

STEP-BY-STEP GUIDE FOR ASSET RECOVERY FROM INDIA

I. INTRODUCTION

India is committed to the global fight against corruption and to ensure that stolen assets are recovered. In India Directorate of Enforcement under Department of Revenue, Ministry of Finance, has been mandated with a duty to investigate the offence of money laundering and asset recovery under Prevention of Money Laundering Act (PMLA), 2002 (15 of 2003) as amended. It has pan India presence & works in close collaboration with law enforcement agencies around the world.

As per main object and scheme of the Prevention of Money Laundering Act the proceeds of crime generated out of scheduled offences committed by the accused persons, are liable for attachment and confiscation. Chapter IX of PMLA 2002 provides that if any of the scheduled offence is committed outside India and proceeds of crime have been generated, the same is also an offence under corresponding law (Section 2(1) (ia) of the Act, the same shall come within the ambit of PMLA. In the PMLA there is no distinction between money generated through serious offences or non serious offences. All the offences numbering 156 arising out of 28 Acts have been listed under part A of the Schedule appended to the Act. As per scheme of the Act, the confiscation of attached property shall be contingent upon conviction of the accused for money laundering offence. The offences under section 7, 8, 9, 10 and 13 of Prevention of Corruption Act, 1988 are listed under Paragraph 8 of part A of Schedule. These offences distinctly criminalize the offence of bribery as well as corruption by public servants. There is inbuilt provisions of asset recovery under the Act in view of wide coverage of the word 'property' under section 2(1)(v) of the Act. The words 'wherever located' make the Act transnational. The embedded provisions of reciprocal arrangements under chapter IX (Ss 55-61) further extend the ambit and scope of the Act to attach and confiscate proceeds of crime lying in the contracting state. The offence of money laundering has been treated as a serious crime being cognizable and non bailable and even the discretionary power to grant bail by Special Court are restricted to some extent.

In order to translate the information if provided by any contracting state, it must execute the Letter of Request, as expeditiously as possible issued u/s 57 of the Act, so that such information could be relied upon as a cogent evidence in the proceedings under the Act whether for attachment, adjudication or prosecution. Therefore the assistance if required for confiscation must be formally sent. However, Directorate of Enforcement, Department of Revenue, India welcomes many forms of assistance on reciprocal basis before a formal request for Mutual Legal Assistance is made.

II. HOW TO SEEK RESTRAINT, SEIZURE AND FOREITURE/CONFISCATION FROM INDIA

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

1. IDENTIFICATION OF THE ASSET

In order to recover the proceeds of corruption held within India, it is essential to first identify whether the request is formal or informal. It will be necessary to identify *the suspect and all related entities through which the accused may hold property including companies, businesses, trust in the name of himself or his/her family members*. In order to assist identify assets in India, the following mechanisms are available:

🕒 **CONSULT THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST** : Requesting country may contact the Indian Central Authority, i.e. Under Secretary (Legal) (Internal Security Division-II), Ministry of Home Affairs, Jai Singh Road, New Delhi - 110001 in advance for making a request for mutual legal assistance, particularly in serious cases to ensure the assistance that is being sought is available under the laws of India and the request will meet the legal requirements of India. The basic requirement for Letter Rogatory to India is listed in the G20 Country Guide to Mutual Legal Assistance.

🕒 **ENSURE THE REQUEST IS PROPORTIONATE TO THE ALLEGED CRIME**: Requesting country must ensure that the request for assistance is proportionate to the level of crime being investigated. A requesting state is urged to consider the need for the evidence in question from the point of view of the

commensurate cost involved in getting the evidence and the criticality of it for the case.

⌚ INDICATE THE MECHANISM USED TO SEEK ASSISTANCE: Requesting country must scrupulously mention the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking assistance from India.

⌚ IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION: Clearly indicate the authority that is conducting the investigation and prosecution.

⌚ SUMMARISE THE CASE: Provide a detailed outline of the case under investigation or prosecution including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following :-

- If witness statement/testimony is being sought, please mention full address/identity particulars and annex a questionnaire with the request;
- If documentary evidence is needed, please mention the authority from whom the documents are to be collected.
- If the execution of a search warrant is sought, please mention exact address/owner of the premises where the search is required to be conducted.
- If seizure/confiscation of criminal proceeds is requested, please mention full details of criminal proceeds and also the evidence to prove that such proceeds are actually criminal proceeds.
- Corporate records available with Ministry of Corporate Affairs and local bodies.
- Direct and indirect tax records for personal income tax, business/company tax etc.
- Records of NGO's, trusts, foreign contributions etc.
- Investigative assistance – interviews, survey, search etc.

⌚ SET OUT THE APPLICABLE LEGAL PROVISIONS: Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

⌚ IDENTIFY THE ASSISTANCE BEING SOUGHT : Outline, in specific terms, exactly what you are seeking to obtain from India and any particular requirements that must be met (for example, certification/authentication). One can refer to Article 1 of the ISD for guidance on the scope of assistance that can be provided against the incoming requests.

⌚ HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS: In India, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

⌚ IDENTIFY ANY URGENCY IN THE EXECUTION OF THE REQUEST: Identify any time limit for compliance with the request desired and the reason for the time constraints (for example, pending court proceeding/time-sensitive investigation etc.) If you face limitation periods, set out the precise dates.

⌚ PROVIDE A LIST OF RELEVANT CONTACT POINTS : Include a list of the names and contact numbers for key law enforcement / prosecution authorities familiar with the case. Requesting country should include the name and, where applicable, the contact information of its Central Authority, in the event India's Central Authority i.e. Ministry of Home Affairs (Legal) (Internal Security Division) wishes to contact for the purpose of clarification or obtaining additional information.

⌚ TRANSLATE THE REQUEST: India requires incoming requests for mutual legal assistance to be provided in writing and in English. Supporting documents, if not in English shall be accompanied by an English translation.

⌚ LIMITATIONS ON USE OF EVIDENCE PROVIDED: Note that any evidence which India provides in response to a mutual legal assistance request

may only be used for the specific purpose stated in the request. If further use of the evidence is required, requesting country must first seek consent from India.

2. CONFISCATION OF PROPERTY RELATING TO FOREIGN OFFENCES

(a) When assets have been identified, India offers the means of assistance to recover the assets through order to restrain/ freeze/ seize assets located in contracting country based on a **foreign arrest or charge** or to confiscate assets through the enforcement of **foreign orders and judgements** for a person **convicted of a foreign offence** including statutory forfeiture/ confiscation, pecuniary penalty orders and substituted asset orders

(b) Where a letter of request is received by the Central Government from a court or an authority from a contracting State requesting attachment or confiscation of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 of the PMLA, 2002, committed in that contracting State, the Central Government may forward such letter of request to the Director, as it thinks fit, for execution in accordance with the provisions of PML Act 2002.

(c) The Director shall, on receipt of a letter of request under section 58 or section 59, of the Prevention of Money Laundering Act, 2002; direct any authority under this Act to take all steps necessary for tracing and identifying such property.

(d) The steps referred to in sub-section (3) may include any inquiry, investigation or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.

(e) Any inquiry, investigation or survey referred to in sub-section (4) shall be carried out by an authority mentioned in sub-section (3) in accordance with such directions issued in accordance with the provisions of this Act.

(f) The provisions of this Act relating to attachment, adjudication, confiscation and vesting of property in the Central Government contained in Chapter III and survey, searches and seizures contained in Chapter V of Prevention of Money Laundering Act, 2002, shall apply to the property in respect of which letter of request is received from a court or contracting State for attachment or confiscation of property.

(g) When any property in India is confiscated as a result of execution of a request from a contracting State in accordance with the provisions of this Act, the Central Government may either return such property to the requesting State or compensate that State by disposal of such property on mutually agreed terms that would take into account deduction for reasonable expenses incurred in investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property.

3. DISPOSAL/RETURN OF ASSETS

In order to return forfeited assets to a foreign State, a formal agreement facilitating the return or disposal of assets to that state is required.

III. ASSET RECOVERY AGENCY/ AGENCIES – CONTACT INFORMATION

Special Director, Directorate of Enforcement, Department of Revenue, Lok Nayak Bhawan, New Delhi.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to Directorate of Enforcement website at www.enforcementdirectorate.gov.in for additional guidance on making asset recovery requests to India.

Requesting countries are also encouraged to refer to the UN Office in Drugs and Crime's *held from Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to India.