**China’s Legal System on the Recovery of Corruption Assets**

1. **The Working Mechanism on Asset Recovery in China**

In China, the National Commission of Supervisory is responsible for leading and coordinating the work of international recovery of corruption assets. In 2014, the International Office of the Central Anti-Corruption Coordination Group was established, led by the National Commission of Supervisory (former Ministry of Supervision), and composed of the Supreme People's court, the Supreme People's Procuratorate, the Ministry of Foreign Affairs, the Ministry of Public Security, the Ministry of Justice, the People's Bank of China, etc. In March 2018, at the first session of the 13th National People's Congress, the ***Amendment to the Constitution of the people's Republic of China*** and the ***Supervision Law of the People's Republic of China*** were adopted. the National Commission of Supervisory was established accordingly. The newly established National Commission of Supervisory mainly integrates the staff and resource of administrative supervision, corruption prevention, and the procuratorial organs that are involved in the investigation and handling of cases concerning embezzlement and bribery, dereliction of duties as well as prevention of duty-related crimes. The Chapter 5 "International Cooperation against Corruption" of the ***Supervision Law of the People's Republic of China*** stipulates that "the National Commission of Supervisory shall organize and coordinate anti-corruption efforts such as international pursuit of stolen assets......” “Request countries where proceeds of corruption are located to to make inquiries , freeze, seize, confiscate, recover, or return the assets involved in cases”.

These stipulations have laid a legal foundation for China to carry out international recovery of corruption proceeds.

1. **Legal Provisions on Asset Recovery in China**

**1）Voluntary Return**

In China, corrupt fugitives can get mitigated or lighter treatment for voluntary return of ill-gotten gains. Article 383 of China's ***Criminal Law*** stipulates that “Whoever commits the crime of corruption, and before the public prosecution is filed, truthfully confesses his or her crime, shows sincere repentance and actively returns the ill-gotten asset to reduce losses” may be given a lighter or mitigated penalty or be exempt from penalty according to the seriousness of the circumstances. Article 31 of the ***Supervision Law*** stipulates that “Where the person under investigation for a suspected duty-related crime voluntarily admits guilt and accepts punishment, under any of the following circumstances, a recommendation for lenient punishment may be made by the supervisory organ on transferring the case to the people’s protectorate, once this has been collectively studied by the leadership and reported to and approved by the supervisory organ at the next higher level.

1. Voluntarily surrenders and truly shows repentance;
2. Actively cooperates with the investigation and truthfully confesses illegal or criminal acts of which the supervisory organ was not yet aware;
3. Voluntarily returns the ill-gotten gains and reduces losses.”

These legal norms clearly stipulate that persons who have committed bribery, embezzlement or duty-related crimes, including those who have absconded overseas, can be given leniency or mitigated punishment. These stipulations provides a legal basis for the practitioners to encourage fugitives to return ill-gotten assets for lighter or mitigated punishment. For example, Xiao Jianming, a former public official on China’s “100 most wanted list” once claimed that he would always on the run in foreign countries until death stops him. Finally, under the guidance of these policies and legal deterrence, he voluntarily return to China and turn himself in to authorities, and voluntarily returned illegal assets worth of about 250 million RMB yuan (37 million USD).

**2）Special Confiscation Procedures**

If the fugitive are reluctant to voluntarily return illicit assets, in order to address the dilemma that assets can not be recovered when the person involved has escapes for a long time or has died, the ***Criminal Procedure Law*** ***of the People's Republic of China*** was amended in March 2012. It added the confiscation procedures for illegal income in cases where a criminal suspect or defendant escapes or dies. According to article 280-283 of the ***Criminal Procedure Law*** of 2012, “Where, in a case regarding a serious crime such as embezzlement, bribery, or terrorist activities, a criminal suspect or defendant escapes and cannot be present in court after being wanted for a year, or a criminal suspect or defendant dies, if his or her illegal income and other property involved in the case shall be recovered in accordance with the ***Criminal Law***, a people's procuratorate may file an application to a people's court for confiscation of illegal income.”“When necessary, a people's court may seize, impound, or freeze the property to be confiscated upon application.” “A people's court shall render a ruling to confiscate illegal income and other property involved in the case that are confirmed at trial, except those legally returned to the victims; or, for property which shall not be recovered, shall render a ruling to dismiss the application and terminate the seizure, impound, or freezing measure taken.”

In practice, after the Chinese court made a confiscation ruling, China will request the country where the assets involved in the case are located to recognize and enforce the ruling in accordance with the relevant laws of that country. From the perspective of judicial application, the confiscation procedure for illegal income is a new design in China. It aims to address the dilemma that illicit assets are cannot be recovered when corruption suspect or defendant escapes or dies. In recent years, China has actively apply this procedure of confiscation to recover stolen assets and achieved positive legal effect.

For example, Li Huabo, a former Chinese official on China’s “100 most wanted list”, fled to Singapore and managed to transfer corruption proceeds to Singapore. A Chinese court made a ruling to confiscate his illicit assets in China and in Singapore worth of 29 million RMB yuan (4.3 million USD). Under the request of Chins and in accordance with relevant laws of Singapore, the confiscation order issued by the Chinese court was recognizes and enforced by Singapore. Thus illicit assets were returned to China.

**3）Formal Cooperation**

Asset recovery cooperation with other countries are often carried out through formal channels. In order to facilitate formal judicial cooperation with other countries, in October 2018, the ***Law of the People's Republic of China on International Criminal Judicial Assistance*** was promulgated, which specifies the specific requirements and procedures for the filing, receiving and processing of criminal judicial assistance requests, as well as for the confiscation and return of illicit proceeds and other property involved in the case. This law has further promotes the formal criminal judicial assistance between China and other countries to pursue stolen assets.

1. **The Integration of China's Domestic Laws with International Conventions and Bilateral Agreements**
2. **UNCAC**

In October 2005, the 18th session of the Standing Committee of the National People's Congress deliberated and ratified the ***United Nations Convention against Corruption***. Chapter V of the Convention provides for asset recovery, including the prevention and detection of transfers of proceeds of crime, measures for direct recovery of property, mechanisms for recovery of property through international cooperation in confiscation,international cooperation for purposes of confiscation, special cooperation, return and disposal of assets, financial intelligence agencies, bilateral and multilateral agreements and arrangements, etc. This has provided international legal basis and blazed a new trail for China to conduct asset recovery cooperation with other countries. For example, Yan Yongming, a former Chinese corrupt official absconded to New Zealand with proceeds of corruption. China, in accordance with the United Nations Convention against corruption, assisted New Zealand in filing a lawsuit against the fugitive Yan Yongming and recover his illegal income. Eventually, Yan Yongming returned to China and surrendered himself. A total of 329 million RMB yuan (48 million USD)of his stolen money and illegal income was fined, confiscated and returned to China.

1. **Bilateral Agreements**

China has been negotiating and signing treaties and agreements on judicial assistance with foreign countries since 1986 and extradition treaties with foreign countries since 1993. As of August, China has concluded a total of 169 bilateral treaties and agreements with 81 countries, including extradition treaties, judicial assistance treaties, agreements on the return and sharing of assets.

For example, in 2016, the foreign ministers of China and Canada formally signed the ***Agreement on Sharing and Return of Forfeited Assets***. The agreement covers both "return" and "sharing". If the court of one party holds that the criminal proceeds belong to the other party or the companies or individuals within its territory, the criminal proceeds will be "returned" according to law. If there is no legal owner, such as the proceeds of crime involved in bribery and drug trafficking cases, or the legal owner cannot be proved due to the lack of evidence, one party can "share" the confiscated assets with the other party after confiscation, and the sharing proportion is determined according to the assistance provided by the other party. The agreement also defines the procedures and channels for the return and sharing of assets.

The signing of this agreement can not only address the problem that Canada, according to its domestic laws, can only “share” confiscated assets with countries based on bilateral agreement, but also help China to gain more experience and improve the our system for international judicial and law-enforcement cooperation.