

# 中华人民共和国国际刑事司法协助法 International Criminal Judicial Assistance Law of the People's Republic of China

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## 中华人民共和国国际刑事司法协助法

### 主席令第十三号

《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。

中华人民共和国主席 习近平

2018年10月26日

## 中华人民共和国国际刑事司法协助法

(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)

### 第一章 总则

#### 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。

#### 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。

#### 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。

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。

对于请求书的签署机关、请求书

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

### Presidential Decree No. 13

The International Criminal Judicial Assistance Law of the People's Republic of China, adopted at the 6th Meeting of the Standing Committee of the 13th National People's Congress of the People's Republic of China on 26 October 2018, is hereby promulgated, effective as of the date of promulgation.

Xi Jinping

President of the People's Republic of China

26 October 2018

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

(Adopted at the 6th Meeting of the Standing Committee of the 13th National People's Congress of the People's Republic of China on 26 October 2018.)

### Chapter 1 General Principles

Article 1 This law is enacted in order to ensure the normal conduct of international criminal judicial assistance, strengthen international cooperation in the field of criminal justice, effectively punish crime, protect the legitimate rights and interests of individuals and organisations, and safeguard national interests and social order.

Article 2 For the purpose of this Law, "international criminal judicial assistance" refers to the assistance provided mutually between the People's Republic of China and foreign countries in such activities as criminal inquiry, investigation, prosecution, trial and execution, including the service of documents, investigation and evidence collection, arrangement of witnesses to testify or assist in investigations, seizing, detaining, or freezing the property involved, confiscate or return illegal income and other property involved, transfer the sentenced person, and other assistance.

Article 3 Criminal judicial assistance between the People's Republic of China and foreign countries shall be conducted in accordance with this Law.

The implementation of foreign criminal justice assistance requests shall be governed by the provisions of this Law, the Criminal Procedure Law and other relevant laws.

The signing authority of the request, the language of the request and the attached materials, and the relevant deadlines and specific procedures

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。

#### 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。

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。

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。

#### 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。

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。

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。

#### 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。

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。

#### 第七条

国家保障开展国际刑事司法协助所需经费。

#### 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。

第二章 刑事司法协助请求的提出、接收和处理

第一节 向外国请求刑事司法协助

may be conducted according to the criminal judicial assistance treaty or mutual negotiation, without violating the basic principles of the laws of the People's Republic of China.

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

The international criminal judicial assistance shall not damage the sovereignty, security and social 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.

Foreign institutions, organisations and individuals may not conduct criminal proceedings under this Law, and the institutions, organisations and individuals within the territory of the People's Republic of China shall not provide evidence materials and assistance provided in this Law to foreign countries, without the consent of the competent authority of the People's Republic of China.

Article 5 Criminal judicial assistance between the People's Republic of China and foreign countries should be coordinated through the foreign relations agencies.

The foreign relations agencies including the Ministry of Justice of the People's Republic of China are responsible for proposing, receiving and transmitting criminal judicial assistance requests, and dealing with other matters related to international criminal judicial assistance.

If there is no criminal justice assistance treaty between the People's Republic of China and a foreign country, contact shall be made through diplomatic channels.

Article 6 The State 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 conducting international criminal judicial assistance, which are responsible to review the criminal judicial assistance requests submitted by foreign countries according to the division of responsibilities, review and handle such requests forwarded by the foreign relations agencies, and undertake work related to international criminal judicial assistance. In the cases of transferring sentenced people, the Ministry of Justice shall assume the responsibility of the corresponding competent authority according to the division of responsibilities.

The organ for handling criminal judicial assistance related matters is the handling agency of the international criminal judicial assistance, and is responsible for submitting a request for foreign criminal judicial assistance to the competent authority, and implementing foreign criminal judicial assistance requests transferred by the competent authority.

Article 7 The State guarantees the funding for international criminal judicial assistance.

Article 8 The expenses incurred by the People's Republic of China and foreign countries for mutual execution of criminal judicial assistance requests shall be borne according to the treaty if there is one; if there is no treaty or the treaty does not stipulate it, it shall be settled through negotiation under the principle of equality and reciprocity.

Chapter 2 Proposing, receiving and processing criminal judicial assistance requests

Section 1 Requesting criminal judicial assistance to foreign countries

## 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。

## 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。

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。

## 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。

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。

## 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。

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。

## 第二节 向中华人民共和国请求刑事司法协助

### 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：

- (一) 请求机关的名称；
- (二) 案件性质、涉案人员基本信息及犯罪事实；
- (三) 本案适用的法律规定；
- (四) 请求的事项和目的；
- (五) 请求的事项与案件之间的关联性；
- (六) 希望请求得以执行的期限；

Article 9 Where the case handling agency needs to request criminal judicial assistance from a foreign country, it shall prepare a written criminal judicial assistance request and attach relevant materials. After the approval of the competent authority is obtained, the foreign relations agency concerned shall make a timely request to the foreign country.

Article 10 The written criminal judicial assistance request to a foreign country shall be submitted in accordance with the provisions of the criminal judicial assistance treaty; if there is no treaty or the treaty has no stipulation, Article 13 of this Law shall apply mutatis mutandis; if the requested country has special requirements, without violating the basic principles of the laws of the People's Republic of China, the requirements may be satisfied.

The written request and accompanying materials shall be made in Chinese with a translation in the official language of the requested country.

Article 11 The requested country may have additional conditions in implementing the criminal judicial assistance requests; if the conditions do not harm the sovereignty, security and social public interests of the People's Republic of China, they can be undertaken by the Ministry of Foreign Affairs. If the requested country clearly states that the commitments made by the foreign relations agencies are fully effective, they can be undertaken by the foreign relations agencies. Undertakings not to prosecute shall be determined by the Supreme People's Procuratorate; undertakings to sentencing shall be determined by the Supreme People's Court.

When investigating the criminal liability of the persons involved, the relevant authorities shall be bound by the commitments made.

Article 12 After receiving the relevant notice or execution result from a foreign country, the foreign relations agency shall promptly forward it or pass the message to the relevant competent authority.

If the foreign country providing criminal judicial assistance require for notification of the outcome of the proceedings, the foreign relations agency shall transfer such requirement to the relevant competent authority for processing.

## Section 2 Request for criminal judicial assistance to the People's Republic of China

Article 13 Where a foreign country submits criminal judicial assistance requests to the People's Republic of China, it shall submit the written request in accordance with the provisions of the criminal judicial assistance treaty. In the absence of a treaty or if the treaty has no stipulation, the following matters shall be included in the Written request with relevant materials attached to it:

- (1) the name of the requesting authority;
- (2) The nature of the case, the basic information of the persons involved and the facts of the crime;
- (3) The legal provisions applicable to this case;
- (4) The matter and purpose of the request;
- (5) the relationship between the requested matter and the case;
- (6) the time limit for which the request is expected to be executed;
- (7) Other necessary information or additional requirements.

In the absence of a criminal judicial assistance treaty, the requesting State should make a reciprocal commitment.

(七) 其他必要的信息或者附加的要求。

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。

请求书及所附材料应当附有中文译文。

#### 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:

(一) 根据中华人民共和国法律,请求针对的行为不构成犯罪;

(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;

(三) 请求针对的犯罪属于政治犯罪;

(四) 请求针对的犯罪纯属军事犯罪;

(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;

(六) 请求的事项与请求协助的案件之间缺乏实质性联系;

(七) 其他可以拒绝的情形。

#### 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。

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。

#### 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:

(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;

(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

The written request and attached materials should be accompanied by a Chinese translation.

Article 14 The criminal judicial assistance requests submitted by a foreign country to the People's Republic of China may be refused in any of the following circumstances:

(1) According to the laws of the People's Republic of China, the requested act is not a crime;

(2) At the time of receipt of the request, the inquiry, investigation, prosecution, and trial of the crime in the request are under way within the territory of the People's Republic of China, an effective judgment has been made, the criminal procedure has been terminated, or the limitation of the offence has expired;

(3) The crime against which the request is made is a political offence;

(4) The crime against which the request is made is purely a military offence;

(5) The purpose of the request is to examine, investigate, prosecute, sue, or execute a sentence based on race, ethnicity, religion, nationality, gender, political opinion or identity, or the parties may be unfairly treated for the above reasons;

(6) There is no substantive link between the requested matter and the case of assistance;

(7) Other circumstances under which the request can be refused.

Article 15 The foreign relations agency that has received the criminal judicial assistance request made by a foreign country shall review the written request and the attached materials. If the written request meets the requirements in both format and content, the written request and the attached materials shall be transferred to competent authorities for processing, according to the division of duties; if the written request does not meet the requirements in both format and content, the requesting country may be asked to submit additional materials or make the request again.

The foreign relations agency may directly refuse assistance if the criminal judicial assistance requests significantly damage the sovereignty, security and social public interest of the People's Republic of China.

Article 16 The competent authorities shall review and make the following decisions after receiving the written criminal judicial assistance request and attached materials:

(1) In accordance with the provisions of this Law and the criminal judicial assistance treaty, if it is considered possible to assist, make the decision and arrange the relevant case handling organ;

(2) According to Article 4 and 14 of this Law or the criminal judicial assistance treaty, if the whole or part of the request shall be refused, return the written request and the attached materials to the foreign relations agency and explain the reasons;

(3) If there is a confidentiality requirement for the request, or if there are other additional conditions, the foreign relations agency shall submit

机关并说明理由；

(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；

(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。

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。

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。

#### 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。

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。

#### 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。

#### 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。

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。

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。

### 第三章 送达文书

#### 第一节 向外国请求送达文书

#### 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。

#### 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

such conditions to the foreign country; after the foreign country has accepted the conditions and made a written guarantee, the request may be implemented with additional conditions;

(4) Where additional materials are required, the foreign relations agency shall be notified and the requesting State shall provide them within a reasonable period of time.

If the execution of the request may impede the inquiry, investigation, prosecution, trial or execution of the relevant authorities of the People's Republic of China, the competent authorities may decide to postpone the assistance and notify the foreign relations agency in writing of the decision and reasons for delaying the assistance.

Where a foreign country has confidentiality requirements or special procedures for the execution of its request, the competent authorities may arrange for execution in accordance with the requirements if they do not violate the basic principles of the laws of the People's Republic of China.

Article 17 After receiving a foreign criminal judicial assistance request from the competent authorities, the case handling agency shall execute it according to law, and report the results of the execution or the circumstances that hinder the execution to the competent authorities in a timely manner.

In handling the request, the case handling agency shall protect the legitimate rights and interests of the parties and other relevant personnel, and shall protect personal information.

Article 18 Where the foreign country requests for evidence obtained through criminal judicial assistance to be used to a purpose other than in this case, the foreign relations agency shall forward it to the competent authorities who shall make of decision of approval or rejection.

Article 19 The foreign relations agency shall promptly forward or to the requesting country after receiving the relevant notice or execution result of the competent authorities.

For cases in which the People's Republic of China provides criminal judicial assistance, the competent authorities may request foreign parties to report the outcome of the proceedings through the foreign relations agency.

If the foreign relations agency receive the relevant materials of the results reported by the foreign countries, the foreign relations agency shall promptly forward to the competent authorities; if they bring a criminal lawsuit against a citizen of the People's Republic of China, the Ministry of Foreign Affairs shall be notified.

### Chapter 3 Service of Documents

#### Section 1 Request to a foreign country for service of documents

Article 20 Where the case handling agency needs foreign assistance to serve the summons, notice, indictment, judgment and other judicial documents, it shall produce written criminal judicial assistance request with relevant materials. After it is promptly approved by the competent authorities, the foreign relations agency shall make a request to a foreign country.

Article 21 In the case of a request to a foreign country for a service of documents, the written request shall state the name or address of the person to be served, the address to be served, and the relevant rights and obligations to be notified to this person.

称、送达的地址以及需要告知受送达人的相关权利和义务。

## 第二节 向中华人民共和国请求送达文书

### 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。

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。

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。

### 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。

### 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。

## 第四章 调查取证

### 第一节 向外国请求调查取证

### 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:

- (一) 查找、辨认有关人员;
- (二) 查询、核实涉案财物、金融账户信息;
- (三) 获取并提供有关人员的证言或者陈述;
- (四) 获取并提供有关文件、记录、电子数据和物品;
- (五) 获取并提供鉴定意见;
- (六) 勘验或者检查场所、物品、人身、尸体;
- (七) 搜查人身、物品、住所和其他有关场所;
- (八) 其他事项。

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

## Section 2 Request to the People's Republic of China for service of document

Article 22 Foreign countries may request the People's Republic of China to assist in the service of summons, notices, indictments, judgments and other judicial documents. The assistance of the People's Republic of China in the service of judicial documents does not constitute recognition of the legal effect of foreign judicial documents.

If a request for assistance to serve a summons in court is made, it shall be submitted within the time limit stipulated in the relevant treaty. If there is no treaty or the treaty does not have stipulation, the request shall be submitted no later than three months before the hearing date.

The People's Republic of China shall not be obliged to assist in the service of a summon of a citizen of the People's Republic of China where they are to be interrogated or to appear as a defendant.

Article 23 Where a foreign country requests the People's Republic of China to serve a document, the written request shall state the name and address of the person to be served, and the relevant rights and obligations to be notified to this person.

Article 24 The people's court or other handling agency responsible for the assistance in service of document shall promptly inform the foreign relations agency of the execution results through the competent authorities, and the foreign relations agency shall inform the requesting country. Unless they cannot be delivered, the receipt or other supporting documents signed by the person to be served shall be attached.

## Chapter 4 Investigation and Evidence Collection

### Section 1 Requesting foreign countries to investigate and collect evidence

Article 25 Where the case handling agency needs a foreign country to assist in investigation and evidence collection on the following matters, it shall produce written criminal judicial assistance request with relevant materials; and the foreign relations agency shall promptly submit the request to foreign country after the approval of the competent authorities:

- (1) Finding and identifying relevant personnel;
- (2) Inquiring and verifying the property and financial account information involved;
- (3) Obtaining and providing testimony or statements from the person concerned;
- (4) Obtaining and providing relevant documents, records, electronic data and articles;
- (5) Obtaining and providing appraisal opinions;
- (6) Investigating or inspecting places, objects, persons, and bodies;
- (7) Searching for persons, articles, dwellings and other relevant places;
- (8) Other matters.

When requesting foreign assistance to investigate and collect evidence, the case handling agency may simultaneously request that a staff member be present at the time of execution of the request.

<p>员到场。</p> <p><b>第二十六条</b></p> <p>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:</p> <p>(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;</p> <p>(二) 需要向被调查人提问的问题;</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(六) 需要鉴定的对象的具体信息;</p> <p>(七) 需要勘验或者检查的场所、物品等的具体信息;</p> <p>(八) 需要搜查的对象的具体信息;</p> <p>(九) 有助于执行请求的其他材料。</p>	<p>Article 26 In the case of requesting investigation and evidence collection from a foreign country, the written request and accompanying materials shall state the following items according to necessity:</p> <p>(1) The name, gender, address, identity information, contact information of the respondent and other information that helps confirm the respondent;</p> <p>(2) Questions that need to be asked by the respondent;</p> <p>(3) The name, gender, address, identity information, contact information, appearance and behavioural characteristics of the persons to be searched for or identified, and other materials that are helpful for finding and identifying such person;</p> <p>(4) Specific information such as the ownership, location, characteristics, appearance and quantity of the property in question to be inquired and verified, and relevant information of the financial account to be inquired and verified;</p> <p>(5) Specific information on the holders, locations, characteristics, appearance and quantities of documents, records, electronic data and articles that need to be obtained;</p> <p>(6) Specific information of the object to be identified;</p> <p>(7) Specific information on places, items, etc. that need to be inspected or examined;</p> <p>(8) Specific information of the object to be searched;</p> <p>(9) Other materials which are helpful to execute the request.</p>
<p><b>第二十七条</b></p> <p>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。</p>	<p>Article 27 If the requested country requests the return of the evidence materials or articles provided by it, the case handling agency shall return it as soon as possible through the foreign relations agency.</p>
<p><b>第二节 向中华人民共和国请求调查取证</b></p> <p><b>第二十八条</b></p> <p>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。</p> <p>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。</p>	<p>Section 2 Requesting the People's Republic of China to investigate and collect evidence</p> <p>Article 28 Foreign countries may request the People's Republic of China to assist in investigation and evidence collection on matters specified by Clause 1, Article 25 of this Law.</p> <p>Where a foreign country requests investigation and evidence collection from the People's Republic of China, the written request and accompanying materials shall contain the matters specified in Article 26 of this Law according to needs.</p>
<p><b>第二十九条</b></p> <p>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。</p>	<p>Article 29 When a foreign country requests investigation and evidence collection from the People's Republic of China, it may simultaneously request that a staff member be present at the time of execution of the request. Those who have been approved to be present shall abide by the laws of the People's Republic of China and obey the arrangements of the competent authorities and the case handling agency.</p>
<p><b>第三十条</b></p> <p>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。</p>	<p>Article 30 If the case handling agency requires the requesting country to guarantee the return of the evidentiary materials or articles provided by it, and the requesting country guarantees the return, the evidence and articles can be provided.</p>
<p><b>第五章 安排证人作证或者协助调查</b></p> <p><b>第一节 向外国请求安排证人作</b></p>	<p>Chapter 5 Arrange for witnesses to testify or assist in investigation</p> <p>Section 1 Requesting a foreign country to arrange witness testimony or</p>

<p>证或者协助调查 第三十一条</p> <p>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。</p>	<p>assist in an investigation Article 31 If the case-handling agency needs foreign assistance in arranging witnesses or expert to testify in the People's Republic of China, testify by video or audio, or to assist in the investigation, it shall produce written criminal judicial assistance request with relevant materials. After the approval of the competent authorities, the foreign relations agency shall make the request to the foreign country concerned in a timely manner.</p>
<p>第三十二条</p> <p>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:</p> <p>(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;</p> <p>(二) 作证或者协助调查的目的、必要性、时间和地点等;</p> <p>(三) 证人、鉴定人的权利和义务;</p> <p>(四) 对证人、鉴定人的保护措施;</p> <p>(五) 对证人、鉴定人的补助;</p> <p>(六) 有助于执行请求的其他材料。</p>	<p>Article 32 To request a foreign country to arrange witnesses or experts to testify or assist in an investigation, the written request and accompanying materials shall state the following according to needs:</p> <p>(1) The name, gender, address, identity information, contact information and other materials that help to identify the witnesses and experts;</p> <p>(2) The purpose, necessity, time and place of the testimony or assistance in the investigation;</p> <p>(3) The rights and obligations of witnesses and experts;</p> <p>(4) Protection measures for witnesses and experts;</p> <p>(5) Subsidies to witnesses and experts; and</p> <p>(6) Other materials that contribute to the execution of the request.</p>
<p>第三十三条</p> <p>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以外,其人身自由不受限制。</p> <p>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。</p>	<p>Article 33 The crimes committed by the witnesses or experts who come to the People's Republic of China to testify or assist in the investigation before the entry are not subject to prosecution before the departure; and their personal freedom is not restricted except for the enforcement of the crimes after the entry into the country.</p> <p>After the time limit stipulated in the treaty or is notified that it is not necessary to continue to stay, if the witness or the appraiser does not leave within 15 days, the provisions of the preceding paragraph shall no longer apply, unless it is unable to leave the country due to force majeure or other special reasons.</p>
<p>第三十四条</p> <p>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。</p>	<p>Article 34 For witnesses and experts who come to the People's Republic of China to testify or assist in the investigation, the case handling agency shall grant subsidies according to law.</p>
<p>第三十五条</p> <p>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。</p> <p>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。</p>	<p>Article 35 If the person who comes to the People's Republic of China to testify or assist in the investigation is a detainee, the foreign relations agency shall agree in advance with the competent authorities and the requested country regarding the transfer of the detainee.</p> <p>The competent authorities and the case handling agency shall abide by the contents of the agreement, detain the transferred person in accordance with the law, and return the person to the requested country in time after the testimony or assistance in the investigation.</p>
<p>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 第三十六条</p> <p>外国可以请求中华人民共和国协</p>	<p>Section 2 Requesting the People's Republic of China to investigate and collect evidence Article 36 Foreign countries may request the People's Republic of China to assist in arranging witnesses or experts to testify in foreign countries or to testify by video or audio, or to assist in investigations.</p>



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。

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。

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。

### 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。

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。

### 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。

在押人员在国外被羁押的期限，应当折抵其在中华人民共和国被判处的刑期。

## 第六章 查封、扣押、冻结涉案财物

### 第一节 向外国请求查封、扣押、冻结涉案财物

#### 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。

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。

#### 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：

(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；

(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

Where a foreign country requests the People's Republic of China to arrange for witnesses or experts to testify or assist in the investigation, the written request and accompanying materials shall state the matters specified in Article 32 of this Law Article as needed.

The requesting country shall make a written undertaking regarding the content of the Clause 1, Article 33 of this Law.

Article 37 Where the witnesses or the experts agree in writing to give evidence or assists in the investigation, the case handling agency shall promptly notify the foreign relations agency of the wishes, requirements and conditions of the witnesses and experts, and the foreign relations agency shall notify the requesting country.

If the witnesses or experts are arranged to testify by video or audio, the competent authorities or the case handling agency shall send personnel to the scene; they shall timely stop any circumstances that damage the sovereignty, security and social public interests of the People's Republic of China or violate the basic principles the laws of the People's Republic of China.

Article 38 If the foreign countries request the detainee to be transferred overseas to testify or assist in the investigation, and guarantee that the detainee is sent back in time after the testimony or assistance in the investigation, the foreign relations agency shall seek the opinions of the competent authorities and the detainees. Where the competent authorities and the detainees agree to go abroad to testify or assist in the investigation, the foreign relations agency shall agree in advance with the competent authorities and the requesting country on matters relating to the transfer of detainees.

The period in which a detainee is detained in a foreign country shall be discounted to the sentence imposed on them in the People's Republic of China.

## Chapter 6 Seize, detain, and freeze the properties involved

### Section 1 Request foreign countries to seize, detain, and freeze the properties involved

Article 39 The case handling agency that need foreign countries to assist in seizing, detaining, and freezing the properties involved shall produce written criminal judicial assistance request and attach relevant materials. After the competent authorities review and approve it, the foreign relations agency shall timely make the request to the foreign countries.

If a foreign country has special requirements for the assistance in seizing, detaining, and freezing the properties involved in the People's Republic of China, it may be approved without violating the basic principles of the laws of the People's Republic of China. Where a decision is required by the judicial authority, it shall be made by the People's court.

Article 40 When requesting foreign countries to seize, detain, and freeze the properties involved, the Written request and attached documents shall contain the following items:

(1) The ownership certificate, name, characteristics, appearance and quantity of the properties involved that require seizure, detaining, and freezing;

(2) The location where the properties involved are required to be seized, detained, and frozen. Where funds or other financial assets are deposited in a financial institution, the name, address and account information of the financial institution shall be specified;

明金融机构的名称、地址和账户信息;

(三) 相关法律文书的副本;

(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;

(五) 有助于执行请求的其他材料。

#### 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。

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。

#### 第二节 向中华人民共和国请求查封、扣押、冻结涉案财物

#### 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。

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。

#### 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:

(一) 查封、扣押、冻结符合中华人民共和国法律规定的条件;

(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;

(三) 涉案财物可以被查封、扣押、冻结;

(四) 执行请求不影响利害关系人的合法权益;

(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。

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。

#### 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。

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。

(3) A copy of the relevant legal instrument;

(4) Legal provisions concerning the seizing, detaining, and freezing and the protection of the rights of interested of the interested parties; and

(5) Other materials that help to execute the request.

Article 41 When the time limit for the seizing, detaining, and freezing determined by a foreign country expires, if the case handling agency needs the foreign country to continue to seize, detain, and freeze the related properties, it should make another request to the foreign country.

If the case handling agency decides to seize, detain, and freeze the property involved, it shall timely notify the requested country.

#### Section 2 Request the People's Republic of China to seize, detain, and freeze the properties involved

Article 42 Foreign countries may request the People's Republic of China to assist in seizing, detaining, and freezing the properties involved within the territory of the People's Republic of China.

When foreign countries request the People's Republic of China to seize, detain, and freeze the properties involved, the written request and accompanying materials shall state the matters specified in Article 40 of this Law as needed.

Article 43 The competent authorities may, after reviewing the following conditions, agree to seize, detain, and freeze the properties involved, and arrange the execution by the case handling agency:

(1) The seizing, detaining, and freezing are in accordance with the conditions laid down by the laws of the People's Republic of China;

(2) The seizing, detaining, and freezing of the properties involved are related to the inquiry, investigation, prosecution and trial activities of the on-going criminal case in the requesting country;

(3) The properties involved can be seized, detained, and frozen;

(4) The execution of the request does not affect the legitimate rights and interests of the interested party;

(5) The execution of the request does not affect the on-going inquiry, investigation, prosecution, trial and enforcement activities of the relevant authorities of the People's Republic of China.

The case handling agency shall promptly notify the foreign relations agency through the competent authorities, and the foreign relations agency shall inform the requesting country of the results of seizing, detaining, and freezing. When necessary, the case handling agency may take measures to deal with the properties under seizure, detaining, and freezing.

Article 44 When the period of seizing, detaining, and freezing expires, if the foreign country needs to continue to seize, detain, and freeze the properties involved, it shall make the request to the foreign relations agency again.

If the foreign country decides to release the seizing, detaining, and freezing, the foreign relations agency shall promptly notify the case handling agency to release it through the competent authorities.

#### 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。

#### 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。

第七章 没收、返还违法所得及其他涉案财物

第一节 向外国请求没收、返还违法所得及其他涉案财物

#### 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。

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。

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。

#### 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:

(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;

(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;

(三) 没收、返还的理由和相关权属证明;

(四) 相关法律文书的副本;

(五) 有关没收、返还以及利害关系人权利保障的法律规定;

(六) 有助于执行请求的其他材料。

#### 第四十九条

外国协助没收、返还违法所得及

Article 45 If the interested parties have objection against the seizing, detaining, and freezing, and after review, the case handling agency considers the seizing, detaining, and freezing does not satisfy the conditions provided by Clause 1, Article 43 of this Law, it shall report to the competent authorities for making a decision to lift the seizing, detaining, and freezing. The foreign relations agency shall be notified, and the requesting country shall be informed by the foreign relations agency. If there are objections against the handling of the case, the case handling agency may forward them to the foreign relations agency through the competent authorities, and the foreign relations agency shall inform the requesting country.

Article 46 In the event that the requesting country causes improper seizing, detaining, and freezing, and it causes damage to the legitimate rights and interests of the interested party, the case handling agency may request the requesting country to assume liability for compensation through the foreign relations agency .

Chapter 7 Confiscate and return illegal income and other the properties involved

Section 1 Request foreign countries to confiscate and return illegal income and other the properties involved

Article 47 If the case handling agency needs foreign assistance to confiscate the illegal income and other properties involved, the written criminal judicial assistance request shall be made with relevant materials, and the foreign relations agency shall promptly make a request to the foreign country after the approval of the competent authorities.

To request a foreign country to return the illegal income and other properties involved to the People's Republic of China or to return to the victim, the request may be made together with the request for confiscation to the foreign country, or be submitted separately.

If the foreign country has special requirements for returning illegal income and other such properties that have been seized, detained, and frozen, the requirements can be allowed as long as they do not violate the basic principles of the laws of the People's Republic of China. Where a decision is required by the judicial authority, the people's court shall make the decision.

Article 48 When requesting a foreign country for confiscation and return of illegal income and other properties involved, the written request and accompanying materials shall state the following as required:

(1) The names, characteristics, appearance and quantity of the illegal proceeds and other the properties involved;

(2) The location of the illegal income and other properties involved that needs to be confiscated and returned. Where funds or other financial assets are deposited in a financial institution, the name, address and account information of the financial institution shall be specified;

(3) Reasons for confiscation, return and relevant ownership certificates;

(4) A copy of the relevant legal instrument;

(5) Legal provisions concerning the confiscation, return and protection of the rights of interested parties; and

(6) Other materials that contribute to the execution of the request.

Article 49 If the foreign country assists in the confiscation and return of illegal income and other properties involved, the foreign relations agency shall consult with the competent authorities on the transfer of the

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。

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。

第二节 向中华人民共和国请求没收、

返还违法所得及其他涉案财物  
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。

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。

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:

(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;

(二) 外国充分保障了利害关系人的相关权利;

(三) 在中华人民共和国有可供执行的财物;

(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;

(五) 没收在请求国不能执行或者不能完全执行;

(六) 主管机关认为应当满足的其他条件。

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:

(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;

(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;

(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;

(四) 其他可以拒绝的情形。

relevant property with the foreign country.

In the case of requesting foreign assistance for confiscation, return of illegal income and other properties involved, if the foreign country proposes sharing of the request, the amount or proportion of the sharing or the proportion shall be determined by the foreign relations agency in consultation with the competent authorities.

Section 2 Request People's Republic of China to confiscate and return illegal income and other the properties involved

Article 50 Foreign countries may request the People's Republic of China to assist in the confiscation and return of illegal income and other properties involved.

Where a foreign country requests assistance from the People's Republic of China for confiscation and return of illegal income and other properties involved, the written request and accompanying materials shall state the matters specified in Article 48 of this Law as required.

Article 51 The competent authorities may, after reviewing the following conditions, agree to assist in the confiscation of illegal income and other properties, and arrange for the case handling agency to implement it:

(1) Confiscation of illegal income and other properties involved is in compliance with the conditions provided by the People's Republic of China;

(2) Foreign countries fully protect the relevant rights of interested parties;

(3) There are properties in the People's Republic of China that can be enforced;

(4) The Written request and accompanying materials detail the ownership, name, characteristics, appearance and quantity of the property targeted for the request;

(5) Confiscation cannot be performed in the requesting country or cannot be fully implemented; and

(6) Other conditions that the competent authorities considers necessary to be satisfied.

Article 52 When a foreign country requests for assistance in the confiscation of illegal income and other properties involved, the request may be refused in any of the following circumstances; and the reasons shall be explained:

(1) The judicial authorities of the People's Republic of China or the third country has made effective judgments on the property against which the request is made, and have executed the judgments or are executing the judgments;

(2) The property against which the claim is made does not exist, has been destroyed, lost, sold, or has been transferred, resulting in the inability to enforce, unless the request is confiscation of property after sales or the property after the transfer;

(3) The person against whom the request is made has an unliquidated debt or an unfinished lawsuit within the territory of the People's Republic of China; and

(4) Other circumstances that may lead to refusal.

### 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。

### 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。

### 第八章 移管被判刑人

#### 第一节 向外国移管被判刑人

### 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。

### 第五十六条

向外国移管被判刑人应当符合下列条件：

(一) 被判刑人是该国国民；

(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；

(三) 对被判刑人判处刑罚的判决已经发生法律效力；

(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；

(五) 中华人民共和国和该国均同意移管。

有下列情形之一的，可以拒绝移管：

(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；

(二) 在请求移管时，被判刑人剩余刑期不足一年；

(三) 被判刑人在中华人民共和国境内存在尚未了结的诉讼；

(四) 其他不宜移管的情形。

### 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：

(一) 请求机关的名称；

(二) 被请求移管的被判刑人的姓名、性别、国籍、身份信息和其

Article 53 If the foreign country that requests for the return of illegal income and other properties involved can provide true and sufficient evidence, and after review the competent authorities consider it to comply with the conditions stipulated by the laws of the People's Republic of China, they may agree to arrange the case handling agency to implement it. Before returning, the case handling agency may deduct the reasonable expenses incurred in executing the request.

Article 54 For foreign country that requests for assistance in the confiscation and return of illegal proceeds and other properties involved, the foreign relations agency may submit a request for sharing with the competent authorities. The amount or proportion of the sharing is determined by the foreign relations agency in consultation with the competent authorities.

### Chapter 8 Transfer the sentenced person

#### Section 1 Transfer the sentenced person to foreign countries

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

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

(1) The sentenced person is a national of the country;

(2) The act of imposing a sentence on a sentenced person also constitutes a crime under the laws of that country;

(3) The judgment of the sentenced person has been legally effective;

(4) The sentenced person agrees to the transfer in writing; or because of the sentenced person's age, physical health or mental health, the transfer is necessary, and the transfer is approved by his agent in writing; and

(5) Both the People's Republic of China and the said country agree to transfer.

Transfer can be refused if one of the following conditions is true:

(1) The sentenced person is sentenced to a suspended execution or life imprisonment, except when the transfer is reduced to fixed-term imprisonment at the time of request;

(2) When the transfer is requested, the sentence of the sentenced person is less than one year;

(3) The sentenced person has an unfinished lawsuit in the territory of the People's Republic of China; or

(4) Other situations where it is not appropriate to transfer.

Article 57 Where a request is made to transfer a sentenced person to a foreign country, the written request and accompanying materials shall state the following items as required:

(1) the name of the requesting authority;

(2) the name, sex, nationality, identity information and other information of the sentenced person who is requested to be transferred;

(3) the place of sentence of the sentenced person;

他资料；	(4) the basis and reasons for requesting the transfer;
(三) 被判刑人的服刑场所；	(5) A written statement that the sentenced person or his agent agrees to transfer; and
(四) 请求移管的依据和理由；	(6) Other matters.
(五) 被判刑人或者其代理人同意移管的书面声明；	
(六) 其他事项。	
第五十八条	Article 58 The competent authorities should verify the willingness of the sentenced person on the transfer. If the foreign country requests staff to be sent to verify the willingness of the sentenced person on the transfer, the competent authorities may make arrangements.
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。	
第五十九条	Article 59 Where a foreign country proposes to the People's Republic of China to transfer a sentenced person, or if the competent authorities consider that it is necessary to submit a request to a foreign country for the transfer of the sentenced person, the competent authorities shall, in conjunction with the relevant competent authority, make a decision on whether to agree with the foreign request or making a request to foreign country. After making a decision on the transfer request made by a foreign country, the foreign relations agency shall notify the requesting country and the sentenced person in writing.
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。	
第六十条	Article 60 The transfer of the sentenced person shall be implemented by execution agency specified by the competent authorities. The time, place, and manner of the transfer of the sentenced person shall be determined by the competent authorities in consultation with the foreign country.
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。	
第六十一条	Article 61 If the sentenced person files a complaint against the original effective judgment after the transfer, he shall submit the complaint to the people's court of competent jurisdiction of the People's Republic of China.
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。	
人民法院变更或者撤销原生效判决的，应当及时通知外国。	If the people's court changes or revokes the original effective judgment, it shall promptly notify the foreign country.
第二节 向中华人民共和国移管被判刑人	Section 2 Transfer the sentenced person to the People's Republic of China
第六十二条	Article 62 The People's Republic of China may request a foreign country to transfer a sentenced Chinese person, and a foreign country may request People's Republic of China to transfer a sentenced Chinese person. The specific conditions and procedures for the transfer are implemented in accordance with the relevant provisions of the Article 1 of this Chapter.
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。	
第六十三条	Article 63 After the sentenced person is transferred to China, the competent authorities shall specify the execution agency to detain the person first.
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。	
第六十四条	Article 64 The People's Procuratorate shall make an application for the conversion of penalties and attach relevant materials to the Intermediate People's Court at the location of the execution agency; the court shall make a penalty conversion ruling.
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。	
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, based on the facts ascertained by the judgment of the foreign court, make a penalty conversion ruling in accordance with the provisions of the Criminal Law. Where the nature and duration of the sentence imposed by a foreign court is in accordance with the laws of the People's Republic of China, it shall be converted according to the sentence and time limit; if the nature and duration of the sentence imposed by the foreign court does not comply with the laws of the People's Republic of China, the type and period for the sentence shall be determined in accordance with the following principles:
	(1) The converted penalty shall be as consistent with the sentence

<p>(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；</p>	<p>imposed by the foreign court; (2) The penalty after the conversion shall not be heavier in terms of the nature or the sentence than the sentence imposed by the foreign court, nor shall it exceed the maximum sentence imposed by the Criminal Law of the People's Republic of China for the same type of crime;</p>
<p>(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；</p>	<p>(3) The penalty of deprivation of liberty shall not be converted into property punishment; and</p>
<p>(三) 不得将剥夺自由的刑罚转换为财产刑；</p>	<p>(4) The converted penalty is not subject to the minimum sentence imposed by the Criminal Law of the People's Republic of China for the same type of crime.</p>
<p>(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。</p>	<p>If the sentenced person is detained before returning to China to serve his sentence, the days of detainment will be calculated as days of sentence after conversion.</p>
<p>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。</p>	<p>The penalty conversion ruling made by the People's Court is final.</p>
<p>人民法院作出的刑罚转换裁定, 是终审裁定。</p>	
<p>第六十五条</p>	<p>Article 65 The execution agency will implement the sentence on the sentenced person who is transferred back to China according to the penalty conversion ruling. The execution of penalties, commutation, parole, and temporary execution of supervision shall be handled in accordance with the laws of the People's Republic of China.</p>
<p>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。</p>	
<p>第六十六条</p>	<p>Article 66 A complaint against the judgment of the foreign court after the sentenced person is transferred back to China shall be filed with the foreign court of competent jurisdiction.</p>
<p>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。</p>	
<p>第九章 附则</p>	<p>Chapter 9 Supplementary Provisions</p>
<p>第六十七条</p>	<p>Article 67 The People's Republic of China and relevant international organisations that carry out criminal judicial assistance shall be governed mutatis mutandis to the provisions of this Law.</p>
<p>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。</p>	
<p>第六十八条</p>	<p>Article 68 The criminal judicial assistance requests submitted to the People's Republic of China or the documents and evidentiary materials provided at the request of the People's Republic of China shall be handled for notarisation and certification in accordance with the provisions of the treaty. If there is no treaty or the treaty does not provide for it, it shall be handled under the reciprocity principles.</p>
<p>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。</p>	
<p>第六十九条</p>	<p>Article 69 For the purpose of this Law, "criminal judicial assistance treaties" refer to the criminal judicial assistance treaty concluded or co-participated by the People's Republic of China and foreign countries, treaties on the transfer of sentenced persons or other treaties containing clauses on criminal judicial assistance and the transfer of sentenced persons.</p>
<p>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。</p>	
<p>第七十条</p>	<p>Article 70 This Law shall come into force as from the date of promulgation.</p>
<p>本法自公布之日起施行。</p>	



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