|  |  |  |
| --- | --- | --- |
| 发文机关Promulgator | ：: | 全国人民代表大会常务委员会The Standing Committee of the National People's Congress |
| 发布日期Date of Issue | ：: | 2018.10.262018.10.26 |
| 生效日期Effective Date | ：: | 2018.10.262018.10.26 |
| 时效性Effectiveness | ：: | 现行有效Current |
| 文号No.  | ：: | 主席令第十三号Presidential Decree No. 13 |

# 中华人民共和国国际刑事司法协助法

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

中华人民共和国国际刑事司法协助法

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

主席令第十三号

Presidential Decree No. 13

《中华人民共和国国际刑事司法协助法》已由中华人民共和国第十三届全国人民代表大会常务委员会第六次会议于2018年10月26日通过，现予公布，自公布之日起施行。

The Law of the People's Republic of China on International Judicial Assistance in Criminal Matters, adopted at the 6th 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 promulgated, effective as of the date of promulgation.

中华人民共和国主席 习近平

President Xi Jinping

2018年10月26日

October 26, 2018

中华人民共和国国际刑事司法协助法

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

（2018年10月26日第十三届全国人民代表大会常务委员会第六次会议通过）

(Adopted at the 6th session of the Standing Committee of the 13th National People's Congress on October 26, 2018)

第一章 总 则

Chapter 1 General Provisions

第一条   为了保障国际刑事司法协助的正常进行，加强刑事司法领域的国际合作，有效惩治犯罪，保护个人和组织的合法权益，维护国家利益和社会秩序，制定本法。

Article 1 This Law is enacted in order to ensure the normal conduct of international judicial assistance in criminal matters, strengthen international cooperation in the field of criminal justice, effectively punish crimes, protect the lawful rights and interests of individuals and organizations, and safeguard national interests and public order.

第二条   本法所称国际刑事司法协助，是指中华人民共和国和外国在刑事案件调查、侦查、起诉、审判和执行等活动中相互提供协助，包括送达文书，调查取证，安排证人作证或者协助调查，查封、扣押、冻结涉案财物，没收、返还违法所得及其他涉案财物，移管被判刑人以及其他协助。

Article 2 For the purpose of the Law, international judicial assistance in criminal matters refers to the provision of mutual assistance by the People's Republic of China and foreign countries in the investigation, investigation, prosecution, trial, enforcement and other activities in criminal cases, including the service of documents, investigation and evidence collection, arranging witnesses to testify or assist in investigation, sealing up, detaining or freezing property involved in a case, confiscating and returning illegal gains and other property involved in a case, and transferring custody of sentenced persons and other assistance.

第三条   中华人民共和国和外国之间开展刑事司法协助，依照本法进行。

Article 3 This Law is applicable to judicial assistance in criminal matters between the People's Republic of China and foreign countries.

执行外国提出的刑事司法协助请求，适用本法、刑事诉讼法及其他相关法律的规定。

The execution of requests for judicial assistance in criminal matters filed by foreign countries shall be governed by the provisions of this Law, the Criminal Procedure Law and other relevant laws.

对于请求书的签署机关、请求书及所附材料的语言文字、有关办理期限和具体程序等事项，在不违反中华人民共和国法律的基本原则的情况下，可以按照刑事司法协助条约规定或者双方协商办理。

Such matters as the signing organ of the request, the language and words of the request and the attached materials, the relevant time limit for handling the request and the specific procedures may be handled in accordance with the provisions of the judicial assistance treaty in criminal matters or through the consultation between the two parties, provided that the basic principles of the laws of the People's Republic of China are not violated.

第四条   中华人民共和国和外国按照平等互惠原则开展国际刑事司法协助。

Article 4 The People's Republic of China and foreign countries shall carry out international judicial assistance in criminal matters in accordance with the principles of equality and reciprocity.

国际刑事司法协助不得损害中华人民共和国的主权、安全和社会公共利益，不得违反中华人民共和国法律的基本原则。

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

非经中华人民共和国主管机关同意，外国机构、组织和个人不得在中华人民共和国境内进行本法规定的刑事诉讼活动，中华人民共和国境内的机构、组织和个人不得向外国提供证据材料和本法规定的协助。

Without the consent of the competent authorities of the People's Republic of China, no foreign institution, organization or individual may engage in criminal proceedings within the territory of the People's Republic of China as specified in this Law, and no institution, organization or individual within the territory of the People's Republic of China may provide any foreign country with evidence or assistance as specified in this Law.

第五条   中华人民共和国和外国之间开展刑事司法协助，通过对外联系机关联系。

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

中华人民共和国司法部等对外联系机关负责提出、接收和转递刑事司法协助请求，处理其他与国际刑事司法协助相关的事务。

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

中华人民共和国和外国之间没有刑事司法协助条约的，通过外交途径联系。

If there is no treaty on judicial assistance in criminal matters between the People's Republic of China and a foreign country, they shall communicate through diplomatic channels.

第六条   国家监察委员会、最高人民法院、最高人民检察院、公安部、国家安全部等部门是开展国际刑事司法协助的主管机关,按照职责分工,审核向外国提出的刑事司法协助请求,审查处理对外联系机关转递的外国提出的刑事司法协助请求,承担其他与国际刑事司法协助相关的工作。在移管被判刑人案件中，司法部按照职责分工，承担相应的主管机关职责。

Article 6 The National Supervisory Commission, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and other departments are the competent authorities for international judicial assistance in criminal matters. They shall, according to the division of responsibilities, examine requests for judicial assistance in criminal matters submitted to foreign countries, examine and handle requests for judicial assistance in criminal matters submitted by foreign countries and forwarded by foreign liaison organs, and undertake other work related to international judicial assistance in criminal matters. In the case of transferring a sentenced person, the Ministry of Justice shall, according to the division of duties, undertake the duties of the corresponding competent authority.

办理刑事司法协助相关案件的机关是国际刑事司法协助的办案机关,负责向所属主管机关提交需要向外国提出的刑事司法协助请求、执行所属主管机关交办的外国提出的刑事司法协助请求。

Organs handling cases relating to judicial assistance in criminal matters are the case-handling organs of international judicial assistance in criminal matters, which shall be responsible for submitting to their competent authorities the requests for judicial assistance in criminal matters directed to foreign countries, and executing the requests for judicial assistance in criminal matters directed by foreign countries and assigned by the competent authorities.

第七条   国家保障开展国际刑事司法协助所需经费。

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

第八条   中华人民共和国和外国相互执行刑事司法协助请求产生的费用，有条约规定的，按照条约承担；没有条约或者条约没有规定的，按照平等互惠原则通过协商解决。

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 in accordance with the principles of equality and mutual benefit.

第二章 刑事司法协助请求的提出、接收和处理

Chapter 2 Submission, Receipt and Handling of Requests for Judicial Assistance in Criminal Matters

第一节 向外国请求刑事司法协助

Section 1 Request for foreign judicial assistance in criminal matters

第九条   办案机关需要向外国请求刑事司法协助的，应当制作刑事司法协助请求书并附相关材料，经所属主管机关审核同意后，由对外联系机关及时向外国提出请求。

Article 9 Where a case-handling organ needs to request judicial assistance in criminal matters from a foreign country, it shall make a request for judicial assistance in criminal matters and attach the relevant materials, and, upon examination and approval by the competent authority for which it is affiliated, the foreign liaison organ shall make a request to the foreign country in a timely manner.

第十条   向外国的刑事司法协助请求书，应当依照刑事司法协助条约的规定提出；没有条约或者条约没有规定的，可以参照本法第十三条的规定提出；被请求国有特殊要求的，在不违反中华人民共和国法律的基本原则的情况下，可以按照被请求国的特殊要求提出。

Article 10 A request for judicial assistance in criminal matters shall be submitted to a foreign country in accordance with the provisions of the treaty on judicial assistance in criminal matters; if there is no treaty or the treaty has no provisions, the request may be submitted with reference to the provisions of Article 13 of this Law; where the requested country has special requirements, under the circumstances that the basic principles of the laws of the People's Republic of China are not violated, the request may be submitted with special requirements of the requested country.

请求书及所附材料应当以中文制作,并附有被请求国官方文字的译文。

The request and attached materials shall be made in Chinese and accompanied by a translation in the official language of the requested country.

第十一条   被请求国就执行刑事司法协助请求提出附加条件,不损害中华人民共和国的主权、安全和社会公共利益的,可以由外交部作出承诺。被请求国明确表示对外联系机关作出的承诺充分有效的,也可以由对外联系机关作出承诺。对于限制追诉的承诺,由最高人民检察院决定;对于量刑的承诺,由最高人民法院决定。

Article 11 Where the Requested State puts forward additional conditions for the execution of the request for judicial assistance in criminal matters, which are not harmful to the sovereignty, security and public interests of the People's Republic of China, the Ministry of Foreign Affairs may make a commitment. Where the requested country clearly expresses the full validity of the commitments made by the foreign liaison organ, the foreign liaison organ may also make such commitments. The assurance with regard to restriction on prosecution shall be subject to decision by the Supreme People's Procuratorate; the assurance with regard to measurement of penalty shall be subject to decision by the Supreme People's Court.

在对涉案人员追究刑事责任时,有关机关应当受所作出的承诺的约束。

The organ concerned shall be bound by the commitments made when investigating the persons involved for criminal responsibility.

第十二条   对外联系机关收到外国的有关通知或者执行结果后，应当及时转交或者转告有关主管机关。

Article 12 After receiving the relevant notice or implementation result from the foreign country, the foreign liaison organ shall timely transfer it or forward it to the relevant competent authorities.

外国就其提供刑事司法协助的案件要求通报诉讼结果的，对外联系机关转交有关主管机关办理。

Where a foreign country requests notification of the outcome of a case in which it has provided judicial assistance in criminal matters, the foreign liaison organ shall transfer the case to the relevant competent authority for handling.

第二节 向中华人民共和国请求刑事司法协助

Section 2 Request for Judicial Assistance in Criminal Matters from People’s Republic of China

第十三条   外国向中华人民共和国提出刑事司法协助请求的，应当依照刑事司法协助条约的规定提出请求书。没有条约或者条约没有规定的,应当在请求书中载明下列事项并附相关材料：

Article 13 Where a foreign country requests judicial assistance in criminal matters from the People's Republic of China, a request shall be submitted in accordance with the provisions of the treaty on judicial assistance in criminal matters. If there is no treaty or the treaty has no provisions, the request shall specify the following matters with the relevant materials attached:

（一）请求机关的名称；

1. the name of the requesting authority;

（二）案件性质、涉案人员基本信息及犯罪事实；

2. the nature of the case, the basic information on the persons involved in the case and the facts of the crime;

（三）本案适用的法律规定；

(III) The legal provisions applicable to the case;

（四）请求的事项和目的；

(IV) the matter and purpose of the request;

（五）请求的事项与案件之间的关联性；

(V) The relevance between the matter requested and the case;

（六）希望请求得以执行的期限；

(VI) The time limit within which the request is expected to be executed;

（七）其他必要的信息或者附加的要求。

(VII) other necessary information or additional requirements.

在没有刑事司法协助条约的情况下,请求国应当作出互惠的承诺。

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

请求书及所附材料应当附有中文译文。

The petition and attached materials shall be accompanied by a Chinese translation.

第十四条   外国向中华人民共和国提出的刑事司法协助请求,有下列情形之一的,可以拒绝提供协助:

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:

（一）根据中华人民共和国法律,请求针对的行为不构成犯罪；

1. the act for which the request is made does not constitute a crime under the laws of the People's Republic of China;

（二）在收到请求时,在中华人民共和国境内对于请求针对的犯罪正在进行调查、侦查、起诉、审判，已经作出生效判决，终止刑事诉讼程序，或者犯罪已过追诉时效期限；

(II) At the time of receiving the request, an investigation, investigation, prosecution or trial regarding the crime against which the request is made is in progress and an effective judgment has been made, and the criminal proceedings are terminated, or the limitation period for prosecution of the crime has expired; or

（三）请求针对的犯罪属于政治犯罪;

(III) the crime for which the request is made is a political crime;

（四）请求针对的犯罪纯属军事犯罪；

(IV) The crime for which the request is made is a purely military crime;

（五）请求的目的是基于种族、民族、宗教、国籍、性别、政治见解或者身份等方面的原因而进行调查、侦查、起诉、审判、执行刑罚，或者当事人可能由于上述原因受到不公正待遇；

(V) The purpose of the request is to investigate, investigate, prosecute, try and execute criminal punishments on grounds of race, ethnicity, religion, nationality, sex, political opinion or identity, etc., or the party concerned may be given unfair treatment due to the above-mentioned reasons;

（六）请求的事项与请求协助的案件之间缺乏实质性联系;

(VI) There is no substantive relationship between the requested matter and the case requiring assistance;

（七）其他可以拒绝的情形。

(VII) Other circumstances under which refusal may be made.

第十五条   对外联系机关收到外国提出的刑事司法协助请求,应当对请求书及所附材料进行审查。对于请求书形式和内容符合要求的，应当按照职责分工，将请求书及所附材料转交有关主管机关处理；对于请求书形式和内容不符合要求的,可以要求请求国补充材料或者重新提出请求。

Article 15 Upon receipt of a request for judicial assistance in criminal matters from a foreign country, the foreign liaison organ shall examine the request and the attached materials. If the form and content of the request meet the requirements, the request and the attached materials shall, according to the division of responsibilities, be transferred to the relevant competent authority for handling; if the form and content of the request do not meet the requirements, the request may be required to be supplemented or a new request may be made.

对于刑事司法协助请求明显损害中华人民共和国的主权、安全和社会公共利益的，对外联系机关可以直接拒绝协助。

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

第十六条   主管机关收到对外联系机关转交的刑事司法协助请求书及所附材料后,应当进行审查，并分别作出以下处理：

Article 16 After receiving the request for judicial assistance in criminal matters and the attached materials transmitted by the foreign liaison organ, the competent authority shall examine them and handle them respectively as follows:

（一）根据本法和刑事司法协助条约的规定认为可以协助执行的,作出决定并安排有关办案机关执行；

1. where assistance in enforcement is deemed appropriate according to this Law and the criminal justice assistance treaty, the Supreme People's Procuratorate shall make a decision and arrange for the relevant case handling organ to enforce the decision;

（二）根据本法第四条、第十四条或者刑事司法协助条约的规定,认为应当全部或者部分拒绝协助的，将请求书及所附材料退回对外联系机关并说明理由；

2. Where it is deemed necessary, in accordance with the provisions of Article 4 or 14 of this Law or the judicial assistance treaty in criminal matters, to refuse to provide assistance in whole or in part, the request and the attached materials shall be returned to the foreign liaison organ and the reasons therefor shall be stated;

（三）对执行请求有保密要求或者有其他附加条件的,通过对外联系机关向外国提出，在外国接受条件并且作出书面保证后，决定附条件执行；

(III) where there are confidentiality requirements or other conditions attached to the execution of the request, the request shall be submitted to the foreign country through the foreign liaison organ, and the conditional execution shall be decided after the foreign country accepts the conditions and makes a written guarantee; and

（四）需要补充材料的,书面通知对外联系机关要求请求国在合理期限内提供。

(IV) If it is necessary to supplement the materials, it shall notify the foreign liaison organ in written form to request the requesting country to provide them within a reasonable time limit.

执行请求可能妨碍中华人民共和国有关机关正在进行的调查、侦查、起诉、审判或者执行的，主管机关可以决定推迟协助，并将推迟协助的决定和理由书面通知对外联系机关。

If the execution of the request may hinder the investigation, investigation, prosecution, trial or execution which are being conducted by the relevant organs of the People's Republic of China, the 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.

外国对执行其请求有保密要求或者特殊程序要求的,在不违反中华人民共和国法律的基本原则的情况下,主管机关可以按照其要求安排执行。

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

第十七条   办案机关收到主管机关交办的外国刑事司法协助请求后,应当依法执行,并将执行结果或者妨碍执行的情形及时报告主管机关。

Article 17 After receiving a request for judicial assistance in criminal matters from the competent authority, the case-handling organ shall execute it according to law and timely report the results of execution or the circumstances that may impede the execution to the competent authority.

办案机关在执行请求过程中,应当维护当事人和其他相关人员的合法权益,保护个人信息。

In the course of executing a request, the case-handling organ shall safeguard the legitimate rights and interests of the parties concerned and other relevant personnel, and protect personal information.

第十八条   外国请求将通过刑事司法协助取得的证据材料用于请求针对的案件以外的其他目的的，对外联系机关应当转交主管机关，由主管机关作出是否同意的决定。

Article 18 Where a foreign country requests the use of evidential materials obtained through judicial assistance in criminal matters for any purpose other than the purpose of the case in which the request is directed, the foreign liaison organ shall transfer the request to the competent authority, which shall decide whether to consent or not.

第十九条   对外联系机关收到主管机关的有关通知或者执行结果后，应当及时转交或者转告请求国。

Article 19 After receiving the relevant notice or the result of implementation from the competent authority, the foreign liaison organ shall transfer or transmit it to the requesting country in a timely manner.

对于中华人民共和国提供刑事司法协助的案件，主管机关可以通过对外联系机关要求外国通报诉讼结果。

For cases in which the People's Republic of China provides judicial assistance in criminal matters, the competent authorities may, through the foreign liaison organ, request the foreign country to notify the outcome of the proceedings.

外国通报诉讼结果的,对外联系机关收到相关材料后,应当及时转交或者转告主管机关，涉及对中华人民共和国公民提起刑事诉讼的，还应当通知外交部。

If the foreign country informs the foreign liaison organ of the results of the litigation, the foreign liaison organ shall, after receiving the relevant materials, transfer them to the competent authority in a timely manner. If criminal proceedings are brought against citizens of the People's Republic of China, the foreign liaison organ shall also notify the Ministry of Foreign Affairs.

第三章 送达文书

Chapter 3 Service of Process

第一节 向外国请求送达文书

Section 1 Request for service of process in a foreign country

第二十条   办案机关需要外国协助送达传票、通知书、起诉书、判决书和其他司法文书的，应当制作刑事司法协助请求书并附相关材料，经所属主管机关审核同意后，由对外联系机关及时向外国提出请求。

Article 20 Where a case-handling organ needs foreign assistance in serving summonses, notices, indictments, judgments or other judicial documents, it shall make a request for judicial assistance in criminal matters and attach the relevant materials, and, upon the examination and approval of the competent authority for which it is affiliated, make a request to the foreign country in a timely manner.

第二十一条   向外国请求送达文书的,请求书应当载明受送达人的姓名或者名称、送达的地址以及需要告知受送达人的相关权利和义务。

Article 21 Where the service of documents is requested to a foreign country, the written request shall specify the name or title and address of the person to be served and the rights and obligations of such person.

第二节 向中华人民共和国请求送达文书

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

第二十二条   外国可以请求中华人民共和国协助送达传票、通知书、起诉书、判决书和其他司法文书。中华人民共和国协助送达司法文书,不代表对外国司法文书法律效力的承认。

Article 22 A foreign country may request the People's Republic of China to assist in the service of a summons, notice, indictment, judgment or other judicial documents. The service of judicial documents by the People's Republic of China does not mean recognition of the legal effect of foreign judicial documents.

请求协助送达出庭传票的,应当按照有关条约规定的期限提出。没有条约或者条约没有规定的，应当至迟在开庭前三个月提出。

The request for assistance in serving the summons for appearance in court shall be filed within the time limit as prescribed in the relevant treaty. Where there is no treaty or the treaty has no provisions, they shall be raised no later than three months before the court session.

对于要求中华人民共和国公民接受讯问或者作为被告人出庭的传票,中华人民共和国不负有协助送达的义务。

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

第二十三条   外国向中华人民共和国请求送达文书的,请求书应当载明受送达人的姓名或者名称、送达的地址以及需要告知受送达人的相关权利和义务。

Article 23 Where the service of documents is requested by a foreign country to the People's Republic of China, the written request shall specify the name or title and address of the person to be served and the rights and obligations of that person.

第二十四条   负责执行协助送达文书的人民法院或者其他办案机关,应当及时将执行结果通过所属主管机关告知对外联系机关，由对外联系机关告知请求国。除无法送达的情形外，应当附有受送达人签收的送达回执或者其他证明文件。

Article 24 The people's court or other case-handling organ responsible for the execution of the document served on assistance shall promptly inform the foreign liaison organ of the result of the execution through the competent authority to which it is subordinate, which shall inform the requesting country of the same. Except in the circumstances in which it is impossible to effect the service, a return receipt signed by the person on whom the document is to be served or other supporting documents shall be attached.

第四章 调查取证

Chapter 4 Investigation and Evidence Collection

第一节 向外国请求调查取证

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

第二十五条   办案机关需要外国就下列事项协助调查取证的,应当制作刑事司法协助请求书并附相关材料,经所属主管机关审核同意后，由对外联系机关及时向外国提出请求：

Article 25 If the case-handling organ needs the foreign country to assist in investigation and evidence collection in respect of the following matters, it shall make a request for judicial assistance in criminal matters and attach the relevant materials, and the foreign liaison organ shall make a request to the foreign country in a timely manner after obtaining the consent of the competent authority for the case:

（一）查找、辨认有关人员;

1. finding and identifying the relevant personnel;

（二）查询、核实涉案财物、金融账户信息;

(II) inquiring about and verifying the property involved in the case and the information of the financial account;

（三）获取并提供有关人员的证言或者陈述;

(III) Obtain and provide the testimonies or statements of relevant personnel;

（四）获取并提供有关文件、记录、电子数据和物品;

(IV) Obtaining and providing relevant documents, records, electronic data and articles;

（五）获取并提供鉴定意见;

(V) Obtaining and providing appraisal opinions;

（六）勘验或者检查场所、物品、人身、尸体;

(VI) Surveying or inspecting places, articles, people and corpses;

（七）搜查人身、物品、住所和其他有关场所;

(VII) Searching persons, articles, residences and other relevant places;

（八）其他事项。

(VIII) other matters.

请求外国协助调查取证时,办案机关可以同时请求在执行请求时派员到场。

When a foreign country is requested to assist in investigation and evidence collection, the case-handling organ may simultaneously request that officers be sent to be present at the time of execution of the request.

第二十六条   向外国请求调查取证的,请求书及所附材料应当根据需要载明下列事项:

Article 26 Where a request for investigation and evidence collection is made to a foreign country, the written request and the attached materials shall specify the following matters as necessary:

（一）被调查人的姓名、性别、住址、身份信息、联系方式和有助于确认被调查人的其他资料;

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

（二）需要向被调查人提问的问题;

2. Issues that need to be asked to the person under investigation;

（三）需要查找、辨认人员的姓名、性别、住址、身份信息、联系方式、外表和行为特征以及有助于查找、辨认的其他资料;

(III) The name, gender, address, identity information, contact information, appearance, behavioral features and other information that is helpful to the search and identification of the person;

（四）需要查询、核实的涉案财物的权属、地点、特性、外形和数量等具体信息，需要查询、核实的金融账户相关信息;

(IV) Information about the ownership, location, properties, shape and quantity of case-involved-properties that need to be inquired into and verified, and information about the financial accounts that needs to be inquired into and verified;

（五）需要获取的有关文件、记录、电子数据和物品的持有人、地点、特性、外形和数量等具体信息;

(V) Specific information about the holders, places, characteristics, shapes and quantities of relevant documents, records, electronic data and articles, which is required to be obtained; and

（六）需要鉴定的对象的具体信息;

(VI) Specific information about the objects to be authenticated as required; and

（七）需要勘验或者检查的场所、物品等的具体信息;

(VII) Specific information on the places and articles to be surveyed or inspected; and

（八）需要搜查的对象的具体信息;

(VIII) specific information about the objects to be searched;

（九）有助于执行请求的其他材料。

(IX) Other materials that may help the execution of the request.

第二十七条   被请求国要求归还其提供的证据材料或者物品的,办案机关应当尽快通过对外联系机关归还。

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

第二节 向中华人民共和国请求调查取证

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

第二十八条   外国可以请求中华人民共和国就本法第二十五条第一款规定的事项协助调查取证。

Article 28 A foreign country may request the People's Republic of China to assist in the investigation and collection of evidence in relation to the matters stipulated in paragraph 1 of Article 25 of this Law.

外国向中华人民共和国请求调查取证的,请求书及所附材料应当根据需要载明本法第二十六条规定的事项。

Where a foreign country requests to the People's Republic of China for investigation and evidence collection, the written request and the attached materials shall specify the matters as prescribed in Article 26 of this Law.

第二十九条   外国向中华人民共和国请求调查取证时,可以同时请求在执行请求时派员到场。经同意到场的人员应当遵守中华人民共和国法律,服从主管机关和办案机关的安排。

Article 29 When a foreign country requests to the People's Republic of China for investigation and evidence collection, it may at the same time request that officers be sent to be present at the time of execution of the request. The personnel approved to be present shall abide by the laws of the People's Republic of China and obey the arrangement of the competent authority and case-handling organ.

第三十条   办案机关要求请求国保证归还其提供的证据材料或者物品,请求国作出保证的,可以提供。

Article 30 Where the case-handling organ requests the requesting country to provide a guarantee to return the evidential materials or articles provided by it, the requesting country may provide such materials or articles.

第五章 安排证人作证或者协助调查

Chapter 5 Arranging Witness to Testify or Assist in Investigation

第一节 向外国请求安排证人作证或者协助调查

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

第三十一条   办案机关需要外国协助安排证人、鉴定人来中华人民共和国作证或者通过视频、音频作证,或者协助调查的，应当制作刑事司法协助请求书并附相关材料,经所属主管机关审核同意后，由对外联系机关及时向外国提出请求。

Article 31 Where a 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 make a request for judicial assistance in criminal matters and attach the relevant materials, which shall be, upon the examination and approval by the competent authority for which it is affiliated, the foreign liaison organ shall make a request to the foreign country in a timely manner.

第三十二条   向外国请求安排证人、鉴定人作证或者协助调查的,请求书及所附材料应当根据需要载明下列事项：

Article 32 Where a request for witness or expert witness testify or assist in investigation is made to a foreign country, the written request and the attached materials shall specify the following matters as necessary:

（一）证人、鉴定人的姓名、性别、住址、身份信息、联系方式和有助于确认证人、鉴定人的其他资料;

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;

（二）作证或者协助调查的目的、必要性、时间和地点等;

(II) the purpose, necessity, time, place and others of testifying or assisting in the investigation;

（三）证人、鉴定人的权利和义务;

(III) the rights and obligations of witnesses and expert witnesses;

（四）对证人、鉴定人的保护措施;

(IV) protective measures for witnesses or expert witnesses;

（五）对证人、鉴定人的补助;

(V) Subsidies to witnesses and expert witnesses;

（六）有助于执行请求的其他材料。

(VI) Other materials that may help the execution of the request.

第三十三条   来中华人民共和国作证或者协助调查的证人、鉴定人在离境前，其入境前实施的犯罪不受追诉；除因入境后实施违法犯罪而被采取强制措施的以外，其人身自由不受限制。

Article 33 Before a witness or expert witness who comes to the People's Republic of China to testify or assist in investigation leaves the territory of the People's Republic of China, he shall not be prosecuted for the crimes he committed before entering the territory of the People's Republic of China; except for the ones against whom compulsory measures are taken for committing crimes after entering the territory of the People's Republic of China, his freedom of the person shall not be restricted.

证人、鉴定人在条约规定的期限内或者被通知无需继续停留后十五日内没有离境的，前款规定不再适用,但是由于不可抗力或者其他特殊原因未能离境的除外。

Where the witness or appraiser does not leave the territory of the People's Republic of Chinawithin the time limit stipulated in the treaty or 15 days after he is notified that he does not need to stay, the provisions of the preceding paragraph shall no longer apply, except that he fails to leave the territory of the People's Republic of Chinadue to force majeure or other special reasons.

第三十四条   对来中华人民共和国作证或者协助调查的证人、鉴定人，办案机关应当依法给予补助。

Article 34 The case-handling organ shall offer subsidies in accordance with the law to the witnesses or expert witnesses who come to the People's Republic of China to testify or assist in investigation.

第三十五条   来中华人民共和国作证或者协助调查的人员系在押人员的,由对外联系机关会同主管机关与被请求国就移交在押人员的相关事项事先达成协议。

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

主管机关和办案机关应当遵守协议内容,依法对被移交的人员予以羁押,并在作证或者协助调查结束后及时将其送回被请求国。

The competent authority and case-handling organ shall abide by the contents of the agreement, detain the person transferred in accordance with the law, and promptly return him to the requested country after giving testimony or assisting in the investigation.

第二节 向中华人民共和国请求安排证人作证或者协助调查

Section 2 Request to the People's Republic of China for witness testification or assistance in investigation

第三十六条   外国可以请求中华人民共和国协助安排证人、鉴定人赴外国作证或者通过视频、音频作证，或者协助调查。

Article 36 A foreign country may request the People's Republic of China to assist in arranging witnesses or expert witnesses to testify in the foreign country or to testify by video or audio testimony, or to assist in investigation.

外国向中华人民共和国请求安排证人、鉴定人作证或者协助调查的,请求书及所附材料应当根据需要载明本法第三十二条规定的事项。

Where a foreign country requests the People's Republic of China to arrange for a witness or expert witness to testify or assist in investigation, the request and the attached materials shall, as necessary, specify the matters stipulated in Article 32 of this Law.

请求国应当就本法第三十三条第一款规定的内容作出书面保证。

The requesting country shall give a written undertaking with respect to the contents set out in paragraph 1 of Article 33 of this Law.

第三十七条   证人、鉴定人书面同意作证或者协助调查的,办案机关应当及时将证人、鉴定人的意愿、要求和条件通过所属主管机关通知对外联系机关,由对外联系机关通知请求国。

Article 37 Where the witness or expert witness agrees in writing to testify or assist in investigation, the case-handling organ shall promptly notify the foreign liaison organ of the will, requirements and conditions of the witness or expert witness through the competent authority to which it is affiliated, and the foreign liaison organ shall notify the requesting country.

安排证人、鉴定人通过视频、音频作证的,主管机关或者办案机关应当派员到场,发现有损害中华人民共和国的主权、安全和社会公共利益以及违反中华人民共和国法律的基本原则的情形的,应当及时制止。

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

第三十八条   外国请求移交在押人员出国作证或者协助调查，并保证在作证或者协助调查结束后及时将在押人员送回的,对外联系机关应当征求主管机关和在押人员的意见。主管机关和在押人员均同意出国作证或者协助调查的,由对外联系机关会同主管机关与请求国就移交在押人员的相关事项事先达成协议。

Article 38 Where a foreign country requests the transfer of a person in custody to testify or assist in investigation abroad and guarantees the timely return of the person in custody after the testimony or assistance in investigation has been completed, the foreign liaison organ shall seek the opinions of the competent authority and the person in custody. If both the competent authority and the detainees agree to go abroad to testify or to assist in the investigation, the foreign liaison authority shall, in concert with the competent authority, reach an agreement in advance with the requesting country on the matters relating to the transfer of the detainees.

在押人员在外国被羁押的期限，应当折抵其在中华人民共和国被判处的刑期。

The period of detention of the person in custody in a foreign country shall be set off by the term of imprisonment in the People's Republic of China.

第六章 查封、扣押、冻结涉案财物

Chapter 6 Sealing up, Seizing and Freezing Property Involved in Cases

第一节 向外国请求查封、扣押、冻结涉案财物

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

第三十九条   办案机关需要外国协助查封、扣押、冻结涉案财物的,应当制作刑事司法协助请求书并附相关材料,经所属主管机关审核同意后，由对外联系机关及时向外国提出请求。

Article 39 Where a case-handling organ needs foreign countries to assist in sealing up, seizing or freezing the property involved in a case, it shall prepare a request for judicial assistance in criminal matters and attach the relevant materials, and the foreign liaison organ shall make a request to the foreign country in a timely manner upon examination and approval by the competent authority for the case.

外国对于协助执行中华人民共和国查封、扣押、冻结涉案财物的请求有特殊要求的,在不违反中华人民共和国法律的基本原则的情况下,可以同意。需要由司法机关作出决定的,由人民法院作出。

The special requirements of a foreign country for assisting in the execution 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 to 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.

第四十条   向外国请求查封、扣押、冻结涉案财物的,请求书及所附材料应当根据需要载明下列事项:

Article 40 Where a request for sealing up, seizing or freezing the property involved in the case is made to a foreign country, the written request and the attached materials shall specify the following matters as required:

（一）需要查封、扣押、冻结的涉案财物的权属证明、名称、特性、外形和数量等;

1. Ownership certificate, name, characteristic, shape and quantity of property to be sealed up, seized or frozen;

（二）需要查封、扣押、冻结的涉案财物的地点。资金或者其他金融资产存放在金融机构中的,应当载明金融机构的名称、地址和账户信息;

(II) The place where the property involved in the case needs to be sealed up, seized or frozen. Where the funds or other financial assets are deposited in a financial institution, the name, address and account information of the financial institution shall be stated;

（三）相关法律文书的副本；

(III) copies of relevant legal documents;

（四）有关查封、扣押、冻结以及利害关系人权利保障的法律规定;

(IV) legal provisions on sealing up, distraining, freezing and protection of the rights of interested parties;

（五）有助于执行请求的其他材料。

(V) Other materials that may help the execution of the request.

第四十一条   外国确定的查封、扣押、冻结的期限届满，办案机关需要外国继续查封、扣押、冻结相关涉案财物的,应当再次向外国提出请求。

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

办案机关决定解除查封、扣押、冻结的，应当及时通知被请求国。

Where the case-handling organ decides to cancel the sealing, seizure or freeze, it shall notify the requested country in a timely manner.

第二节 向中华人民共和国请求查封、扣押、冻结涉案财物

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

第四十二条   外国可以请求中华人民共和国协助查封、扣押、冻结在中华人民共和国境内的涉案财物。

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 the case within the territory of the People's Republic of China.

外国向中华人民共和国请求查封、扣押、冻结涉案财物的,请求书及所附材料应当根据需要载明本法第四十条规定的事项。

Where a foreign country requests to the People's Republic of China for sealing up, seizing or freezing the property involved in a case, the written request and the attached materials shall, according to the need, contain the matters stipulated in Article 40 of this Law.

第四十三条   主管机关经审查认为符合下列条件的,可以同意查封、扣押、冻结涉案财物，并安排有关办案机关执行:

Article 43 Where the competent authority, upon examination, deems that the following conditions are met, it may agree to seal up, detain or freeze the property involved in the case, and arrange for the relevant case-handling organ to execute:

（一）查封、扣押、冻结符合中华人民共和国法律规定的条件；

1. Such seizure, impoundment or freezing shall be in conformity with the laws of the People's Republic of China;

（二）查封、扣押、冻结涉案财物与请求国正在进行的刑事案件的调查、侦查、起诉和审判活动相关；

(II) sealing up, seizing or freezing the property or objects involved in the case is related to the ongoing investigation, investigation, prosecution and trial of criminal cases in the requesting country;

（三）涉案财物可以被查封、扣押、冻结;

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

（四）执行请求不影响利害关系人的合法权益；

(IV) The execution of the request does not affect the lawful rights and interests of the interested parties;

（五）执行请求不影响中华人民共和国有关机关正在进行的调查、侦查、起诉、审判和执行活动。

(V) The execution of the request does not affect the ongoing investigation, investigation, prosecution, trial and execution activities of the relevant organs of the People's Republic of China.

办案机关应当及时通过主管机关通知对外联系机关，由对外联系机关将查封、扣押、冻结的结果告知请求国。必要时,办案机关可以对被查封、扣押、冻结的涉案财物依法采取措施进行处理。

The case-handling organ shall, in a timely manner, notify the foreign liaison organ through the competent authority, and the foreign liaison organ shall notify the requesting country of the results of seizure, detention or freezing. When necessary, the case-handling organ may take measures to dispose of the property involved in the case that is sealed up, seized or frozen in accordance with the law.

第四十四条   查封、扣押、冻结的期限届满，外国需要继续查封、扣押、冻结相关涉案财物的,应当再次向对外联系机关提出请求。

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

外国决定解除查封、扣押、冻结的，对外联系机关应当通过主管机关通知办案机关及时解除。

Where a foreign country decides to cancel the sealing, seizure or freezing measure, the foreign liaison organ shall, through the competent authority, notify the case-handling organ to timely cancel such measure.

第四十五条   利害关系人对查封、扣押、冻结有异议,办案机关经审查认为查封、扣押、冻结不符合本法第四十三条第一款规定的条件的，应当报请主管机关决定解除查封、扣押、冻结并通知对外联系机关，由对外联系机关告知请求国；对案件处理提出异议的，办案机关可以通过所属主管机关转送对外联系机关,由对外联系机关向请求国提出。

Article 45 Where an interested party has an objection to the sealing up, distraining or freezing of property, and the case-handling organ, upon examination, finds that the sealing up, distraining or freezing does not meet the conditions prescribed in Paragraph 1 of Article 43 of this Law, it shall report to the competent authority for decision on lifting the sealing up, distraining or freezing of property and notify the foreign liaison organ, which shall notify the requesting country. If the case-handling organ raises an objection to the handling of the case, it may, through the competent authority, transfer the case to the foreign liaison organ, which shall notify the requesting country.

第四十六条   由于请求国的原因导致查封、扣押、冻结不当,对利害关系人的合法权益造成损害的,办案机关可以通过对外联系机关要求请求国承担赔偿责任。

Article 46 Where the sealing up, seizure or freezing is improperly imposed for reasons attributable to the requesting country, causing damage to the legitimate rights and interests of an interested party, the case-handling organ may, through the foreign liaison organ, request the requesting country to assume liability for compensation.

第七章 没收、返还违法所得及其他涉案财物

Chapter 7 Confiscation and Return of Illegal Gains and Other Property Involved in Cases

第一节 向外国请求没收、返还违法所得及其他涉案财物

Section 1 Request for Seizure and Return of Illegal Gains and Other Case-Related Property from a Foreign Country

第四十七条   办案机关需要外国协助没收违法所得及其他涉案财物的,应当制作刑事司法协助请求书并附相关材料，经所属主管机关审核同意后，由对外联系机关及时向外国提出请求。

Article 47 Where a case-handling organ needs foreign assistance in confiscating illegal gains and other property involved in a case, it shall make a request for judicial assistance in criminal matters and attach the relevant materials, and, upon examination and approval by the competent authority for which it is affiliated, the foreign liaison organ shall make a request to the foreign country in a timely manner.

请求外国将违法所得及其他涉案财物返还中华人民共和国或者返还被害人的,可以在向外国提出没收请求时一并提出，也可以单独提出。

A request made by a foreign country for the return of illegal gains and other property involved in a case to the People's Republic of China or to the victim may be made together with or alone with the request made to the foreign country for confiscation.

外国对于返还被查封、扣押、冻结的违法所得及其他涉案财物有特殊要求的,在不违反中华人民共和国法律的基本原则的情况下,可以同意。需要由司法机关作出决定的,由人民法院作出决定。

The special requirements of a foreign country for return of the illegal gains that have been sealed up, seized or frozen and other involved property may be agreed to 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.

第四十八条   向外国请求没收、返还违法所得及其他涉案财物的，请求书及所附材料应当根据需要载明下列事项：

Article 48 Where a request for confiscation or return of illegal gains and other case-related properties is made to a foreign country, the written request and the attached materials shall specify the following items as required:

（一）需要没收、返还的违法所得及其他涉案财物的名称、特性、外形和数量等；

1. The name, properties, shape and quantity of the illegal gains and other case-related property to be confiscated and returned;

（二）需要没收、返还的违法所得及其他涉案财物的地点。资金或者其他金融资产存放在金融机构中的，应当载明金融机构的名称、地址和账户信息;

(II) The place where the illegal proceeds and other case-related property to be confiscated or returned shall be located. Where the funds or other financial assets are deposited in a financial institution, the name, address and account information of the financial institution shall be stated;

（三）没收、返还的理由和相关权属证明；

(III) Reasons for confiscation or return and relevant ownership certificates; and

（四）相关法律文书的副本；

(IV) copies of relevant legal documents;

（五）有关没收、返还以及利害关系人权利保障的法律规定；

(V) The legal provisions on confiscation, return and protection of the rights of the interested parties;

（六）有助于执行请求的其他材料。

(VI) Other materials that may help the execution of the request.

第四十九条   外国协助没收、返还违法所得及其他涉案财物的,由对外联系机关会同主管机关就有关财物的移交问题与外国进行协商。

Article 49 Where a foreign country assists in the confiscation or return of illegal gains and other property involved in a case, the foreign liaison organ shall, in concert with the competent authority, consult with the foreign country on the transfer of the relevant property.

对于请求外国协助没收、返还违法所得及其他涉案财物,外国提出分享请求的，分享的数额或者比例，由对外联系机关会同主管机关与外国协商确定。

With regard to the request for assistance in confiscating and returning the illegal proceeds and other property involved in the case from the foreign country, if the foreign country so requests, the amount or proportion of such share shall be determined by the foreign liaison organ in consultation with the competent authority and the foreign country.

第二节 向中华人民共和国请求没收、

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

返还违法所得及其他涉案财物

Return of Illegal Gains and Other Case-Related Property

第五十条   外国可以请求中华人民共和国协助没收、返还违法所得及其他涉案财物。

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

外国向中华人民共和国请求协助没收、返还违法所得及其他涉案财物的,请求书及所附材料应当根据需要载明本法第四十八条规定的事项。

Where a foreign country requests assistance from the People's Republic of China in confiscating or returning illegal gains and other property involved in a case, the request and the attached materials shall specify the particulars specified in Article 48 of this Law as necessary.

第五十一条   主管机关经审查认为符合下列条件的,可以同意协助没收违法所得及其他涉案财物，并安排有关办案机关执行:

Article 51 The competent authority may agree to assist in the confiscation of illegal gains and other property involved in the case and arrange for the relevant case-handling organ to enforce the decision if, upon examination, it considers the following conditions are met:

（一）没收违法所得及其他涉案财物符合中华人民共和国法律规定的条件；

1. The confiscation of illegal gains and other case-related properties meets the conditions provided by the laws of the People's Republic of China;

（二）外国充分保障了利害关系人的相关权利;

(II) The foreign country has fully guaranteed the relevant rights of the interested parties; and

（三）在中华人民共和国有可供执行的财物;

(III) There is property that can be enforced in the People's Republic of China;

（四）请求书及所附材料详细描述了请求针对的财物的权属、名称、特性、外形和数量等信息;

(IV) The letter of request and the attached materials give a detailed description of the ownership, name, characteristics, shape and quantity of the property in respect of which the request is made;

（五）没收在请求国不能执行或者不能完全执行;

(V) Confiscation cannot be enforced or cannot be completely enforced in the requesting country;

（六）主管机关认为应当满足的其他条件。

(VI) other requirements deemed necessary by the competent authority.

第五十二条   外国请求协助没收违法所得及其他涉案财物，有下列情形之一的，可以拒绝提供协助，并说明理由：

Article 52 Where a foreign country requests assistance in confiscating its illegal gains and other case-related property under any of the following circumstances, assistance may be refused with the reasons therefor stated:

（一）中华人民共和国或者第三国司法机关已经对请求针对的财物作出生效裁判，并且已经执行完毕或者正在执行；

1. The judicial organ of the People's Republic of China or a third country has made a valid judgment on the property for which the request is made, and has been executed or is being executed;

（二）请求针对的财物不存在，已经毁损、灭失、变卖或者已经转移导致无法执行，但请求没收变卖物或者转移后的财物的除外；

(II) The property for which the request is made does not exist, or has been damaged, lost, sold or transferred, making it impossible to execute the request, except for the request to confiscate the property for sale or the property after transfer;

（三）请求针对的人员在中华人民共和国境内有尚未清偿的债务或者尚未了结的诉讼；

(III) the person against whom the request is made has outstanding debts or pending litigation within the territory of the People's Republic of China; and

（四）其他可以拒绝的情形。

(IV) Other circumstances under which refusal may be made.

第五十三条   外国请求返还违法所得及其他涉案财物，能够提供确实、充分的证据证明，主管机关经审查认为符合中华人民共和国法律规定的条件的，可以同意并安排有关办案机关执行。返还前，办案机关可以扣除执行请求产生的合理费用。

Article 53 Where a foreign country requests the return of illegal proceeds and other property involved in a case and is able to provide conclusive and sufficient evidence, the competent authority may, after examination, agree to it and arrange for the enforcement of the decision by the case-handling organ if it considers that the request meets the conditions prescribed by the laws of the People's Republic of China. Before returning, the case-handling organ may deduct the reasonable expenses incurred in executing the request.

第五十四条   对于外国请求协助没收、返还违法所得及其他涉案财物的，可以由对外联系机关会同主管机关提出分享的请求。分享的数额或者比例，由对外联系机关会同主管机关与外国协商确定。

Article 54 Where a foreign country requests assistance in confiscating or returning illegal gains and other property involved in a case, the foreign liaison organ may make a request for sharing the same jointly with the competent authority. The amount or proportion of such sharing shall be determined by the foreign liaison organ in consultation with the competent authority and the foreign state through consultation.

第八章 移管被判刑人

Chapter 8 Transferred Sentenced Persons

第一节 向外国移管被判刑人

Section 1 Transfer of Sentenced Persons to Foreign Jurisdiction

第五十五条   外国可以向中华人民共和国请求移管外国籍被判刑人，中华人民共和国可以向外国请求移管外国籍被判刑人。

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

第五十六条   向外国移管被判刑人应当符合下列条件：

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

（一）被判刑人是该国国民；

1. the sentenced person is a national of that State;

（二）对被判刑人判处刑罚所针对的行为根据该国法律也构成犯罪；

(II) the act for which the sentence was given which also constitutes an offence under the law of that State;

（三）对被判刑人判处刑罚的判决已经发生法律效力；

(III) the judgment of sentencing the sentenced person has become legally effective;

（四）被判刑人书面同意移管，或者因被判刑人年龄、身体、精神等状况确有必要，经其代理人书面同意移管；

(IV) the sentenced person has given written consent for transfer, or there is a real need for transfer due to the sentenced person's age, physical condition, mental condition or other conditions, and written consent has been obtained from the sentenced person's agent for transfer; and

（五）中华人民共和国和该国均同意移管。

(V) The People's Republic of China and the country concerned both agree to transfer control.

有下列情形之一的，可以拒绝移管：

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

（一）被判刑人被判处死刑缓期执行或者无期徒刑，但请求移管时已经减为有期徒刑的除外；

1. the sentenced person has been sentenced to death with a suspension of execution or life imprisonment, except that the sentence has been commuted to fixed-term imprisonment when the transfer is requested; and

（二）在请求移管时，被判刑人剩余刑期不足一年；

2. when the request for transfer is made, the sentenced person has a remaining term of imprisonment of less than one year;

（三）被判刑人在中华人民共和国境内存在尚未了结的诉讼；

(III) that the sentenced person has a pending lawsuit within the territory of the People's Republic of China; or

（四）其他不宜移管的情形。

(IV) other circumstances in which transfer of administration is inappropriate.

第五十七条   请求向外国移管被判刑人的，请求书及所附材料应当根据需要载明下列事项：

Article 57 For a request for the transfer of a sentenced person to a foreign country, the written request and the attached materials shall specify the following matters as necessary:

（一）请求机关的名称；

1. the name of the requesting authority;

（二）被请求移管的被判刑人的姓名、性别、国籍、身份信息和其他资料；

(II) The name, gender, nationality, identity information and other information of the sentenced person requested to be transferred;

（三）被判刑人的服刑场所；

(III) the place where the sentenced person serves his sentence;

（四）请求移管的依据和理由；

(IV) grounds and reasons for applying for transfer;

（五）被判刑人或者其代理人同意移管的书面声明；

(V) the written statement of the sentenced person or the agent thereof on consenting to the transfer;

（六）其他事项。

(VI) other matters.

第五十八条   主管机关应当对被判刑人的移管意愿进行核实。外国请求派员对被判刑人的移管意愿进行核实的，主管机关可以作出安排。

Article 58 The competent authorities shall verify the sentenced person's willingness to transfer. If a foreign country requests the dispatch of personnel to verify the sentenced person's will of transfer, the competent authority may make arrangements.

第五十九条   外国向中华人民共和国提出移管被判刑人的请求的，或者主管机关认为需要向外国提出移管被判刑人的请求的，主管机关应当会同相关主管部门，作出是否同意外国请求或者向外国提出请求的决定。作出同意外国移管请求的决定后，对外联系机关应当书面通知请求国和被判刑人。

Article 59 If the foreign country makes a request to the People's Republic of China for the transfer of a sentenced person or if the competent authority deems it necessary to make a request to the foreign country for the transfer of a sentenced person, the competent authority shall, in conjunction with the relevant competent authorities, make a decision on whether to consent to the foreign request or make the request to the foreign country. After making the decision to agree to the request, the foreign liaison organ shall notify the requesting country and the sentenced person in writing.

第六十条   移管被判刑人由主管机关指定刑罚执行机关执行。移交被判刑人的时间、地点、方式等执行事项，由主管机关与外国协商确定。

Article 60 The transfer of a sentenced person shall be executed by a penalty enforcement authority designated by the competent authority. Matters such as the time, place and manner of execution concerning the transfer of the sentenced person shall be determined by the competent authority and the foreign country through consultation.

第六十一条   被判刑人移管后对原生效判决提出申诉的，应当向中华人民共和国有管辖权的人民法院提出。

Article 61 If a sentenced person files an appeal against the originally effective judgment after transfer of jurisdiction, he/she/it shall file the appeal with the competent people's court of the People's Republic of China.

人民法院变更或者撤销原生效判决的，应当及时通知外国。

Where the people's court alters or revokes an originally effective judgment, it shall notify the foreign country in a timely manner.

第二节 向中华人民共和国移管被判刑人

Section 2 Transfer sentenced persons to the People’s Republic of China

第六十二条   中华人民共和国可以向外国请求移管中国籍被判刑人，外国可以请求中华人民共和国移管中国籍被判刑人。移管的具体条件和办理程序，参照本章第一节的有关规定执行。

Article 62 The People's Republic of China may request a foreign country to transfer a sentenced person of Chinese nationality, and a foreign country may request the People's Republic of China to transfer a sentenced person of Chinese nationality. The specific conditions and handling procedures for the transfer shall be subject to the relevant provisions of Section 1 of this Chapter.

第六十三条   被判刑人移管回国后，由主管机关指定刑罚执行机关先行关押。

Article 63 After the sentenced person has been transferred back to the country, the competent authority shall designate a penalty enforcement authority to hold him in custody.

第六十四条   人民检察院应当制作刑罚转换申请书并附相关材料，提请刑罚执行机关所在地的中级人民法院作出刑罚转换裁定。

Article 64 The People's Procuratorate shall prepare an application form for conversion to criminal punishment with relevant materials attached thereto, and submit the same to the intermediate people's court at the place where the penalty enforcement authority is located for decision on conversion to criminal punishment.

人民法院应当依据外国法院判决认定的事实，根据刑法规定，作出刑罚转换裁定。对于外国法院判处的刑罚性质和期限符合中华人民共和国法律规定的，按照其判处的刑罚和期限予以转换；对于外国法院判处的刑罚性质和期限不符合中华人民共和国法律规定的，按照下列原则确定刑种、刑期:

The people's court shall, on the basis of the facts ascertained in the judgment rendered by the foreign court and in accordance with the Criminal Law, render a ruling on conversion of criminal punishments. Where the nature and term of punishment of a foreign court are in conformity with the laws and regulations of the People's Republic of China, the conversion shall be made on the basis of the nature and term of punishment sentence; where the nature and term of punishment of a foreign court are not in conformity with the laws and regulations of the People's Republic of China, the type and term of punishment shall be determined in accordance with the following principles:

（一）转换后的刑罚应当尽可能与外国法院判处的刑罚相一致；

1. the punishment after conversion shall be consistent with the punishment imposed by the foreign court to the extent possible; and

（二）转换后的刑罚在性质上或者刑期上不得重于外国法院判处的刑罚，也不得超过中华人民共和国刑法对同类犯罪所规定的最高刑期；

(II) The punishment imposed after the conversion shall not be heavier in nature or term than that imposed by a foreign court, nor shall it exceed the maximum term of punishment for the same crime as specified by the Criminal Law of the People's Republic of China;

（三）不得将剥夺自由的刑罚转换为财产刑；

(III) Penalties of deprivation of liberty may not be converted into punishments of property;

（四）转换后的刑罚不受中华人民共和国刑法对同类犯罪所规定的最低刑期的约束。

(IV) Criminal punishment after conversion shall not be subject to the minimum term of sentence for the same crime as is prescribed by the Criminal Law of the People's Republic of China.

被判刑人回国服刑前被羁押的，羁押一日折抵转换后的刑期一日。

Where a sentenced person is detained before returning to the country for service, one day of detention shall be offset against one day of imprisonment after conversion.

人民法院作出的刑罚转换裁定，是终审裁定。

The penalty conversion ruling rendered by a people's court shall be final.

第六十五条   刑罚执行机关根据刑罚转换裁定将移管回国的被判刑人收监执行刑罚。刑罚执行以及减刑、假释、暂予监外执行等，依照中华人民共和国法律办理。

Article 65 The criminal penalty enforcement authority shall, in accordance with the decision on conversion of criminal penalty, put the sentenced person back in prison for enforcement of the criminal penalty. Criminal penalty, commutation, parole, and temporary execution of sentence outside prison shall be governed by the laws of the People's Republic of China.

第六十六条   被判刑人移管回国后对外国法院判决的申诉，应当向外国有管辖权的法院提出。

Article 66 An appeal against a judgment rendered by a foreign court after the sentenced person has returned to the country shall be filed with the competent court of the foreign country.

第九章 附 则

Chapter 9 Supplementary Provisions

第六十七条   中华人民共和国与有关国际组织开展刑事司法协助,参照本法规定。

Article 67 This Law shall be referred to in the judicial assistance in criminal matters between the People's Republic of China and the relevant international organizations.

第六十八条   向中华人民共和国提出的刑事司法协助请求或者应中华人民共和国请求提供的文件和证据材料,按照条约的规定办理公证和认证事宜。没有条约或者条约没有规定的,按照互惠原则办理。

Article 68 Requests for judicial assistance in criminal matters submitted to the People's Republic of China or documents and evidence provided at the request of the People's Republic of China shall be notarized and authenticated in accordance with the provisions of the treaty. If there is no treaty or the treaty has no provisions, the principle of reciprocity shall apply.

第六十九条   本法所称刑事司法协助条约，是指中华人民共和国与外国缔结或者共同参加的刑事司法协助条约、移管被判刑人条约或者载有刑事司法协助、移管被判刑人条款的其他条约。

Article 69 For the purpose of the Law, judicial assistance treaties in criminal matters refer to treaties on judicial assistance in criminal matters and treaties on the transfer of sentenced persons concluded or acceded to by the People's Republic of China and foreign countries, or other treaties containing provisions on judicial assistance in criminal matters and transfer of sentenced persons.

第七十条   本法自公布之日起施行。

Article 70 This Law shall go into effect as of the date of promulgation.