

Law of the People's Republic of China on International Judicial Assistance in Criminal Matters

Promulgation date	2018/10/26	Effective region	NATIONAL
Promulgator	Standing Committee of the National People's Congress	Document no	Order of the President of the People's Republic of China No.13
Effectiveness	Effective	Effective date	2018/10/26
Category	Criminal Law (Criminal Law & Criminal Action->Criminal Law) ,Criminal Procedure Law (Criminal Law & Criminal Action->Criminal Procedure Law)		

Law of the People's Republic of China on International Judicial Assistance in Criminal Matters

Order of the President of the People's Republic of China No.13

October 26, 2018

The Law of the People's Republic of China on International Judicial Assistance in Criminal Matters, which was adopted at the Sixth Session of the Standing Committee of the 13th National People's Congress of the People's Republic of China on October 26, 2018, is hereby issued for implementation as of the date of issue.

Xi Jinping, president of the People's Republic of China

Law of the People's Republic of China on International Judicial Assistance in Criminal Matters

(Adopted at the Sixth Session of the 13th Standing Committee of the National People's Congress on October 26, 2018)

Contents

Chapter I General Provisions

Chapter II Submission, Reception and Handling of Requests for Judicial Assistance in Criminal Matters

Section 1 Requests for Judicial Assistance in Criminal Matters from Foreign Countries

Section 2 Requests for Judicial Assistance in Criminal Matters from the People's Republic of China

Chapter III Service of Documents

Section 1 Request to a Foreign Country for Service of Documents

Section 2 Request to the People's Republic of China for Service of Documents

Chapter IV Investigation and Evidence Collection

Section 1 Request to a Foreign Country for Investigation and Evidence Collection

Section 2 Request to the People's Republic of China for Investigation and Evidence Collection

Chapter V Arranging Witnesses to Testify or Assist in Investigations

Section 1 Request to a Foreign Country for Witness Testimony or Assistance in Investigations

Section 2 Request to the People's Republic of China for Witness Testimony or Assistance in Investigations

Chapter VI Sealing up, Seizure or Freezing of Property Involved in a Case

Section 1 Request to a Foreign Country for Sealing up, Seizing or Freezing Property Involved in a Case

Section 2 Request to the People's Republic of China for Sealing up, Seizing or Freezing Property Involved in a Case

Chapter VII Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Section 1 Request to a Foreign Country for Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Section 2 Request to the People's Republic of China for Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Chapter VIII Transfer of Sentenced Persons

Section 1 Transfer of Sentenced Persons to a Foreign Country

Section 2 Transfer of Sentenced Persons to the People's Republic of China

Chapter IX Supplementary Provisions

Chapter I General Provisions

Article 1 The Law of the People's Republic of China on International Judicial Assistance in Criminal Matters (the "Law") is enacted in order to guarantee the normal conduct of international judicial assistance in criminal matters, strengthen cooperation in the field of international criminal justice, effectively punish crimes, protect the legitimate rights and interests of individuals and organizations, and safeguard national interests and social order.

Article 2 For the purposes of the Law, international judicial assistance in criminal matters means the provision of mutual assistance by the People's Republic of China and foreign countries in criminal investigations, detection, prosecutions, trials and enforcement activities, including service of documents, investigation and taking of evidence, arranging the witness to testify or assist in the investigation, sealing up, detaining or freezing the property involved in the case, confiscating, returning illegal gains and other property involved in the case, transferring sentenced persons and other assistance.

Article 3 Judicial assistance in criminal matters between the People's Republic of China and foreign countries shall be conducted pursuant to the Law.

Requests for the judicial assistance in criminal matters made by foreign countries shall be subject to the Law, the Criminal Procedure Law and other relevant laws.

Matters such as the signing authority of a letter of request, a letter of request and the language of attached materials, relevant handling period and concrete procedures may be subject to the treaty on the judicial assistance in criminal matters or the negotiation by and between both parties, under the basic principle of no violation of any law of the People's Republic of China.

Article 4 The People's Republic of China and foreign countries shall conduct international judicial assistance in criminal matters under the principle of equality and reciprocity.

International judicial assistance in criminal matters shall not impair the sovereignty, security and public interests of the People's Republic of China, and not violate any basic principle of the laws of the People's Republic of China.

Without the approval of the competent authority of the People's Republic of China, no foreign institution, organization or individual shall initiate criminal proceedings specified hereunder within the territory of the People's Republic of China, and no institution, organization or individual within the territory of the People's Republic of China shall provide any evidential material or the assistance set forth hereunder for a foreign country.

Article 5 Judicial assistance in criminal matters between the People's Republic of China and foreign countries shall be conducted through contact by foreign liaison organs.

The Ministry of Justice of the People's Republic of China and other foreign liaison organs are responsible for the submission, receipt and forwarding of requests for judicial assistance in criminal matters and for other matters relating to international judicial assistance in criminal matters.

Where there is no treaty on the judicial assistance in criminal matters between the People's Republic of China and a foreign country, contact shall be conducted through a diplomatic channel.

Article 6 The National Supervision Commission, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of National Security and other departments are the competent authorities for international judicial assistance in criminal matters, reviewing requests for judicial assistance in criminal matters made to foreign countries, examining and handling requests for judicial assistance in criminal matters made by foreign countries as forwarded by foreign liaison organs, and undertaking other work related to judicial assistance in criminal matters, in accordance with the duties thereof. In the case of transferring a sentenced person, the Ministry of Justice shall undertake corresponding duties as competent authority, as per the duties thereof.

Organs that handle cases about judicial assistance in criminal matters are the case-handling organs of international judicial assistance in criminal matters, responsible for submitting requests for judicial assistance in criminal matters necessary to be made to foreign countries to the competent authorities, and executing requests for judicial assistance in criminal matters from foreign countries assigned by the competent authorities.

Article 7 The State guarantees the funds required for international judicial assistance in criminal matters.

Article 8 The costs incurred by the People's Republic of China and foreign countries in executing mutual requests for judicial assistance in criminal matters shall be borne in accordance with the provisions of the treaties. If there

is no treaty or the treaty does not provide for it, the matter shall be settled through consultation and under the principle of equality and reciprocity.

Chapter II Submission, Reception and Handling of Requests for Judicial Assistance in Criminal Matters

Section 1 Requests for Judicial Assistance in Criminal Matters from Foreign Countries

Article 9 Where a case-handling organ needs judicial assistance in criminal matters from foreign countries, it shall prepare a letter of request for judicial assistance in criminal matters and attach the relevant materials, which shall be submitted promptly by the foreign liaison organ to the foreign countries after examination and approval by the competent authority of the case-handling organ.

Article 10 A letter of request for judicial assistance in criminal matters to a foreign country shall be submitted in accordance with the treaty on the judicial assistance in criminal matters; if there is no such treaty or the treaty does not provide for that, the letter of request may be submitted as per Article 13 hereof; if the requested country has any special requirement, the letter of request may be submitted as per the special requirements of the requested country under the basic principle of no violation of any law of the People's Republic of China. The letter of request and attached materials shall be in Chinese and shall be accompanied by a translation into the official language of the requested country.

Article 11 If a requested country attaches additional conditions to the implementation of a request for the judicial assistance in criminal matters, the Ministry of Foreign Affairs may, on behalf of the People's Republic of China, which request does not impair the sovereignty, national interests and public interests of the People's Republic of China, the Ministry of Foreign Affairs may make a commitment. If a requested country expressly expresses the full validity of the commitments made by the foreign liaison organ, the foreign liaison organ may also make such commitments. The Supreme People's Procuratorate shall decide on the commitment to restriction on prosecution; the Supreme People's Court shall decide on the commitment to sentencing. Relevant organs shall be bound by the commitments made when investigating the persons involved in the case for criminal liability.

Article 12 After receiving the relevant notice or implementation result provided by the foreign country, the foreign liaison organ shall pass it on to or inform the competent authority in a timely manner. Where a foreign country requests to be notified of the litigation results in respect of a case in which it has provided judicial assistance in criminal matters, the foreign liaison organ shall transmit it to the competent authority.

Section 2 Requests for Judicial Assistance in Criminal Matters from the People's Republic of China

Article 13 Where a request for judicial assistance in criminal matters is made to the People's Republic of China, the request shall be submitted in accordance with the treaty on the judicial assistance in criminal matters. If there is no such treaty or the treaty does not provide for the same, the letter of request shall specify matters below and be attached with relevant materials:

1. name of the request authority;
2. the nature of the case, the basic information about the persons involved in the case and the criminal facts;
3. the legal provisions applicable to the case;
4. the matters as requested and purpose;
5. the relevance between the matter requested and the case;
6. the time limit within which the request is expected to be executed; and
7. other necessary information or attached requirements.

In the absence of a treaty on the judicial assistance in criminal matters, the requesting country concerned shall make a reciprocal commitment.

The letter of request and attached materials shall be attached with Chinese translations.

Article 14 Where a foreign country requests the People's Republic of China for judicial assistance in criminal matters under any of the following circumstances, the People's Republic of China may refuse to provide assistance:

1. the act for which the request is made does not constitute a crime under the laws of the People's Republic of China;
2. at the time of receiving the request, investigation, detection, prosecution or trial is conducted, an effective

- judgment has been rendered, the criminal procedure has been terminated or the time limit for prosecution has been passed for the crime for which the request is made within the territory of the People's Republic of China;
3. the crime for which the request is made is a political crime;
 4. the crime for which the request is made is a purely military crime;
 5. the purpose of the request is to investigate, detect, prosecute, try, execute a punishment for a crime on grounds of nationality, race, religion, nationality, sex, political opinion or identity, etc., or the party concerned may be treated unfairly for any of the reasons mentioned above;
 6. there is no substantive connection between the matter requested and the case with the assistance requested;
- or
7. any other circumstance under which refusal may be made.

Article 15 Upon receipt of a request for judicial assistance in criminal matters from a foreign country, the foreign liaison organ shall examine the letter of request and the attached materials. If the form and contents of a letter of request meet the relevant requirements, the foreign liaison organ shall, as per the duties thereof, forward the letter of request and attached materials to the relevant competent authority for disposal; if not, it may require the requesting country concerned to supplement materials or submit a request again.

Where a request for judicial assistance in criminal matters obviously impairs the sovereignty, security and public interests of the People's Republic of China, the foreign liaison organ may directly refuse assistance.

Article 16 Upon receipt of a letter of request for judicial assistance in criminal matters and attached materials forwarded by a foreign liaison organ, a competent authority shall examine the request and the attached materials, and handle the following cases respectively:

1. if believing that the assistance can be provided pursuant to the Law and the treaty on the judicial assistance in criminal matters, it shall make a decision and arrange the relevant case-handling organ for execution;
2. if believing that the assistance should be refused in whole or in part as per Article 4 or 14 hereof or the treaty on the judicial assistance in criminal matters, it shall return the letter of request and attached materials to the foreign liaison organ and give a reason;
3. if there is a confidentiality requirement or any other condition attached to the execution of a request, it shall, through the foreign liaison organ, put it forward to the foreign country, and determine the conditional execution, after the foreign country accepts the condition and makes a written commitment; or
4. if it is necessary to provide additional materials, it shall notify the foreign liaison organ in writing to request the requesting country to provide them within a reasonable time limit.

If the execution of a request would impede the ongoing investigation, detection, prosecution, trial or execution of the judicial organ of the People's Republic of China, a competent authority may decide to postpone the assistance and notify the foreign liaison organ in writing of the decision and reasons for the postponement of the assistance.

Where a foreign country has confidentiality or special procedural requirements for the execution of its request, the competent authority may, subject to the basic principles of the laws of the People's Republic of China, arrange the execution thereof in accordance with its requirements.

Article 17 The case-handling organ shall, after receiving a request for foreign judicial assistance in criminal matters from the competent authority for execution, execute it according to the law, and timely report the execution result or the existence of circumstances that may impede the execution to the competent authority. In the process of executing a request, the case-handling organ shall protect the lawful rights and interests of the parties and other relevant persons, and protect personal information.

Article 18 Where a foreign country requests to use the evidential materials obtained through the judicial assistance in criminal matters for any purpose other than the case for which a request is made, the foreign liaison organ concerned shall pass the request on to the competent authority, which will decide to agree or not.

Article 19 After receiving the relevant notice or implementation result provided by the competent authority, the foreign liaison organ shall pass it on to or inform the requesting country in a timely manner.

For a case in which the People's Republic of China provides judicial assistance in criminal matters, the competent authority may request the foreign country to notify the litigation result of the case.

Where a foreign country reports any litigation result, the foreign liaison organ shall, after receiving relevant materials, promptly pass it on to or inform the competent authority. If it involves criminal proceedings against any citizen of the People's Republic of China, the foreign liaison organ shall notify the Ministry of Foreign Affairs too.

Chapter III Service of Documents

Section 1 Request to a Foreign Country for Service of Documents

Article 20 Where a case-handling organ needs foreign assistance in serving summonses, notices, indictments, judgments or other judicial documents, it shall submit a letter of request for judicial assistance in criminal matters and attach the relevant materials. After the letter of request and attached materials are examined and approved by the competent authority of the case-handling organ, the foreign liaison organ shall make a request to the foreign country in due time.

Article 21 Where the service of documents is requested to a foreign country, the letter of request shall specify the name of the addressee, the address of the service and relevant rights and obligations which should be informed to the addressee.

Section 2 Request to the People's Republic of China for Service of Documents

Article 22 A foreign country may request the People's Republic of China to assist in the service of summonses, notices, indictments, judgments and other judicial documents. The assistance in the service of judicial documents provided by the People's Republic of China does not mean recognition of the legal force of foreign judicial documents.

Where the service of a summons is requested, the request shall be made as per the period specified in the relevant treaty. If there is no treaty or the treaty does not provide for it, the request shall be made at least three months before the date of the hearing.

The People's Republic of China shall not have the obligation to assist in the service of a summons for a defendant to be questioned or appear in court as defendant.

Article 23 Where the service of documents is requested by a foreign county to the People's Republic of China, the letter of request shall specify the name of the addressee, the address of the service and relevant rights and obligations which should be informed to the addressee.

Article 24 The people's court or other case-handling organ responsible for the execution of serving documents shall notify the foreign liaison organ of the execution result through the competent authority, and the foreign liaison organ shall inform the requesting country. Unless service is impossible, the service return receipt signed by the addressee or any other certification shall be attached.

Chapter IV Investigation and Evidence Collection

Section 1 Request to a Foreign Country for Investigation and Evidence Collection

Article 25 Where a case-handling organ needs assistance in an investigation and evidence collection for any of the following matters from foreign countries, it shall submit a letter of request for judicial assistance in criminal matters and attach the relevant materials, and upon examination and approval by the competent authority, the foreign liaison organ shall make a request to foreign countries in a timely manner:

1. finding and identifying the relevant persons;
2. inquiring and verifying property involved in the case and financial account information;
3. obtaining and providing the testimony or statements of the relevant personnel;
4. obtaining and providing documents, records, electronic data and articles;
5. obtaining and providing appraisal opinions;
6. surveying or inspecting places, articles, human bodies and corpses;
7. searching persons, articles, residences and other relevant places; and
8. other matters.

In the case of a request for assistance from a foreign country in the investigation and evidence collection, the case-handling organ may simultaneously request the arrangement for the person to be present at the time of the execution thereof.

Article 26 To apply to a foreign country for investigation and evidence collection, the letter of request and the attached materials shall specify the following matters as required:

1. the name, gender, address, identity information and contact information of the person under investigation and other information that helps to confirm the person under investigation;

2. a list of questions that need to be asked to the person under investigation;
3. the name, gender, address, identity information, contact information, appearance and behavioral characteristics, and other information that is helpful to the search or identification of the person;
4. the ownership, place, characteristics, shape, quantity as well as other specific information of the property involved in the case that needs to be inquired into and verified, and relevant financial account information that needs to be inquired into and verified;
5. relevant documents, records and electronic data that need to be obtained, and the owner, place, characteristics, shape, quantity and other specific information of relevant articles;
6. specific information about the objects to be authenticated;
7. specific information on the places and articles to be surveyed and inspected;
8. specific information about the objects to be searched; and
9. other materials that may help the execution of the request.

Article 27 Where the requested country requests the return of the evidential materials or articles provided by it, the case-handling organ shall promptly return them through the foreign liaison organ.

Section 2 Request to the People's Republic of China for Investigation and Evidence Collection

Article 28 A foreign country may request the People's Republic of China to render assistance in the investigation and evidence collection as prescribed in Paragraph 1 of Article 27 of the Law.

Where a foreign country requests the People's Republic of China for investigation and evidence collection, the letter of request and the attached materials shall, as needed, specify the matters as listed in Article 26 hereof.

Article 29 In the case of a request for investigation and evidence collection from a foreign country to the People's Republic of China, the foreign country may simultaneously request the arrangement for the person to be present at the time of execution thereof. The person who is allowed to be present shall abide by the laws of the People's Republic of China, and be subject to the arrangement of the competent authority and case-handling organ.

Article 30 Where the case-handling organ requests the requesting country to return the evidential materials or articles it provides and the requesting country makes a statement, the case-handling organ may provide such materials or articles.

Chapter V Arranging Witnesses to Testify or Assist in Investigations

Section 1 Request to a Foreign Country for Witness Testimony or Assistance in Investigations

Article 31 Where the case-handling organ needs foreign assistance in arranging witnesses or expert witnesses to testify in the People's Republic of China or to testify by video or audio, or to assist in investigation, it shall submit a letter of request for judicial assistance in criminal matters and attach the relevant materials, which shall be submitted to the foreign country by the foreign liaison organ in due time, upon examination and approval by the competent authority.

Article 32 In the event that assistance from a foreign country in arranging a witness or expert witness to testify or assist in investigation is requested, the letter of request and the attached materials shall specify the following matters as required:

1. the name, gender, address, identity information and contact information of the witness or expert witness as well as other information that helps to identify the witness or expert witness;
2. the purpose, necessity, time, place and so on of the testimony or assistance in the investigation;
3. the rights and obligations of the witness or expert witness;
4. the protective measures for the witness or expert witness;
5. the protective measures for the witness or expert witness; and
6. other materials that may help in the execution of the request.

Article 33 A witness or expert witness coming to the People's Republic of China to testify or assist in investigation shall not be prosecuted before leaving the territory of the People's Republic of China for the crimes he/she commits before entering the territory of the People's Republic of China; and his/her personal freedom shall not be restricted, unless he/she is subject to compulsory measures because he/she commits a crime after entering the territory of the People's Republic of China.

Where a witness or expert witness does not leave the territory of the People's Republic of China within a period

stipulated in a treaty or within 15 days after being notified of no necessity of continuous stay, except for force majeure or any other special reason, the preceding paragraph shall not apply.

Article 34 For witnesses and expert witnesses who come to the People's Republic of China to testify or assist in an investigation, the case-handling organ shall pay allowances according to the law.

Article 35 Where a person who comes to the People's Republic of China to testify or assist in an investigation is a detainee, the foreign liaison organ, in conjunction with the competent authority, and the requested country shall reach an agreement in advance on the matters about the transfer of the detainee.

The competent authority and case-handling organ shall abide by the content of the agreement, ensure that the person transferred remains in custody according to the law, and transfer him/her to the requested country in a timely manner upon the conclusion of the testimony or assistance in the investigation.

Section 2 Request to the People's Republic of China for Witness Testimony or Assistance in Investigations

Article 36 A foreign country may request the People's Republic of China to assist in arranging a witness or expert witness to testify in the foreign country or to testify by video or audio testimony or assist in an investigation. Where a foreign country requests the People's Republic of China to arrange a witness or expert witness to testify or assist in an investigation, the letter of request and the attached materials shall, as needed, specify the matters as listed in Article 32 hereof.

The requesting country shall make a written commitment as per Paragraph 1 of Article 33 hereof.

Article 37 Where a witness or expert witness agrees to testify or assist in an investigation in writing, the case-handling organ shall promptly notify the foreign liaison organ of the willingness, requirements and conditions of the witness or expert witness through its competent authority, and the foreign liaison organ shall notify the requesting country.

In the case of arranging a witness or expert witness to testify by video or audio, the competent authority or case-handling organ shall send personnel to the scene. If any witness or expert witness is found to commit any act with prejudice to the sovereignty, security or public interests of the People's Republic of China or violate the basic principles of the laws of the People's Republic of China, such act shall be stopped in a timely manner.

Article 38 Where a foreign country requests to transfer a detainee to testify or assist in an investigation abroad, and ensures to send the detainee back responsively after the testimony or assistance in the investigation, the foreign liaison organ shall seek opinions of the competent authority and the detainee. Where both the competent authority and the detainee agree to testify or assist in the investigation, the foreign liaison organ, in conjunction with the competent authority, and the requesting country shall reach an agreement in advance on the matters about the transfer of the detainee.

The period of detention of the detainee in a foreign country shall be set off by his/her prison term sentenced in the People's Republic of China.

Chapter VI Sealing up, Seizure or Freezing of Property Involved in a Case

Section 1 Request to a Foreign Country for Sealing up, Seizing or Freezing Property Involved in a Case

Article 39 Where a case-handling organ needs a foreign country to assist in sealing up, seizing or freezing the property involved in a case, it shall prepare a letter of request for judicial assistance in criminal matters and attach the relevant materials, which shall be submitted promptly by the foreign liaison organ to the foreign country after examination and approval by the competent authority of the case-handling organ.

The special requirements of the foreign country for assisting in the implementation of the request of the People's Republic of China for sealing up, seizing or freezing the property involved in the case may be agreed upon under the condition that the basic principles of the laws of the People's Republic of China are not violated. Where a decision needs to be made by a judicial organ, the people's court shall make the decision.

Article 40 To apply to a foreign country for sealing up, seizing or freezing the property involved in a case, the letter of request and the attached materials shall specify the following matters as required:

1. the documents certifying the ownership of property involved in the case that is to be sealed up, seized or frozen, and the name, characteristic, shape and quantity of such property and so on;
2. the place where the property involved in the case needs to be sealed up, seized or frozen. Where the capital or any other financial asset is deposited in a financial institution, the name, address and account information of the

financial institution concerned shall be specified;

3. duplicates of relevant legal instruments;

4. legal provisions on sealing up, seizing or freezing and the guarantee of rights of interested parties; and

5. other materials that may help the execution of the request.

Article 41 Where the case-handling organ needs to continue to seal up, seize or freeze the relevant property involved in a case when the time limit for sealing up, seizure or freezing the property determined by the foreign country expires, it shall make a request to the foreign country again.

Where a case-handling organ decides to cancel the sealing up, seizure or freezing, it shall notify the requested country in due time.

Section 2 Request to the People's Republic of China for Sealing up, Seizing or Freezing Property Involved in a Case

Article 42 A foreign country may request the People's Republic of China to assist in sealing up, seizing or freezing the property involved in a case within the territory of the People's Republic of China.

Where a foreign country requests the People's Republic of China to seal up, seize or freeze the property involved in a case, the letter of request and the attached materials shall, as needed, specify the matters as listed in Article 40 hereof.

Article 43 Where believing the satisfaction of the following conditions upon examination, a competent authority may agree to seal up, seize or freeze the property involved in a case, and arrange the relevant case-handling organ for implementation:

1. the sealing up, seizure or freezing meets the conditions stipulated under the laws of the People's Republic of China;

2. the sealing up, seizure or freezing of the property involved in a case is related to the investigation, detection, prosecution and trial activities of the criminal case under way in the requesting country;

3. the property involved in the case can be sealed up, seized or frozen;

4. the execution of the request does not affect the lawful rights and interests of other interested parties; and

5. The execution of the request does not affect the ongoing investigation, detection, prosecution, trial and execution activities conducted by relevant organs in the People's Republic of China.

The case-handling organ shall, in a timely manner, request the foreign liaison organ through its competent authority to notify the requesting country of the results of the sealing up, seizure or freezing. If necessary, a case-handling organ may, according to law, take measures against the property involved in a case which is sealed up, seized or frozen.

Article 44 Where a foreign country needs to continue to seal up, seize or freeze the relevant property involved in a case when the time limit for sealing up, seizing or freezing the property expires, it shall make a request to the foreign liaison organ again.

Where a foreign country decides to cancel sealing up, seizure or freezing, a foreign liaison organ shall, through the competent authority thereof, notify the case-handling organ to cancel the same in due time.

Article 45 Where an interested party objects to sealing up, seizure or freezing, and a case-handling organ believes through examination that the sealing up, seizure or freezing does not meet the conditions set out in Paragraph 1 of Article 43 hereof, the case-handling organ shall propose its competent authority to decide to cancel the sealing up, seizure or freezing and notify the foreign liaison organ, which shall inform the requesting country; in the case of an objection to the treatment of the case, the case-handling organ may, through its competent authority, pass it on to the foreign liaison organ, which shall put forward the objection to the requesting country.

Article 46 The case-handling organ may, through the foreign liaison organ, request the requesting country to assume liability for damages caused to the rights of the interested parties due to the inappropriate sealing up, seizure or freezing of property due to reasons attributable to the requesting country.

Chapter VII Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Section 1 Request to a Foreign Country for Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Article 47 Where a case-handling organ needs a foreign country to assist in confiscating illegal gains and other

property involved in a case, it shall prepare a letter of request for judicial assistance in criminal matters and attach the relevant materials, which shall be submitted promptly by the foreign liaison organ to the foreign country after examination and approval by the competent authority of the case-handling organ.

Where a foreign country is requested to return illegal gains and other property involved in a case to the People's Republic of China or victim, the request may be made together with the request for confiscation made to the foreign country or separately.

The special requirements of a foreign country for returning the illegal gains and other property involved in the case that are sealed up, seized or frozen may be agreed upon under the condition that the basic principles of the laws of the People's Republic of China are not violated. Where a decision needs to be made by a judicial organ, the people's court shall make the decision.

Article 48 For a request to a foreign country for confiscating and returning illegal gains and other property involved in a case, the letter of request and the attached materials shall specify the following matters as required:

1. the name, characteristic, shape, quantity and so on of illegal proceeds and other property involved in the case to be confiscated and returned;
2. the places of illegal gains and other property involved in the case to be confiscated and returned. Where the capital or any other financial asset is deposited in a financial institution, the name, address and account information of the financial institution concerned shall be specified;
3. the reason for confiscation and return and relevant ownership certification;
4. duplicates of relevant legal instruments;
5. legal provisions on confiscation, return and the guarantee of the rights of the interested parties; and
6. other materials that may help the execution of the request.

Article 49 Where a foreign country assists in confiscating and returning the illegal gains and other property involved in a case, the foreign liaison organ, in conjunction with its competent authority, shall negotiate with the foreign country concerning the transfer of relevant properties.

Where a foreign country puts forward the sharing of a request for its assistance in confiscating and returning the illegal gains and other property involved in a case, the foreign liaison organ, in conjunction with its competent authority, shall negotiate with the foreign country concerning the sharing amount or percentage.

Section 2 Request to the People's Republic of China for Confiscation and Return of Illegal Gains and Other Property Involved in a Case

Article 50 A foreign country may request the People's Republic of China to assist in confiscating and returning illegal gains and other property involved in a case.

Where a foreign country requests the People's Republic of China to assist in confiscating and returning illegal gains and other property involved in a case, the letter of request and the attached materials shall, as needed, specify the matters as listed in Article 48 hereof.

Article 51 Where believing the satisfaction of the following conditions upon examination, a competent authority may agree to the assistance in the confiscation of the illegal gains and other property involved in a case, and arrange the relevant case-handling organ to carry out the implementation:

1. the confiscation of the illegal gains and other property involved in the case meets the conditions stipulated under the laws of the People's Republic of China;
2. the foreign country has fully guaranteed the relevant rights of the interested parties;
3. there is property that can be enforced in the People's Republic of China;
4. the letter of request and the attached materials describe in detail the ownership, name, characteristic, shape and quantity of properties for which the request is made;
5. the confiscation cannot be enforced in whole or in part in the requesting country; and
6. other conditions that the competent authority deems necessary to be satisfied.

Article 52 Where a foreign country requests assistance in the confiscation of the illegal gains and other property involved in a case, the request may be refused in any of the following circumstances, with a reason to be given:

1. the judicial organ of the People's Republic of China or a third country has rendered an effective judgment on the illegal gains for which the request is made, which judgment has been executed or is in the process of execution;
2. the property for which the request is made does not exist, has been destroyed, lost, sold off or transferred, thus making it impossible to execute them, except for the request for the confiscation of the property acquired as a result of selling off the aforesaid property or the property transferred;

3. the person against whom the request is made has outstanding debts within the territory of the People's Republic of China or proceedings that have not been concluded; or
4. other circumstances under which refusal may be made.

Article 53 Where a foreign country, requesting the return of illegal gains and other property involved in a case, can provide real and sufficient evidence and the competent authority believes upon examination the satisfaction of the conditions stipulated by the laws of the People's Republic of China, the request may be agreed upon and the relevant case-handling organ may be arranged to carry out the execution thereof. Before returning the illegal gains and other property involved in a case, the case-handling organ may deduct the reasonable expenses incurred in executing the request.

Article 54 Where a foreign country requests assistance in confiscating and returning illegal gains and other property involved in a case, the foreign liaison organ, in conjunction with its competent authority, shall make a request for sharing. The foreign liaison organ, in conjunction with its competent authority, shall negotiate with the foreign country concerning the sharing amount or percentage.

Chapter VIII Transfer of Sentenced Persons

Section 1 Transfer of Sentenced Persons to a Foreign Country

Article 55 A foreign country may request the People's Republic of China to transfer a foreign sentenced person, and the People's Republic of China may request a foreign country to transfer a foreign sentenced person.

Article 56 The transfer of a sentenced person to a foreign country shall meet the conditions below:

1. the sentenced person is a citizen of the said country;
2. the behavior for which the sentenced person is sentenced to a criminal punishment also constitutes a crime as per the laws of the said country;
3. the judgment on the criminal punishment of the sentenced person has taken effect legally;
4. the sentenced person agrees upon the transfer in writing, or if it is really necessary due to conditions of the sentenced person such as age, physical conditions or mental conditions, the agent thereof agrees upon the transfer in writing; and
5. both the People's Republic of China and the said country agree to the transfer.

In any of the following circumstances, the transfer may be refused:

1. the sentenced person was sentenced to death with a suspension of execution or life imprisonment, unless the punishment has been commuted to fixed-term imprisonment at the time of request for transfer;
2. the remaining term of imprisonment of the sentenced person is less than one year at the time of the request for transfer;
3. the sentenced person is undergoing proceedings that have not been concluded within the territory of the People's Republic of China; or
4. other circumstances under which transfer is inappropriate.

Article 57 To apply to a foreign country for the transfer of a sentenced person, the letter of request and the attached materials shall specify the following matters as required:

1. name of the requesting authority;
2. the name, sex, nationality, identity information and other materials of the sentenced person under a request for transfer;
3. the sentence serving place of the sentenced person;
4. bases and reasons for the request for transfer;
5. the written statement of the sentenced person or agent thereof on the agreement upon transfer; and
6. other matters.

Article 58 A competent authority shall verify the will of transfer of the sentenced person. Where a foreign country requests to arrange a person to verify the transfer will of a sentenced person, the competent authority may make an arrangement.

Article 59 Where a foreign country makes a request for transfer of a sentenced person to the People's Republic of China, or a competent authority deems it necessary to make a request for transfer of a sentenced person to a foreign country, the competent authority, shall, in conjunction with the relevant competent departments, make a decision whether to agree to the request of the foreign country or make a request to the foreign country. After

making a decision on agreement to the request for transfer by the foreign country, the foreign liaison organ shall inform the requesting country and the sentenced person in writing.

Article 60 The transfer of a sentenced person shall be executed by the criminal punishment execution organ designated by the competent authority. Execution matters such as the time, place and method of transfer of the sentenced person shall be determined by the competent authority and a foreign country through negotiation.

Article 61 Where a sentenced person appeals the original effective judgment after transfer, he/she shall lodge an appeal to the people's court with the jurisdiction in the People's Republic of China. Where the people's court alters or revokes the original effective judgment, it shall inform the foreign country responsively.

Section 2 Transfer of Sentenced Persons to the People's Republic of China

Article 62 The People's Republic of China may request a foreign country to transfer a Chinese sentenced person, and a foreign country may request the People's Republic of China to transfer a Chinese sentenced person. The provisions in Section 1 of this chapter shall be referred to for the concrete conditions and handling procedures of transfer.

Article 63 After a sentenced person is transferred back, the competent authority concerned shall designate a criminal punishment execution organ to detain him/her first.

Article 64 A people's procuratorate shall make a criminal punishment conversion application and attach relevant materials, and propose the intermediate people's court at the place where the criminal punishment execution organ concerned is located to make a criminal punishment conversion ruling.

The people's court shall make a criminal punishment conversion ruling based on facts identified under the judgment of a foreign court and in accordance with the Criminal Law. If the criminal punishment nature and period under the judgment made by the foreign court conform to the laws of the People's Republic of China, the conversion shall be conducted as per the criminal punishment and period abovementioned; if not, the criminal punishment type and period shall be determined according to the following principles:

1. the criminal punishment after conversion shall be consistent with the criminal punishment under the judgment of the foreign court to the largest extent;
2. the criminal punishment after conversion shall not be severer than that under the judgment of the foreign court, or exceed the maximum term of imprisonment stipulated under the Criminal Law of the People's Republic of China for the same crime;
3. the criminal punishment of deprivation of freedom shall not be converted into a property-related punishment; and
4. the criminal punishment after conversion shall not be bound by the minimum term of imprisonment stipulated under the Criminal Law of the People's Republic of China for the same crime.

Where the sentenced person is detained before coming back to serve his/her sentence, one day of detention shall offset one day of the term of imprisonment after conversion.

A criminal punishment conversion ruling made by a people's court shall be final.

Article 65 A criminal punishment execution organ shall put the sentenced person transferred back in prison to undergo criminal punishment. Criminal punishment execution, commutation, conditional release, temporary service outside prison and so on shall be subject to the laws of the People's Republic of China.

Article 66 Where a sentenced person appeals the judgment made by a foreign court after being transferred back, he/she shall lodge an appeal to the foreign court with jurisdiction.

Chapter IX Supplementary Provisions

Article 67 The Law shall apply *mutatis mutandis* to the judicial assistance in criminal matters between the People's Republic of China and the relevant international organizations.

Article 68 Notarization and authentication shall be conducted in accordance with the relevant treaty for requests for judicial assistance in criminal matters submitted to the People's Republic of China or the documents and evidential materials provided at the request of the People's Republic of China. If there is no treaty or the treaty does not provide for this, the principle of reciprocity shall apply.

Article 69 For the purpose of the Law, the treaty on the judicial assistance in criminal matters refers to any treaty on the judicial assistance in criminal matters, any treaty on the transfer of sentenced persons or any other treaty with clauses on judicial assistance in criminal matters or transfer of sentenced persons which the People's Republic of China and a foreign country enter into or to which they are parties.

Article 70 The Law shall come into effect as of the date of issue.

2021 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.