

Research on criminal asset sharing system in overseas recovery of stolen goods

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Abstract

It is not only necessary for China to establish the system of sharing criminal assets in the recovery of overseas assets, but also has sufficient theoretical basis and clear legal basis. From the perspective of extraterritorial rule of law, the modes of criminal asset sharing include fixed agreement mode and individual agreement mode. The confiscated criminal assets shall be returned to the victim or the legal owner first, and reasonable fees shall be deducted before the assets are shared; The proportion of sharing is mainly determined based on the contribution of the assisting country, and factors such as the nature of the crime and the damage suffered by the requesting country are comprehensively considered. The sharing of criminal assets has become a common practice for overseas recovery of stolen goods, showing obvious characteristics of international cooperation and incentive. Based on the practice of foreign-related rule of law, China can gradually fix the experience of asset sharing into bilateral agreements on the basis of successful cases of individual cooperation. According to the different nature of the case, different sharing strategies should be adopted to determine the reasonable standard of asset sharing. External liaison agencies and competent authorities that specify the sharing of assets; Establish a sound procedure mechanism for the proposal, review, decision and implementation of criminal asset sharing.

Keywords

Foreign rule of law; Overseas recovery of stolen goods; Asset sharing; Case agreement.

1. Basic content and characteristics of criminal asset sharing system

In terms of international law, relevant international conventions such as the Convention against Transnational Crimes and the United Nations Convention against Corruption advocate the concept of asset sharing. The United States, the United Kingdom, Canada, Australia and other countries have also established the sharing system of overseas recovered criminal assets in domestic legislation or bilateral treaties, and formed relatively complete rules in the long-term foreign rule of law practice.

1.1. The basic content of criminal asset sharing

1.1.1. The mode of sharing criminal assets

The United States, Canada, the United Kingdom and Australia, among others, have all accepted that criminal assets can be shared. From the basis of asset sharing, the relevant countries have gradually abandoned the practice of a single absolute treaty. The so-called treaty advance means that the relevant country requires the requesting country and the requested country to conclude the relevant asset sharing agreement when carrying out asset sharing. This mode is based on the existence of fixed protocol, also known as fixed protocol mode. In the past, the United States, Canada and other countries have stressed the need to sign bilateral treaties when carrying out asset sharing. But in recent years, countries have moved away from the pre-treaty approach, allowing for collaboration on a case-by-case basis. The so-called case cooperation means that the requesting country and the requested country can consult on specific cases and

carry out asset sharing cooperation without signing a bilateral asset sharing agreement. Under this model, asset sharing is determined on a case-by-case basis according to the needs of overseas recovery of stolen goods in specific cases, which is also called the case-by-case agreement model.

Bilateral treaties are the main legal basis for asset sharing in the United States. However, agreements can also be signed to carry out asset sharing activities on a case-by-case basis. The United States Department of Justice, with the consent of the United States Department of the Treasury and under the authority of the United States Department of State, negotiates the terms of the case-by-case agreements and returns the confiscated criminal assets on a pro-rata basis, in accordance with domestic legislation such as the Foreign Assistance Act, the Manual on the Law and Practice of Asset Forfeiture, and the Guidance on Equitable Sharing with Foreign, Federal, State, and Regional Law Enforcement. For example, the United States has criminal asset sharing agreements with countries such as the United Kingdom and Canada, but it also shares assets of confiscated assets with countries that do not have criminal asset sharing agreements. Canada has long adhered to the pre-treaty approach to asset sharing, and has signed bilateral agreements on criminal asset sharing with more than 30 countries, including China. However, in recent years, according to the international trend of overseas asset recovery and domestic practice, the mode of case-by-case agreement is gradually accepted to carry out asset sharing cooperation. Australia's Proceeds of Crime Recovery Act 2002 also stipulates that an asset sharing agreement is a prerequisite for asset sharing, including an agreement between the parties on a specific case. For example, in the "Li Jixiang embezzlement case", although there is no relevant asset sharing agreement between China and Australia, Australia

In recognition of the Chinese Government's assistance in the discovery, investigation and prosecution of criminal assets for money laundering crimes, the Government will share RMB30 million with China. Therefore, from the perspective of the relevant practices of major countries in the world on the sharing of criminal assets in overseas asset recovery, they all adopt the fixed agreement model and the individual agreement model, which also provides space for us to actively carry out cooperation on asset sharing cases in overseas asset recovery.

1.1.2. On the scope of "shareable assets"

In the overseas recovery of stolen goods, the confiscated criminal assets are mainly cross-border transfer assets. The determination of the scope of "shareable assets" is the key to the construction of asset sharing system. At the convention level, the United Nations Convention against Drugs includes all forms of direct or indirect criminal property, whether physical or immaterial, movable or immovable, tangible or intangible, in the category of criminal assets. The Convention against Transnational Crime includes all forms of criminal assets and their proceeds, such as alternative benefits, mixed benefits and profit gains, within the scope of criminal assets. ⑳ The United Nations Convention against Corruption also clearly stipulates that any proceeds directly or indirectly arising from a crime are criminal assets. The Proceeds of Crime Recovery Act of the United Kingdom also includes alternative benefits, mixed benefits and benefit proceeds into the scope of confiscation of criminal assets. The criminal assets under the Australian Proceeds of Crime Recovery Act also include "instruments of crime". It can be seen that the relevant international conventions, based on the purpose of cracking down on cross-border crimes, have broad provisions on the scope of confiscation of criminal assets, and criminal assets that are related to crimes and reflected as property interests belong to the scope of confiscation. However, in the legislation and law enforcement practices of relevant countries, criminal assets that can be confiscated are not necessarily used for sharing, and the following special provisions need to be noted:

First, the deduction of reasonable expenses. It mainly deducts case handling costs and asset management expenses generated by international cooperation between countries such as

criminal asset confiscation. The United Nations Convention against Corruption clearly states that a requested State party may deduct reasonable expenses before returning property. The Model Agreement on Asset Sharing also provides for the deduction of forfeiture costs before the return of assets. When the United States shares assets with a foreign country, it is required to deduct in determining the amount to be transferred the costs incurred in the seizure, preservation, forfeiture, and transfer of property in connection with the execution of the forfeiture order. For example, in a drug crime case in which the United States cooperated with our country, the two sides agreed to share the confiscated proceeds of drug trafficking, but required that 20 per cent of the expenses of asset forfeiture should be deducted first. Australia's Proceeds of Crime Recovery Act also provides for deduction of case investigation fees, legal aid fees, and administrative expenses necessary to pay custodians in order to assist foreign countries in enforcing confiscation orders.

Second, priority should be given to returning property to victims of property. In the process of overseas recovery of stolen goods, the victim of the property is clear in cases of corruption, duty encroachment and other crimes, so in accordance with the provisions of relevant conventions, the confiscated property should be returned to the original legal owner of the property. Article 57, paragraph 3, of the United Nations Convention against Corruption provides that States parties shall give priority to the return of confiscated assets resulting from the crime of corruption or property over which the requesting State can "reasonably prove" ownership. The Council of Europe Convention on Mutual Legal Assistance in Criminal Matters (Additional Protocol II) (2001) also provides that consideration should be given to the return of assets of the requesting State acquired through criminal means to the rightful owner. The Agreement between the People's Republic of China and Canada on the Sharing and Return of Recovered Assets also stipulates that confiscated criminal assets shall be returned to the legal owner in accordance with the law if the legal owner can be identified; In the case of smuggling, bribery, drugs and other crimes, the criminal assets have no clear legal owner, or the legal owner cannot be proved due to lack of evidence, and are "shareable assets". Therefore, sharing generally does not occur where there is a clear victim or where the property has a legitimate owner. For example, in the "corruption and embezzlement case involving Yu Zhendong and others at the Kaiping Branch of the Bank of China", the United States returned the full amount of \$3.55 million seized by the United States to China because it was the proceeds of corruption and embezzlement.

Third, the legal property of a bona fide third party shall not be shared. In international cooperation on criminal asset forfeiture, the relevant interests of bona fide third parties may be involved. In this regard, relevant international conventions and relevant national laws emphasize that it should be protected. Article 55 of the United Nations Convention against Corruption, Article 5 of the United Nations Convention against Drugs, and Article 12 of the Convention against Transnational Crime all provide for the protection of the legitimate rights and interests of bona fide third parties. The Council of Europe Convention on Mutual Legal Assistance in Criminal Matters of 2001 (Additional Protocol II) also provides that the transfer of property at the request of the requesting State shall not prejudice the legitimate interests of other bona fide third parties. Article 66 of the German Law on International Legal Assistance in Criminal Matters stipulates that the transfer of property shall ensure that the rights of third parties are not affected and that the provisions on reservations are complied with. In the bilateral agreement on asset sharing signed by the United States, the content of protecting the rights and interests of bona fide third parties in the process of confiscation and disposal of criminal assets is also stipulated. Article 16 of the Agreement between the Government of the People's Republic of China and the Government of the United States of America on Judicial Assistance in Criminal Matters also provides that the legitimate rights of third parties shall be respected in connection with the confiscation and transfer of criminal assets.

1.1.3. The share ratio of "shareable assets"

Determining the proportion of criminal assets sharing in overseas recovered assets is an important link in asset sharing. At present, the prevailing international practice is to determine the proportion of sharing according to the contribution made by the assisting party in international cooperation. Some countries determine the proportion of asset sharing under different circumstances according to the domestic law of the requested country. In other cases, reasonable asset sharing is determined by negotiation based on the degree of contribution made by the requesting State in international judicial cooperation. The Memorandum of Understanding signed by the United States Department of Justice and the Treasury on 4 May 1995 provides guidance for determining the proportion of asset sharing shares. The MOU Outlines the proportional range of asset sharing under the three categories. According to the degree of Assistance provided by foreign countries, it is usually divided into three categories: Essential Assistance, Major Assistance and Facilitating Assistance, and then the proportion of asset sharing at different levels is determined.

(1) In determining whether the assisting State falls into the category of providing "substantial assistance," the Department of Justice examines factors such as whether the case involves a victim or whether the assisting State is a victim. In addition, the Justice Department considers other factors, such as whether the assisting country has abandoned its own confiscation action and provided all necessary evidence to U.S. authorities; Whether the State initiated proceedings; Whether to actively repatriate funds to the United States. Between 50 and 100 per cent of the total confiscated funds can be shared if "substantial assistance" is deemed to have been provided.

(2) In determining whether the assisting State falls into the category of providing "major assistance," the Department of Justice will consider whether the assisting State has carried out the final forfeiture order of a U.S. court, facilitated the repatriation of assets to the United States, and passed a freeze

Whether the removal of the assets freeze to assist the United States, whether the return of the accused through an extradition request or his law enforcement officer is assisting the case at personal risk, whether substantial prosecution and law enforcement resources have been expended on the case, and other factors. In such cases, the share usually involves 40 to 50 per cent of the total forfeiture amount.

(3) In determining whether the assisting State falls into the category of providing "facilitated assistance," consider whether the assisting State provided critical information about investigative leads, assisted the United States in obtaining and sharing extensive bank documents, provided other financial records, or assisted foreign banks in repatriating assets. In this case, up to 40% of the confiscated assets can be shared. For example, in the United States Benister Brothers medical fraud case, the Dominican Republic seized and confiscated \$37 million of the Benister brothers' assets in its territory at the request of the United States. Based on the size of the Dominican Republic's contribution to the criminal asset forfeiture, the United States considered that it had provided "facilitative assistance" and decided to share 20 per cent of the total confiscated assets. Under Canada's Forfeited Property Sharing Provisions, the Attorney-General determines the share ratio based on the size of the contribution made by the relevant country in the asset forfeiture. A maximum of 90% of the assets that can be shared when major contributions are made; A maximum of 50% of assets that can be shared when significant contributions are made; The share rate for smaller contributions is 10%. In any event, Canada's share of not less than 10% of the assets that can be shared. Australia, Switzerland and other countries determine the reasonable proportion of asset sharing based on the degree of contribution made by the requesting country in the case of law enforcement

cooperation. Under the Proceeds of Criminal Assets Recovery Act, Australia provides that the proportion of the proceeds of illegal conduct shall be shared with the relevant country

By the size and extent of the aid. The proportion of the sharing of assets can be determined by the country where the criminal assets are located according to its own country or the proportion of the sharing of criminal assets determined by the two parties on the basis of consultation. In accordance with the provisions of the Federal Law on the Sharing of Confiscated Assets, Switzerland generally distributes confiscated criminal assets equally with the requesting State. However, taking into account the nature of the crime, the magnitude of the damage suffered by the requesting State, the extent of the requesting State's participation in the investigation and relevant international factors, the full amount of the criminal assets may also be returned

2. The construction path of China's criminal asset sharing system

From the current situation of international cooperation in overseas asset recovery, the asset sharing system is conducive to the maximum recovery of assets transferred abroad, and is an effective and fair overseas asset recovery measure. Because of this, the asset sharing system has become a common practice for overseas recovery of stolen goods. In the face of the reality of overseas asset recovery in China, we should combine China's national conditions, learn from the beneficial experience outside the region, and build a system of overseas asset recovery sharing with Chinese characteristics.

2.1. Establish a pragmatic asset sharing model

In general, international judicial cooperation requires a clear legal basis. Judging from the legislation and judicial practice of relevant countries in the world, treaties are an important basis for relevant countries to carry out international cooperation. For some countries that adopt pretreatyism, sometimes treaties are the only basis for international cooperation. However, with the in-depth development of international judicial cooperation, more and more countries have gradually given up the absolute pre-treaty practice, allowing the application of the principle of reciprocity and carrying out international judicial cooperation on a case-by-case basis. From the experience of asset sharing in relevant countries outside the region, the asset sharing modes are mainly fixed agreement mode and individual agreement mode

The fixed agreement model stipulates the entity and procedure content of asset sharing through relevant international conventions and bilateral treaties, which makes the content of asset sharing standardized. Fixed agreements enable asset sharing to function as a mechanism of rights and obligations. Due to the limited enforcement power of international conventions, in the international cooperation of asset sharing, the fixed agreement mode is mainly to sign bilateral treaties. Due to the characteristics of institutionalization and standardization, bilateral treaties have strong guidance for relevant countries to carry out asset sharing, and it is easy to exert the binding force of treaties. However, the procedures for signing bilateral treaties are complicated and time-consuming, and the handling of different cases sometimes lags behind. Judging from the signing of bilateral treaties in our country, it is more difficult for some major countries to sign bilateral treaties with us. By November 2020, China had concluded a total of 169 extradition treaties and judicial assistance treaties with 81 countries, and signed financial information exchange cooperation agreements with 56 countries and regions. However, the countries that have signed these bilateral treaties are mainly developing countries. In practice, most of the countries where criminals transfer assets such as job-related crimes and economic crimes are Western countries such as the United States, Australia, Canada and some countries with relatively loose financial regulation, most of these countries have not signed effective bilateral treaties with our country. namely

For countries that have signed treaties on international criminal judicial cooperation with our country, because the implementation of the treaties is easily affected by political, diplomatic and other factors, in specific cases, the relevant countries may sometimes selectively apply the treaties, which makes the actual implementation and operability of the treaties signed in our country is not high, and then affects the application effect of bilateral treaties in our overseas asset recovery. Moreover, the signing of bilateral treaties requires a long period of consultation between the contracting parties, which takes a long time. For example, the only bilateral asset sharing agreement signed by China to date, the Agreement between the People's Republic of China and Canada on the Sharing and Return of Recovered Assets, has gone through eight years of negotiations. In the short term, it is not realistic for China to sign bilateral asset sharing agreements with other major asset importing countries. Therefore, in the process of overseas asset recovery, we cannot rely too much on the signing of bilateral agreements on asset sharing, but need to actively explore asset sharing cooperation on a case-by-case basis. Of course, carrying out asset sharing activities through bilateral agreements has its own advantages, we also need to proceed from the actual needs of the current overseas asset recovery, according to the difficulty of signing treaties, and gradually promote the signing of bilateral treaties with the main asset inflow countries, and promote the standardization and institutionalization of China's overseas asset recovery sharing system.

The model of the case-by-case agreement is more flexible, mainly discussing the issue of asset sharing in specific cases, and reflecting the relevant consensus of the country from which the asset originates and the country where the asset is located on the handling of confiscated criminal assets. The key to reaching an asset sharing agreement is to flexibly deal with the special issues of specific cases and form a mutually beneficial and win-win consensus between countries. Therefore, in the process of overseas asset recovery, when there is no bilateral agreement on asset sharing, we need to pay attention to the mode of asset sharing according to the case agreement. In specific cases, factors such as the contribution of the country where the assets are located and the nature of the case are important references for determining the scope and proportion of asset sharing. Due to the complexity of the case situation, even if some countries have signed bilateral agreements on asset sharing, the specific proportion of asset sharing will be determined through case-by-case negotiation.

Therefore, in the absence of bilateral treaties on asset sharing between China and major asset importing countries, criminal asset sharing can be considered as a case-by-case agreement model. Although this method lacks fixity and stability, considering the small number of bilateral treaties on asset sharing signed by China, it is difficult to sign bilateral agreements on asset sharing with major countries where criminal assets flow into the country for a long time in the future, and asset sharing activities can only be carried out according to the circumstances of specific cases. Under the operation of long-term case-by-case cooperation mode, the relevant legal issues of asset sharing are gradually refined and summarized, and the relevant legal mechanism of asset sharing in China is improved. Therefore, at this stage, asset sharing with other countries can be mainly carried out through case-by-case agreements. Based on successful cases of case-by-case cooperation, mature experience and practices in asset sharing can be gradually fixed in the bilateral agreements on asset sharing signed in the future, and the construction of China's criminal asset sharing system can be promoted in stages and steps.

2.2. Clarify the scope and quota standards for asset sharing

Judging from the prevailing practice of relevant countries outside the region, the criminal assets used for sharing are not all the criminal assets confiscated. Relevant countries will deduct relevant reasonable expenses when sharing assets, and protect the legitimate rights and interests of victims and bona fide third parties. When we recover assets overseas, we should pay attention to distinguish whether there are victims and adopt different asset recovery

strategies according to the different nature of the case. For victimless crimes such as money laundering, bribery, drugs, etc., they may be shared within the scope of confiscated property; For crimes with victims due to corruption, embezzlement and other duties, we should make full use of relevant national laws and regulations, and strive to prioritize compensation for crime victims and legal owners of assets, so as to maximize the interests of the state and relevant victims. It should be noted that when overseas recovery of stolen goods, the perpetrator may involve two or more charges. Generally speaking, according to the laws of the relevant countries, crimes with victims such as embezzlement and embezzlement are more likely to return assets than crimes without victims such as money laundering, bribery and drug trafficking. Therefore, when we carry out the international cooperation of asset recovery, we need to choose the appropriate crime to propose the assistance request of asset confiscation, so as to help the smooth progress of the cooperation of overseas fugitive and asset recovery. After determining the scope of asset sharing, how to determine the proportion of criminal asset sharing is the core link of asset sharing in practice. The most important basis for determining the proportion of assets sharing is the size of the contribution of the requesting country in the recovery process. In fact, as mentioned above, the United States, Australia, Canada and other countries mainly determine the proportion of asset sharing based on the contribution of the relevant country to assist in criminal asset forfeiture. Although the United Nations Model Agreement on Asset Sharing gives two reference methods in determining the proportion of asset sharing, that is, to determine the proportion of asset sharing according to the provisions of the relevant domestic law or through consultation between the two parties, in practice, either approach will emphasize the contribution of the assistance provided by the country where the asset is located to the asset forfeiture. As an incentive mechanism for international cooperation in asset recovery, the direct significance of asset sharing system is to encourage relevant countries to provide judicial assistance with economic benefits. Therefore, the size of contribution as the basic basis for determining the proportion of asset sharing conforms to the original intention of the system, and is also conducive to the sound development of criminal judicial cooperation and criminal asset recovery among countries in the future.

In the design of the relevant system of asset sharing, China can refer to the beneficial practice of extraterritorial rule of law. Whether it is our request for asset sharing or another country's request for asset sharing, when determining the proportion of asset sharing, the most important thing is to consider the contribution of judicial assistance provided by relevant countries to overseas asset recovery. Asset sharing has the dual characteristics of international cooperation and incentive, and the proportion of asset sharing reflects the contribution of the assisting party in the asset forfeiture process. On the one hand, it is highly recognized that the country where the assets are located actively carries out international cooperation; On the other hand, it is also an incentive for potential international cooperation countries, which helps to form a long-term mechanism of asset sharing in overseas recovery.

In the current situation that China has signed a small number of bilateral agreements on asset sharing, we can refer to the provisions of relevant national and international conventions, and determine the proportion of sharing according to the contribution of the country where the asset is located in the individual agreement. The criteria for judging the contribution of the relevant country can be comprehensively evaluated from the nature and importance of the information provided, the weight of the evidence provided, and the degree of participation in the investigation. This also suggests that when we carry out international cooperation with relevant countries to recover assets overseas, especially when our country is the requesting country for asset sharing, we should try to provide key evidence in the process of criminal asset confiscation, and provide international judicial assistance such as service of documents, investigation and collection of evidence, and witnesses to testify in court, which will help us seize more initiative and say in asset sharing. Of course, the amount of assistance provided by

the requested State cannot be the sole criterion for determining the proportion of sharing. Other factors affecting the effectiveness of asset recovery, such as the enthusiasm of the relevant State to participate in the investigation and the nature of the crime, should also be taken into account. For example, in the famous corruption case of former Nigerian head of state Abacha, the Nigerian government's asset recovery work in the UK has not been smooth, and the passive inaction of relevant departments and banks in the UK delayed the recovery of assets, resulting in a substantial reduction in the assets eventually recovered, which also has a direct impact on the final share of assets.

2.3. Determining the associated and competent authorities for the sharing of criminal assets

Article 49 and Article 54 of the Law on International Criminal Judicial Assistance provide that where a foreign country makes a request for sharing or China makes a request for sharing assets, the foreign liaison authority, together with the competent authority, shall negotiate with the foreign country. Therefore, how to determine the foreign contact agencies and competent authorities is the institutional problem to be solved in the sharing of criminal assets in overseas recovery. According to the provisions of the International Criminal Judicial Assistance Law and other domestic laws, the main responsibility of the external liaison agency is to make, receive and transmit requests for criminal judicial assistance. Generally speaking, the establishment of external liaison organs should follow the principles of unity and stability, simplification and conformity with the principle of legal system, which can smooth the internal and external communication channels of various functional organs, coordinate the international criminal judicial assistance system, and contribute to the coordinated handling of cases. In the bilateral treaties signed by our country, about two thirds of the bilateral treaties provide that the Ministry of Justice is the only external contact organ. Even though there are some bilateral treaties that designate two or even three foreign communication agencies, the Ministry of Justice is one of them

In view of this, the author believes that the Ministry of Justice should be regarded as the foreign contact organ for sharing the criminal assets of our country. As the judicial administrative organ of our country, on the one hand, the Ministry of Justice can fully ensure that the organs of foreign contact fulfill their functions of foreign contact, organization and coordination, service and supervision; On the other hand, it can ensure the full concentration of its internal expertise, improve the efficiency of judicial assistance, and reduce the cost of handling cases. Whether assistance is requested or provided, the competent authorities play a decisive role, and whether a request can be made to a foreign state and whether a foreign request can be executed by our country should be subject to the consent of the competent authorities. This point is also clearly reflected in the International Criminal Judicial Assistance Law of our country. Therefore, the decision of the competent authority in the criminal judicial assistance system is a final and rigid decision. The competent authorities, in accordance with domestic law, are primarily responsible for the examination of our requests to foreign States and for the examination and processing of foreign requests to us. Since the competent authorities in the International Criminal Judicial Assistance Law of our country are established strictly in accordance with the Criminal Procedure Law and other laws, what kind of functions the competent authorities enjoy in the Criminal Procedure Law of our country, they enjoy symmetrical functions in international criminal judicial assistance.

In view of this, the author believes that the competent authority for asset sharing should be determined according to the functional authority of the relevant authorities in our criminal law. The International Legal Assistance in Criminal Matters Act uses only the term "competent authority" in general terms in relation to international cooperation in the sharing of assets. So who is the authority that has the authority to decide on asset sharing? This is directly related

to the review and decision of foreign requests for asset sharing to our country and Chinese requests for asset sharing to foreign countries. Article 6 of the Law on International Criminal Judicial Assistance provides in general terms that 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 to carry out international criminal judicial assistance. In this regard, as long as the Chinese law grants the above-mentioned "competent authorities" the right to decide or initiate the procedure for the confiscation of illegal gains, they can be used as the competent authorities for the confiscation of criminal assets. For example, according to the Supervision Law, supervisory organs may confiscate illegal gains; The Criminal Law gives the people's court the final power to dispose of illegal gains and other property involved in the case. punishment

The Civil Procedure Law stipulates that the People's Procuratorate has the power to initiate the confiscation of illegal gains; The Drug Control Law stipulates that the public security organs shall recover the proceeds of drug offences and crimes. There is no doubt that when it comes to the functional jurisdiction of the relevant central authorities, these authorities can review and decide on requests for confiscation of illegal gains.

However, it should be noted that in practice, according to the relevant law, not only the authorities explicitly listed above have legal responsibilities for the confiscation of relevant illegal gains. For example, the Customs Law stipulates that the customs has no right to confiscate the illegal proceeds of smuggling; The Securities Law gives the securities regulatory organs the right to forfeit illegal gains from securities. Although these organs are not "judicial organs" in the strict sense of criminal proceedings, in carrying out international judicial cooperation in the confiscation of criminal assets, our country's Law on International Criminal Judicial Assistance does not require the court of the requesting State to make a confiscation decision, and the requesting State may request the confiscation of illegal proceeds to our country at any stage of the confiscation of criminal assets. The International Criminal Judicial Assistance Law (Draft I), submitted to the Standing Committee of the 12th National People's Congress for deliberation in December 2017, has established different procedures for handling the confiscation of illegal gains by courts based on foreign requests. In case the requesting State makes a confiscation ruling, the Supreme People's Court shall review it; If no confiscation ruling has been made, the relevant competent authority shall refer the case to the case handling organ for handling. This provision was removed from the final enactment of the International Criminal Legal Assistance Law, mainly in consideration of the fact that foreign applications for confiscation of illegal gains no longer distinguish whether the requesting State has made a confiscation award, so the provisions only generally allow "competent authorities.

Legal conditions to make decisions and arrangements. From the legislative original intent, we can see that our country's assistance in foreign confiscation of illegal income may not all be reviewed and decided by courts. Other competent authorities in China that undertake illegal income confiscation according to law not only include the State Supervision Commission, the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security and other central organs, The General Administration of Customs, the China Securities Regulatory Commission and other organs may also carry out decisions and arrangements on confiscation and return of illegal gains and other property involved in the case in accordance with their functions and powers.

Therefore, in the case of international cooperation in the confiscation and return of criminal assets, China has provided a relatively flexible competent authority. When asset sharing is carried out, criminal asset forfeiture is the premise of asset sharing, and the criminal asset forfeiture organ has a fuller understanding of the assistance provided by the relevant country and the nature of the case, and can make a more comprehensive judgment on the scope and proportion of asset sharing. Consideration could therefore be given to identifying the

competent authority for asset sharing as consistent with the competent authority for international cooperation in criminal asset forfeiture, that is, the competent authority for asset sharing should be the authority with legal competence in the confiscation of illicit gains and other property involved. When China makes a request for asset sharing, the competent authority providing assistance in confiscating criminal assets may make the decision and request for asset sharing; When a foreign country makes a request for asset sharing to our country, the decision on asset sharing shall be made by the administrative organ that made the request for criminal asset confiscation to the foreign country. However, it should be noted that in the case of a foreign request for asset sharing, since China's Criminal Procedure Law stipulates that the people's Court is the authority to dispose of the entity of criminal assets, no unit may dispose of the property involved before the judgment without a court judgment. In such case, the competent authority shall consult the Supreme People's Court for confirmation on the decision on asset sharing.

3. Conclusion

International cooperation in tracing fugitives and recovering assets has become an important part of major-country diplomacy with Chinese characteristics and an important part of building a community with a shared future for mankind. Our country has gradually occupied the commanding height of the morality of international cooperation with the successful practice of fugitive and asset recovery, and has an expanding voice and influence in international related fields. However, with the fugitive and asset recovery work entering the deep water area, new situations and problems keep emerging, overseas asset recovery may be more difficult than overseas repatriation, and overseas asset recovery work faces many difficulties and challenges. For example, the asset transfer prevention system in overseas asset recovery legal mechanism is insufficient, the systematization and completeness of relevant legislation need to be strengthened, the application rate of international treaties is not high, and the capacity building of overseas asset recovery is relatively lagging. In the context of The Times when the country attaches great importance to overseas asset recovery, we need to fully understand the importance and difficulty of overseas asset recovery, accurately study and judge the situation of overseas asset recovery, adhere to the coordinated development of domestic rule of law and foreign rule of law, and make great efforts to solve the "bottleneck" problem of overseas asset recovery, so as to effectively solve the difficulties and challenges of overseas asset recovery. Promote the legalization and institutionalization of overseas asset recovery work, and actively promote the development of overseas asset recovery work. As an asset recovery measure with both international cooperation and incentive, asset sharing system in overseas asset recovery plays a very important role in effectively recovering assets transferred abroad. Under the circumstance that the asset sharing system has been established in the relevant laws of China, facing the reality of overseas asset recovery in China, it is necessary to reform the old-fashioned concept of international cooperation, establish a sound asset sharing system, and maximize the joint efforts of illegal gains confiscation procedures and default trial procedures in overseas asset recovery. It should be noted that in some countries, for confiscated criminal assets, The sharing of assets can be flexibly addressed, including through compensation.

In the current situation, it is difficult for us to effectively share assets with all major criminal asset inflow countries. Therefore, it is necessary to master the legal rules of the relevant countries, adopt appropriate flexible methods, and consider giving appropriate economic compensation to the assisting parties, so as to encourage the relevant countries to provide international cooperation, so as to achieve the purpose of effectively recovering the criminal assets transferred abroad by criminals.

References

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- [3] See Karyn Kenny, *supra* note 23, 265.
- [4] See Davis Pablo J., To Return the Funds at All: Global Anticorruption, Forfeiture, and Legal Frameworks for Asset Return, Vol.47:291, p.353 (2016).
- [5] See Ad Hoc Committee for the Negotiation of a Convention against Corruption, Global Study on the Transfer of Funds of Illicit Origin, Especially Funds Derived from Acts of Corruption (2003) A/AC.261/12, p.14.