary to identify *[the suspect and all related entities through which he/she may hold property including companies, businesses, trust and family members; the crimes the suspect has committed; the money flow in and out of China;]* In order to assist identify assets in [China], the following mechanisms are available:

- *Mutual Legal Assistance Request, e.g. outline of steps, with further detail available in the G20 Country Guide to Mutual Legal Assistance;*

Note: The following information can be obtained with the approval and assistance from relevant authorities in China, such as the police or the administrative management bodies for industry and commerce, etc.

- *Access to government held property ownership records including real property, motor vehicles, vessels, aircraft.*
- *Access to corporate records showing directors and shareholders of registered corporations.*
- *Access to taxation records for personal income tax, business/company tax.*
- *Access to registered trusts and their beneficiaries.*

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

When assets have been identified, China offers the following means of assistance to recover the assets:

At present, foreign requests for the restraint, freezing, seizure, and confiscation of assets will only be approved on the basis of effective foreign judicial order and judgement, in other words, that the person shall be convicted of specific crimes by a foreign court. The request shall also meet the principle of dual criminality.

3. DISPOSAL/RETURN OF ASSETS

In order to return forfeited assets with a foreign State, the following requirements must be met.

The return of forfeited assets shall be operated in accordance with the articles in the bilateral treaties and agreements, or with those in the international conventions. If none of the above exists, the return of assets shall be conducted on a case-by-case basis according to the agreement reached by China and the requesting country. The requesting country shall inform China's central authorities of the bank accounts, means of disposing the immovable properties such as trust auctions, etc.

III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

1) For MLA request for asset recovery based on bilateral treaties, the Ministry of Justice is the main central authority.

Contact Info. : Department of Mutual Legal Assistance and Foreign Affairs, Ministry of Justice

No. 6, Chaoyangmen Nan Street, Beijing, China

cnca@moj.gov.cn

[Maximum 6 Pages]

2) For MLA request for asset recovery based on UNCAC and other international conventions, the Supreme People's Procuratorate is the central authority.

Contact Info. : Department of International Cooperation, Supreme People's Procuratorate

No. 147, Beiheyuan Street, Dongcheng District, Beijing, China

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to [Ministry of Justice or Supreme People's Procuratorate] website at <www.moj.gov.cn, www.spp.gov.cn> for additional guidance on making asset recovery requests to [China].