



**Asia-Pacific
Economic Cooperation**



Australian Government
Attorney-General's Department

Requesting Mutual Legal Assistance in criminal matters from APEC Economies: A STEP-BY-STEP GUIDE

ANTI-CORRUPTION AND TRANSPARENCY WORKING GROUP
NOVEMBER 2014

Note: The terms "country" and "countries" used in the text are for purposes of this report and do not imply the "political status" of any APEC member economy.

APEC Project: ACT 01 2013A

Produced by

The Anti-Corruption and Transparency Working Group

and

The Attorney-General's Department, Australia

3-5 National Circuit

BARTON ACT 2600

Telephone: +61 2 6141 6666

Email: Anti-CorruptionSection@ag.gov.au

For

Asia Pacific Economic Cooperation Secretariat

35 Heng Mui Keng Terrace

Singapore 119616

Telephone: (65) 68 919 600

Fax: (65) 68 919 690

Email: info@apec.org

Website: www.apec.org

© 2014 APEC Secretariat

APEC#214-AC-01.1 ISBN 978-981-09-2680-9

FOREWORD

Corruption and transnational crime pose major threats to good governance and economic growth in the Asia Pacific. On behalf of Australia, I am therefore pleased to present the APEC Guide to Mutual Legal Assistance (the Guide).

Work by the APEC Anti-Corruption and Transparency Working Group (ACTWG) has shown that stronger systems for mutual legal assistance will help APEC economies to detect and disrupt corruption and transnational crime.

While globalisation and technological innovation have been positive forces for development and prosperity, illicit networks have taken advantage of our increasingly interconnected APEC region to expand their enterprises. Regional corruption provides an enabling environment for the trafficking of drugs, arms, people, stolen or pirated goods and for funding criminal activities and creates an uphill battle for emerging legitimate business enterprises.

The Guide provides concise, step-by-step instructions on how to initiate and successfully conduct requests for mutual legal assistance made within the APEC region. In addition, a sample request has been included to demonstrate how the step-by-step process may be applied.

There are several means by which APEC economies may seek mutual legal assistance, such as bilateral and multilateral treaties or reciprocity arrangements. Each of these mechanisms has specific requirements and the requirements may vary from one APEC economy to another. The APEC community has recognised that a lack of familiarity with an economy's requirements for a mutual legal assistance request may cause delays in providing assistance, which hinders corruption

investigations, prosecutions and the recovery of illicit assets.

APEC member economies can use mutual legal assistance to help each other obtain evidence to investigate and prosecute corruption and transnational crime, and recover illicit assets derived from such crimes. Effective processes for mutual legal assistance ensure corrupt officials cannot avoid prosecution, or hide illicit assets, simply because evidence or assets are located in another APEC economy. The effective implementation of mutual assistance frameworks in the APEC region is therefore critical in the fight against corruption.

The Guide complements existing tools on mutual legal assistance, most notably the Mutual Legal Assistance Writer Tool of the UN Office on Drugs and Crime and the G20's guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries.

I am pleased that this Guide will assist APEC economies to work more effectively to fight corruption and ensure transparency. The Guide has been compiled by Australia with the support of the APEC ACTWG and demonstrates the willingness of all APEC economies to cooperate closely in the fight against corruption.

I encourage all APEC economies to use this practical Guide to develop and strengthen mutual legal assistance relationships across the APEC region.



The Hon Michael Keenan MP
Minister for Justice

CONTENTS

FOREWORD.....	III
PART 1: INDIVIDUAL STEP-BY-STEP GUIDES FOR SEEKING MUTUAL LEGAL ASSISTANCE FROM APEC ECONOMIES	1
AUSTRALIA.....	2
BRUNEI DARUSSALAM.....	7
CANADA.....	12
CHILE.....	17
CHINA.....	21
HONG KONG, CHINA.....	25
INDONESIA.....	30
JAPAN.....	34
REPUBLIC OF KOREA.....	40
MALAYSIA.....	44
MEXICO.....	49
NEW ZEALAND.....	54
PAPUA NEW GUINEA.....	59
PERU.....	64
THE PHILIPPINES.....	68
RUSSIAN FEDERATION.....	72
SINGAPORE.....	79
CHINESE TAIPEI.....	83
THAILAND.....	88
UNITED STATES.....	94
VIET NAM.....	100
PART 2: SAMPLE MUTUAL LEGAL ASSISTANCE REQUEST.....	105

PART 1

Individual step-by-step
guides for seeking mutual
legal assistance from
APEC economies

AUSTRALIA

I. INTRODUCTION

Australia can consider a request from any foreign state to gather evidence in a criminal matter or to identify, restrain and forfeit the proceeds of crime, whether or not a bilateral or multilateral treaty relationship with that foreign state exists. Australian law does not distinguish between government-to-government requests, whether made on a treaty or nontreaty basis, and 'letters rogatory.' The Australian Central Authority can receive requests directly from foreign Central Authorities in hard copy or electronic form.

2]

(i) Requests Made Under a Treaty/Convention

Requests made under a bilateral or multilateral treaty/convention are executed under Australia's *Mutual Assistance in Criminal Matters Act 1987* (the MA Act) subject to the provisions of the relevant treaty/convention. Australian authorities can execute search warrants, take evidence from a witness in Australia (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Australia can also provide other assistance such as voluntary witness statements or service of documents.

(ii) Requests Made in the Absence of a Treaty/Convention

Australia can consider a request for assistance from any foreign state in the absence of a treaty/convention. The MA Act enables Australian authorities to execute search warrants, take evidence from a witness in Australia (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Australia can also provide other assistance such as voluntary witness statements and service of documents.

(iii) Dual Criminality Requirements

Dual criminality is a discretionary ground for refusal of assistance under the MA Act and many of Australia's bilateral treaties. In the absence of dual criminality, it would be open to the Attorney-General, as decision maker, to take into account Australia's obligations under a multilateral convention (such as the UNCAC) in making a decision on whether or not to grant assistance.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Australian Central Authority can be contacted as follows:

**Assistant Secretary
International Crime Cooperation
Central Authority
International Crime Cooperation Division
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600
AUSTRALIA
Telephone: +61 2 6141 3244
Facsimile: +61 2 6141 5457
Email: mutualassistance@ag.gov.au**

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM AUSTRALIA

In general, when seeking mutual legal assistance from Australia, the steps outlined below should be followed:

Step 1: Consider whether the information or evidence could be obtained via informal channels

Law enforcement authorities should consider seeking informal (agency-to-agency, or policeto-police) assistance before making a formal mutual legal assistance request, as information can generally be provided more quickly on an informal basis. Australian authorities may be able to provide the following types of assistance on an agency-to-agency basis: taking voluntary witness statements, conducting voluntary witness interviews, taking voluntary witness testimony via a video link facility, hosting foreign police who are conducting inquiries in Australia, sharing intelligence, conducting optical surveillance, obtaining criminal records, and obtaining publicly available material.

Step 2: Consult with the central authority before submitting the request

The Australian Central Authority encourages foreign Central Authorities to make contact before making a request, particularly in urgent cases and in proceeds of crime requests, to ensure the assistance sought is available under Australian law, and the request will meet Australia's requirements. The Australian Central Authority is happy to discuss Australia's requirements by telephone or email, and can also review draft requests.

Step 3: Indicate the mechanism used to seek assistance

The request should identify the basis on which it is made including any bilateral or multilateral treaty/convention (such as the UNCAC or UNTOC). If there is no relevant treaty/convention the request should state whether reciprocity would be afforded of an Australian request made in comparable circumstances.

Step 4: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/or prosecuting authority.

Step 5: Summarise the case

The request should describe the nature of the criminal matter and summarise the relevant facts. The summary of facts should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

The summary of facts should:

- include sufficient information to enable Australia to undertake a dual criminality assessment
- provide information about why the investigating and/or prosecuting authorities believe relevant evidence is located in Australia, and
- identify the suspect(s).

Step 6: Set out the applicable legal provisions

The request should include the full text of all relevant offence and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

The request should outline, in specific terms, exactly what assistance is sought from Australia, and any particular procedural requirements that must be met, for example, where there are any specific certification/authentication requirements for the evidence provided in response to the request, or if certain procedures must be followed when taking evidence from a witness.

In addition, depending upon the nature of the assistance sought, the following information should be included:

a. Witness statements/testimony:

- include a list of questions to be asked of the witness
- indicate whether the defence or prosecution wants to examine or cross-examine a witness (including via video link)
- indicate whether evidence provided needs to be sworn/affirmed
- include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
- state the status of the witness (suspect/accused, or simply a witness)
- include a clear explanation of how the information sought from the witness is relevant to the case, and
- if known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made for the witness to be compelled to give evidence (note that although witnesses can generally be compelled to give evidence, a suspect cannot be compelled to give evidence in Australia).

b. Documentary evidence:

- if possible, identify the specific documents sought
- state the location where the documents are believed to be held
- include the reasons why the evidence will be relevant to the case, and
- indicate whether the defence or prosecution wants to examine or cross-examine the person who produces documents (including via video link)

c. Search and seizure:

- include a clear description of the evidence to be seized
- state the precise location to be searched
- include an explanation why this measure is required, and
- state how the items seized will be relevant to the case.

d. Enforcing an order to restrain and/or forfeit the proceeds of crime:

- include an official, certified copy of the relevant order(s)
- include an official, certified copy of the conviction of the person, if applicable
- include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes) and whether the application to register the order needs to be done ‘on notice’
- for conviction-based forfeiture orders, provide confirmation that the conviction and the order are final and are not subject to appeal
- include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
- include as much information as possible to link the criminal conduct of the person to the assets located

in Australia as well as ownership of property or effective control of property to the alleged offender (including evidence of transfers or other financial information)

- include any information about whether there is any third party interest in any of the property in Australia, and
- include any information about the risk that the assets will be dissipated.

Note: Australia can register both conviction-based and non-conviction-based proceeds of crime orders directed against both persons and assets received from any country provided the appropriate legal thresholds are met, including that the order is made in respect of an offence which carries a maximum penalty of death, imprisonment for a period exceeding 12 months, or a fine exceeding A\$51,000.

e. Provision of existing evidentiary material (i.e. material lawfully obtained in an Australian investigation):

- identify what evidentiary material is sought, and what enforcement agency holds the material
- indicate whether a proceeding in relation to a serious offence against the laws of the requesting country (for which the penalty is death or imprisonment for a period exceeding 12 months) has commenced (e.g. has the suspect been indicted?), and
- explain how the evidence will be relevant to the investigation or prosecution.

Note: The Australian Central Authority encourages foreign law enforcement agencies to discuss requests of this nature with the Australian Federal Police in advance of making a formal request to ensure the material is available.

f. Transfer of Federal or State prisoners to give evidence in person in a foreign proceeding or investigation:

- indicate whether a proceeding in relation to a criminal matter has commenced (for example, has the suspect been indicted?) or whether the matter is still at the investigation stage
- state the grounds on which it is believed the prisoner is capable of providing evidence relevant to the proceeding or assistance relevant to the investigation
- if known, indicate whether the prisoner consents to giving evidence in the proceeding or assistance in the investigation, and
- include undertakings pertaining to the safe passage of the prisoner (contact the Australian Central Authority to discuss the appropriate undertakings).

Note: Non-prisoners can voluntarily travel to a foreign country for the purpose of providing evidence in a foreign investigation or proceeding, and a mutual assistance request may not necessarily be required.

Step 8: Highlight any specific confidentiality requirements

In Australia, the existence and contents of foreign requests are treated confidentially except to the extent necessary to execute the request. If the matter is particularly sensitive, the request should expressly set out the need and reasons for confidentiality (for example, if the suspect has no knowledge of the investigation relating to the request).

Step 9: Identify any urgency in the execution of the request

The request should expressly identify any time period within which the assistance is sought, and the reason for this time constraint (such as a pending court proceeding or a time-

sensitive investigation). If there is a statutory limitation period on the prosecution of the offence, please provide the relevant dates.

Step 10: Provide a list of relevant contact points in your country

The request should include contact details for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Australian Central Authority may wish to seek clarification or obtain additional information. The Australian Central Authority prefers to communicate by email to progress matters efficiently.

Step 11: Translate the request

Australia requires requests to be provided in writing in English.

Step 12: Limitations on use of evidence provided

Any evidential material provided by Australia in response to a request may only be used for the specific purpose stated in the request. If the requesting country wishes to use the evidence for any other purpose(s), consent must be sought from the Australian Central Authority.

IV. OTHER USEFUL REFERENCES

The Australian Central Authority encourages requesting countries to refer to:

- the Australian Central Authority's website, (<http://www.ag.gov.au/Internationalrelations/Internationalcrimecooperationarrangements/CentralAuthority/Pages/default.aspx>)
- the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>).

Please forward any mutual assistance enquiries to the Australian Central Authority at mutual.assistance@ag.gov.au.

BRUNEI DARUSSALAM

I. INTRODUCTION

The legal framework for mutual legal assistance (MLA) in Brunei Darussalam is primarily provided for in the *Mutual Assistance in Criminal Matters Order 2005* (MACMO 2005). Brunei Darussalam is also a party to the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States as well as other international conventions providing for MLA, including UNTOC and UNCAC.

The Attorney General is the Central Authority of Brunei Darussalam for MLA matters. The Attorney General's duties as the Central Authority are executed by officers in the MLA and Extradition Secretariat. Requests are to be made directly to the Attorney General, and only the Attorney General is authorised to make MLA requests to foreign countries on behalf of competent authorities in Brunei Darussalam.

Under the MACMO 2005, Brunei can make and comply with requests for assistance for:

- obtaining of evidence
- making of arrangements for persons to give evidence or assist in investigations
- confiscation of property
- service of documents
- identification and location of persons
- search and seizure
- provision of documents, and
- any other types of assistance not contrary to our domestic laws.

Under the *Criminal Asset Recovery Order 2012* (CARO 2012), Brunei Darussalam may render assistance to requesting countries to obtain the issue of a restraining order against property, as well as the enforcement of foreign restraining, confiscation and benefit recovery orders against property located in Brunei Darussalam. The CARO 2012 also enables the Central Authority to assist in locating property believed to be proceeds of a serious crime.

(i) Requests Made Under a Treaty/Convention

Assistance can be rendered to any foreign country, not necessarily a treaty partner or a party to a convention that Brunei is also a party to. However, where such requests are made pursuant to a bilateral or multilateral MLA treaty, then such assistance rendered is subject to the terms of such treaty.

Brunei Darussalam has ratified and is a party to the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States, the United Nations Convention against

Transnational Organised Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

(ii) Requests Made in the Absence of a Treaty/Convention

Where Brunei does not have a treaty/convention with the requesting country, then Brunei Darussalam can render assistance on the basis of reciprocity (see wording for reciprocity undertaking under Step 9 below).

(iii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

Assistance requested via letters rogatory is not prohibited under our domestic laws.

(iv) Dual Criminality Requirements

There is no requirement for dual criminality under MACMO 2005.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Attorney General of
Brunei Darussalam

The Law Building

Jalan Raja Isteri Pengiran Anak Saleha

Bandar Seri Begawan BA1910

Brunei Darussalam

Facsimile: +67 3223 1221

Email: mla@agc.gov.bn

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM BRUNEI DARUSSALAM

In general, when seeking mutual legal assistance from Brunei Darussalam, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that authorities contact the Central Authority of Brunei Darussalam before making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance sought is available under the laws of Brunei Darussalam and the request will meet the legal requirements of Brunei Darussalam.

The MLA Secretariat encourages informal consultations prior to making formal MLA requests, such as providing a draft statement of facts of the offence alleged to be committed, so that the Secretariat can evaluate and advise whether the request can be complied with and executed or otherwise. Informal consultations can be made via email to the Secretariat's email address – mla@agc.gov.bn.

Requesting countries are also encouraged to peruse MACMO 2005 which is available on the Attorney General's Chambers website (www.agc.gov.bn). Also available on the website are sample requests for certain types of assistance which may serve as guidelines illustrating what information the Central Authority of Brunei Darussalam requires when considering an MLA request.

In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in Brunei Darussalam, a requesting state is urged to consider the need for the evidence in question. If the offence being investigated is minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention or other avenue of cooperation being referred to in seeking the assistance from Brunei Darussalam (such as the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States, UNCAC, UNTOC or OECD Anti-Bribery Convention).

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following.

- a. **If witness statement/testimony** is being sought, the relevance of the witness in the matter being investigated and/or prosecuted.

- b. **If documentary evidence** is needed, the connection between such documentary evidence and the criminal matter being investigated/prosecuted and how such evidence will assist in the investigations and/or prosecution.
- c. **If the execution of a search warrant** is sought, reasonable grounds for believing that the article or thing to which the MLA request relates is located in Brunei Darussalam.
- d. **If seizure/confiscation of criminal proceeds** is requested, confirmation that criminal investigations have begun in the requesting country, that the person against whom the order is sought has been convicted, and that there are reasonable grounds to believe that the property is located in Brunei Darussalam.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties. Please also attach to the MLA request an extract of the relevant law providing for the criminalisation of the offence/s and the penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from Brunei Darussalam, and any particular requirements that must be met, for example, certification/authentication needs.

In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:**
 - Include the names, addresses and telephone numbers of such witnesses.

- Attach a list of the questions to be posed to the witnesses.
- b. **Documentary evidence:**
- Specify the document/s to be procured and the location of such document/s, if known.
 - Include any other details that will assist in identifying relevant documents. If, for example, financial statements are being sought, please specify the time period the documents should cover.
- c. **Search and Seizure:**
- Specify what article/thing is to be sought and seized.
 - Include the location and description of the article/thing, as well as the details of the person from whom such article/thing is to be searched or seized i.e. name, address and telephone number.
 - State how the article/thing sought is connected with the criminal matter to which the MLA request relates.
- d. **Enforcing Order to Seize Criminal Proceeds:**
- Attach a copy of the seizure order to the MLA request.
 - Include a statement confirming that such order is currently in force in the foreign country.
- e. **Enforcing Order to Confiscate Criminal Proceeds:**
- Attach a copy of the confiscation order to the MLA request
 - Include a statement confirming that such order is currently in force in the foreign country and is not subject to appeal.

Step 8: Highlight any specific confidentiality requirements

In Brunei Darussalam, the existence and nature of MLA requests are subject to confidentiality. However, in some cases a certain degree of disclosure may be necessary, particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated in the request.

Step 9: Reciprocity undertaking

Where the requesting country is not a country with which Brunei Darussalam has a treaty, or is not a party to a relevant international convention, such country shall make a reciprocity undertaking to this effect:

“The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.”

Step 10: Mandatory assurances and undertakings

Brunei Darussalam will also require the following assurances and undertakings from the requesting country when any MLA request is made to the Central Authority:

- that the MLA request does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam

- that the MLA request is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's colour, race, ethnic origin, sex, religion, nationality or political opinions
- that unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to the MLA request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made, and
- should the Attorney General of Brunei Darussalam require the return of any evidence obtained pursuant to the MLA request at the conclusion of the criminal proceedings and of all consequential appeals, the evidence will be returned to the Attorney General of Brunei Darussalam.

Step 11: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). Indicate precise dates if you have specific limitation periods.

Step 12: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities dealing with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 13: Translate the request

Brunei Darussalam requires incoming requests for mutual legal assistance to be provided, in writing, in the English language.

Step 14: Limitations on use of evidence provided

Any evidence provided by Brunei Darussalam in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for any other purpose, you must first obtain the consent of the Central Authority of Brunei Darussalam.

Step 15: Admissibility of foreign evidence obtained through MLA

Subject to the law relating to the admissibility of evidence, any document or record that is obtained, provided or produced pursuant to a request made under MACMO 2005 which is duly authenticated is admissible in evidence in any criminal proceedings.

A document or record is duly authenticated if it is signed or certified by a Judge, Magistrate or other judicial officer in or of the foreign country.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the website of the Attorney General's Chambers, Brunei Darussalam, which can be found at www.agc.gov.bn and navigate to the "MLA Secretariat" Tab for additional guidance on making mutual legal assistance requests to Brunei Darussalam and to download the necessary forms for initiating an MLA request to Brunei Darussalam.

CANADA

I. INTRODUCTION

12] A foreign state may request assistance from Canada in the gathering of evidence or the enforcement of some criminal orders (seizure orders, confiscation orders, fines) through three separate routes: (i) treaty and convention requests, (ii) letters rogatory (court issued non-treaty letter of request) and (iii) non-treaty requests. In rare circumstances, Canada may enter into an administrative arrangement with a non-treaty country to give effect to an individual request for assistance, for a time-limited period. The widest assistance can be provided for treaty or convention requests. More limited assistance is available for letters rogatory and non-treaty requests.

(i) Requests Made Under a Treaty/Convention

Requests made under a treaty or convention, and which seek court-ordered assistance, are executed under Canada's *Mutual Legal Assistance in Criminal Matters Act*. The Act gives Canadian courts the power to issue orders to gather evidence for a requesting state, including by search warrant; to locate a person who is suspected of having committed an offence in the requesting state; and to enforce orders of seizure and confiscation. The Act permits assistance to be rendered at any stage of a criminal matter, from investigation to appeal.

In most cases, before issuing a court order to give effect to a request for assistance, the Canadian court must be satisfied, on reasonable grounds, that an offence has been committed and that the evidence sought from Canada will be found in Canada. Therefore, when seeking assistance that requires the issuance of compulsory measures (for example production orders, search warrants, orders compelling statements/testimony), a requesting country must provide Canada with sufficient and clear information to establish a connection between the foreign investigation/prosecution and the evidence or assistance requested.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

Where there is no treaty/convention in place between Canada and the requesting state, it is still possible for the requesting state to seek some court-ordered assistance from Canada. Under the *Canada Evidence Act*, orders compelling witnesses to give evidence (including by video-link) and to produce records can be issued at the request of a foreign state. However, this mechanism requires that two essential conditions be met: (1) that there be a criminal matter pending before the foreign judge, court or tribunal; and (2) that the foreign judicial body wishes to obtain the evidence sought (that is, the request must be made by the foreign judge, court or tribunal). It is important that this be clearly stated in the letters rogatory request. In addition, the request should include information that indicates how the evidence sought is relevant to the foreign proceedings.

(iii) Requests Made in the Absence of a Treaty/Convention

To the extent possible, Canada will also execute non-treaty requests for assistance, as well as those that do not satisfy the requirements of the *Canada Evidence Act* (that is, letters rogatory requests). However, the assistance that is generally available in response to a non-treaty letter of request is voluntary in nature (for example, taking voluntary statements from persons; obtaining publicly available documents; or serving documents).

(iv) Dual Criminality Requirements

As a general rule, dual criminality is not required when seeking mutual assistance from Canada, unless the treaty with the requesting state requires it. Note, however, that with respect to requests to enforce seizure and forfeiture orders, dual criminality is always required under Canadian law.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

In Canada, all requests for mutual legal assistance in criminal matters are submitted to the Canadian Central Authority, the International Assistance Group at the Department of Justice. The contact information is provided below:

**International Assistance Group
Litigation Branch, Criminal Law Division
Department of Justice Canada
284 Wellington Street, 2nd Floor
Ottawa, ON K1A 0H8
Telephone: +613 957 4832
After hours: +613 851 7891
Facsimile: +613 957 8412
E-mail: cdncentralauthority@justice.gc.ca**

In addition, Canada has a liaison official in Brussels to facilitate the processing of mutual legal assistance requests from countries in Europe, and a liaison official in Paris to assist in the processing of requests to and from France. Their contact information is as follows:

**Counsellor of International Criminal Operations Canadian Mission to the European Union Avenue de Tervuren 2 1040
Brussels, Belgium
Telephone: + 32 2 741 07 71
Facsimile: + 32 2 741 06 29**

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM CANADA

In general, when seeking mutual legal assistance from Canada, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Canadian Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance that you seek is available under Canadian law and the request will meet Canada's legal requirements.

In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to Canadian law enforcement and prosecuting authorities, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required under Canadian law to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from Canada.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation/prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

- a. If **witness statement/testimony** is being sought, include:
 - the name, nationality and location of the witness(es)
 - their status in the case (suspect/accused or simply a witness)
 - a clear explanation of how the information sought from the witness is relevant to the case, and
 - if known, an indication of whether the witness is likely to cooperate in providing the statement/testimony.
- b. If **documentary evidence** is needed, set out the nature of the documentary evidence, the location of the evidence, and the reasons why you believe the evidence will be relevant to your case (for example, where bank/financial records are sought, identify the nature of the records, the name and location of the financial institution where the records are believed to be located, the account number pertaining to the records, and why you believe the records will assist in advancing the case).
- c. If the **execution of a search warrant** is sought, explain the reason why this measure is required and how the items to be seized will be relevant to your case.

- d. If **seizure/confiscation of criminal proceeds** is requested, set out your basis to believe that the property constitutes the proceeds of crime. In other words, establish a clear connection between your criminal case and the alleged proceeds located in Canada.

Note: It is not sufficient to seek the restraint of all accounts related to a person under investigation or prosecution. A clear link between the Canadian account/assets and the alleged crime must be demonstrated.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from Canada and any particular requirements that must be met (for example, certification/authentication needs). In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** Clearly describe the subject matter of the testimony or statement sought (if possible, include a list of questions to be posed). If statements are requested, include instructions as to whether these are to be sworn/affirmed. In addition, indicate whether your investigating/prosecuting officials wish to attend in Canada to participate in the interviews, and why this is necessary.
- b. **Documentary evidence:** Identify the specific documents required (for example, if bank records are sought, do you require signature cards, account opening statements, account ledger cards, correspondence to and from the account holder, etc).
- c. **Search and seizure:** Identify the precise location in Canada to be searched and identify the items to be seized. Note that this assistance is only available to states making requests pursuant to a treaty or convention.
- d. **Enforcing order to seize criminal proceeds:** Canada may not seize criminal proceeds at the request of a foreign state unless the requesting state seeks this assistance under a treaty or convention and provides Canada with a seizure order issued by the foreign criminal court. The foreign seizure order could then be enforced under Canadian law. Note, however, that the person whose property is to be seized must be charged in the requesting state. Note also that double criminality is a requirement when asking Canada to enforce a foreign seizure order. It is recommended that the requesting state consult with the Canadian Central Authority before seeking assistance to enforce a seizure order to ensure that the request will meet Canadian requirements.
- e. **Enforcing order to confiscate criminal proceeds:** Canada may not confiscate criminal proceeds at the request of a foreign state unless the requesting state makes its request under a treaty or convention and provides Canada with a confiscation order issued by the foreign criminal court. The foreign confiscation order could then be enforced under Canadian law. Note, however, that the person, whose property is to be confiscated, must be convicted in

the requesting state. Note also that double criminality is a requirement when asking Canada to enforce a foreign confiscation order. It is recommended that the requesting state consult with the Canadian Central Authority before seeking assistance to enforce a confiscation order to ensure the request will meet Canadian legal requirements.

Step 8: Highlight any specific confidentiality requirements

In Canada, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (for example, pending court proceeding/time-sensitive investigation). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the Canadian Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

Canada requires incoming requests for mutual legal assistance to be provided, in writing, in one of Canada's two official languages, French or English.

Step 12: Limitations on use of evidence provided

Note that any evidence which Canada provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek Canada's consent to the further use.

Step 13: Advise of any media attention

Advise Canada of any media attention that the case has received, or whether the case is otherwise high-profile in your country.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Canada.

CHILE

I. INTRODUCTION

Chile accepts all applications or requests for international assistance in criminal matters (MLA) from other states, whether or not they are linked by a bilateral or multilateral treaty in relation to these matters.

The Chilean Central Authority is the Department of Legal Affairs in the Ministry of Foreign Affairs, and the executing authority is the Public Prosecutor's Office.

According to Chilean legislation, requests for international assistance in criminal matters which involve the implementation of acts which affect or restrict rights guaranteed by the Constitution of the Republic, must be approved by the Courts of Justice and the act requested must be substantiated (for example, entering and searching a home, wire-tapping, lifting banking secrecy, etc.). Other requests are directly executed by the Public Prosecutor's Office itself or by other entities related to criminal prosecution.

Requests for international criminal assistance (MLA) must be submitted in writing through diplomatic channels to the Chilean Central Authority. Informal channels of consultation with the Public Prosecutor's Office are also available.

(i) Requests Made Under a Treaty/Convention

Requests for international criminal assistance which are made under a treaty or convention shall be governed by specific regulations contained in these international instruments and in accordance with Chilean law, particularly with regard to the need to obtain prior judicial authorisation of requests that affect or restrict rights.

(ii) Requests Made in the Absence of a Treaty/Convention

Chile does not require a specific treaty or convention as regards this subject matter for the execution of a request for international criminal assistance. Therefore, it is possible to assist other states requiring international criminal assistance in accordance with the general regulations of international law and the requirements of domestic law.

By these means it is possible, among other actions, to assist in matters such as locating people or assets, issuing notices or summons, taking depositions from defendants, victims, witnesses or experts, undertaking searches, copying or transmitting private or public documents, collecting evidence, conducting

international videoconferences, seizing goods, lifting banking secrecy, undertaking wire-tapping, etc.

(iii) Dual Criminality Requirements

There is no dual criminality requirement for requests for international criminal assistance to Chile. Thus, it is possible to execute requests in relation to acts deemed to be criminal offences in a foreign state and which do not constitute a crime in Chile, but are at least contrary to the common Chilean legislation.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Chilean Central Authority can be contacted as follows:

Mr Director
Department of Legal Affairs
Ministry of Foreign Affairs
Teatinos # 180, Floor 16
Santiago CHILE
Telephone: +56 2 2827 4239
+56 2 2827 4252
Facsimile: +56 2 2380 1654
E-mail: jurrutia@minrel.gov.cl

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM CHILE

In general, when international criminal assistance is requested from Chile, the following steps must be followed:

Step 1: Consult with the prosecutor's office before submitting the request

The Public Prosecutor's Office is the enforcement authority of requests for international assistance in criminal matters and has extensive experience and knowledge both in this subject matter and extraditions. Consulting this institution beforehand is suggested regarding requirements, availability of resources, forms, deadlines and procedural rules in general, especially in more complex cases.

This mechanism of prior consultation is informal and facilitates the receipt and execution of requests for international criminal assistance, reducing turnaround times. Even though Spanish is the official language of Chile, for this consultation mechanism the use of English and French language is accepted.

Consultations must be addressed to:

Mr Director
International Cooperation and Extradition Unit
Public Prosecutor's Office
Av. General Mackenna 1369 – 2nd floor
Santiago CHILE
Telephone: +56 2 296559576
Facsimile: +56 2 296559596
E-mail: uciex@minpublico.cl

This prior consultation mechanism does not eliminate the requirement for states to develop requests for international criminal assistance formally and in writing through diplomatic channels to the Chilean Central Authority for their compliance.

Step 2: Provide supporting documentation for requests for international criminal assistance affecting or restricting rights

Requests for international criminal assistance affecting or restricting people's rights in Chile, which are guaranteed by the State Constitution, require the Public Prosecutor's Office to obtain authorisation from the Courts of Justice for execution. In order to obtain authorisation, specific supporting documentation is required. Requests must be accompanied by documents which support the need to implement the measures and thereby convince the respective Chilean judges.

Step 3: Identify the authority conducting the investigation/prosecution

It is necessary to indicate clearly which authority in your country is requesting international criminal assistance.

Step 4: Indicate the mechanism used to seek assistance

The request must clearly indicate the international instrument (treaty or convention) under which the implementation of a request is being sought. If this does not exist, reciprocity must be offered formally for equivalent cases.

Step 5: Summarise the case

The request must accurately describe the relevant facts under investigation, indicate how a person under investigation has participated and identify this person as accurately as possible.

Step 6: Set out the applicable legal provisions

The request must contain a full copy of the legislation which categorises the offence under investigation and its ways of commission, establishment of penalties, terms and conditions of prescription, as well as criminal involvement.

Step 7: Identify the assistance being sought

The request must specify exactly the nature of assistance being sought and how the assistance can help to clarify the facts investigated by the authorities of the requesting state.

a. Taking deposition:

- Provide identification data of the person whose testimony is requested including: full name, gender, identity document, nationality, Chilean domicile and any other information that helps to identify the person, such as the date and place of birth, a photograph, profession or job, etc.
- If the deposition is sought of a defendant in relation to the crime under investigation, the rights of that person in that capacity and the formalities required in order to exercise them must be indicated. Keep in mind that in Chile the accused party has the right to remain silent and to have a personal lawyer.
- Specify whether a statement is required as a witness or as an expert.
- Provide a list of specific questions on which the interrogation will be based on and that are relevant to the crime under investigation.

b. Taking deposition through videoconference:

- In addition to the above, the time difference with Chile must be taken into account and the necessary legal formalities for the validity of the act must be informed, such as having the presence of a consul of the requesting state or other public minister figure.

c. Documentary evidence:

- Specify the requested document and its legal nature.
- Indicate if the original document or a certified or authorised copy, by means of any special formality, is required.
- Indicate where it might be located.

d. Confiscation or Seizure:

- Include detailed information about the goods to be confiscated.
- Specify where they are located.
- If bank accounts are intended to be confiscated, clearly indicate the bank or financial institution holding the account, the number and type of account, the name of the owner, the amount of money and the purpose of the confiscation or seizure.

Step 8: Highlight any specific confidentiality requirements

Chile grants confidentiality to requests for international criminal assistance from other countries, but according to the internal regulations, the participants of criminal proceedings may access that information, including the person that is accused of committing the crime.

If the requesting state wants to apply measures that require a special level of confidentiality, this petition must be clearly indicated and substantiated. This is particularly necessary for measures that affects or restricts rights and that must be executed without knowledge of the accused party.

Step 9: Identify any urgency in the execution of the request

Chilean authorities commit to execute the requests for international criminal assistance in the shortest period of time possible, where possible, according to their human and material resources. If the requesting state wants the execution to occur in a very short period of time or before a certain date, this petition must be indicated and substantiated with precision, especially in cases considered particularly relevant or sensitive.

Step 10: Provide a list of relevant contact points in your country

The request for international criminal assistance must contain the identification of relevant contact points, specifying how to establish effective communication (email, telephone, fax, language, time difference), in order to establish a direct and informed communication with an authorised person, to answer questions, clarify a request or provide execution modalities.

Step 11: Translate the request

Spanish is the only official language in Chile; therefore, all documents must be written or translated into this language.

IV. OTHER USEFUL REFERENCES

We recommend visiting the following web sites:

- Public Prosecutor's Office Website
www.fiscaliadechile.cl
- Ministry of Foreign Affairs Website
<http://chileabroad.gov.cl/>
- The UN Office on Drugs and Crime's MLA Writer Tool
<http://www.unodc.org/mla/index.html>

CHINA

I. INTRODUCTION

Requests Made Under a Treaty/Convention submitted by APEC economies are acceptable where there are bilateral mutual legal assistance treaties in existence or/and a UN convention to which both China and the requesting state are members.

Letters Rogatory Requests (Court-Issued Non-Treaty Requests) submitted by APEC economies are generally unacceptable unless they have been submitted and granted via China's diplomatic channel.

Non-Treaty Letters of Request must similarly be submitted and granted via the diplomatic channel. That is, it must be submitted via the Department of Treaty and Law, the Ministry of Foreign Affairs of P.R. China.

Dual Criminality is generally required.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Ministry of Justice of China has been designated as the Central Authority (CNCA) for China for all of MLATs signed between China and its treaty partners. Both China's Ministry of Justice and Ministry of Public Security have been designated as the Central Authorities for China for the UNTOC, whereas the Supreme People's Procuratorate is the CNCA for UNCAC.

Treaty /convention requests may be submitted to the following address:

Director General Guo Jianan
Department of Judicial Assistance & Foreign Affairs
Ministry of Justice
No.6 Chaoyangmen Nandajie
BEIJING 100020
P.R. CHINA
Telephone: +8610 65153069
Facsimile: +8610 65153019
Email: cnca@moj.gov.cn

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM CHINA

In general, when seeking mutual legal assistance from China, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting state directly contact the Central Authority in advance. That is called the pre-viewing procedure, which may enable the requesting state's request to be granted promptly. You may provide your draft version of the request to CNCA by email. The CNCA may pre-review it and provide feedback, correction and comments. After receiving the CNCA's feedback, you may finalise your request letter and arrange for translation and finally submit the request for mutual legal assistance to CNCA for reviewing, granting and implementing, particularly in the most serious cases, to ensure the assistance sought is available under the laws of China and meets the legal requirements of China. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the geographic landscape of China and the limited resources available for law enforcement and judicial authorities in China, you are urged to consider the need for the assistance in question. Please pursue through police-to-police or other law enforcement cooperation channel, if the assistance sought is purely for the exchange of information for investigation. The formal

assistance channel, that is MLAT, is for seeking assistance for public prosecution and court hearing. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority unless conditions to executing your request are set forth by common agreement of the Central Authority for the two sides.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the mutual legal assistance treaty, Conventions (UNCAC, UNTOC, others) or other avenue of cooperation being referred to in seeking the assistance from China, or directly contact with the CNCA for that.

Step 4: Identify the authority conducting the investigation/prosecution

All general crimes will be investigated by the Chinese police force across China, led by the Ministry of Public Security. All corruption-related crimes are investigated by the AntiCorruption Bureau within the public prosecution authorities across China, led by the Supreme People's Procuratorate. Crimes relating to custom will be overseen by the AntiSmuggling Bureau of the General Administration of Custom of China and its agencies.

All public prosecution against crimes is the jurisdiction of public prosecution authorities across China, led by the Supreme People's Procuratorate.

Step 5: Summarise the case

- a. If **witness statement/testimony** is being sought, please provide the witness's photo (passport or ID) and telephone number, the question list and the linkage between the case and the witness.

- b. If **documentary evidence** is needed, please advise the whereabouts of the documents and why you think there is linkage between the case and the documentation sought.
- c. If the **execution of a search warrant** is sought, provide the search warrant issued by the court or other judicial authority of the requesting state, which specifically refers to the house, person or items.
- d. If **seizure/confiscation of criminal proceeds** is requested, you may submit your request followed by seizure/confiscation order, which may specifically refer to items, assets and proceeds of crime. An official statement may be needed which is written by the prosecutor or judge in charge, in which you may describe how and when the case will be prosecuted and/or sentenced, how the evidential material is to be collected, what proceeding is to be followed, and what and how the verdict will be made, etc.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions relating to the investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from China, and any particular requirements that must be met (for example, certification/authentication needs).

In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** The requesting state should provide detailed information about the witness, a question list and the linkage between the case and the witness.

- b. **Documentary evidence:** You should advise the whereabouts of the documents and why you think there is linkage between the case and the documentation sought.
- c. **Search and seizure:** The requesting state should provide the search warrant or the seizure order issued by the court or other judicial authority of the requesting state, and detailed information about the place to be searched and the property to be seized.
- d. **Enforcing order to seize criminal proceeds:** The requesting state should provide the seizure order and the detailed information of the property.
- e. **Enforcing order to confiscate criminal proceeds:** The requesting state should provide the confiscation order and the detailed information of the property.

Step 8: Highlight any specific confidentiality requirements

In China, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (for example, pending court proceeding/time-sensitive investigation). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the CNCA wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

China requires incoming requests for mutual legal assistance to be provided, in writing, in its official language, namely Chinese.

Step 12: Limitations on use of evidence provided

Note that any evidence which China provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek China's consent to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to China.

HONG KONG, CHINA

I. INTRODUCTION

The principal laws governing mutual legal assistance matters in Hong Kong are the *Mutual Legal Assistance in Criminal Matters Ordinance* (MLAO) (Cap. 525) and the *Evidence Ordinance* (EO) (Cap. 8).

(i) Requests Made Under a Treaty/Convention

MLAO came into force in September 1997. It regulates mutual legal assistance in criminal matters between Hong Kong and places outside Hong Kong. It is also used to give effect to arrangements on mutual legal assistance to which Hong Kong is a party.

With the authorization of the Central People's Government of the People's Republic of China (PRC), as at 1 November 2013, Hong Kong has negotiated and signed 29 bilateral agreements on mutual legal assistance with other countries. In addition, 14 multilateral conventions targeting specified heinous crimes have been signed by Hong Kong, including UNCAC.

MLAO provides a wide range of assistance: taking of evidence (including by way of live television link) by a magistrate; search and seizure of things; production of materials upon an order of the court; transfer on a voluntary basis of persons (including persons in custody) in and out of Hong Kong to assist in a criminal matter; obtaining restraint of property pending issue and enforcement of confiscation or forfeiture orders; and service of legal process.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

A court of a country or territory outside Hong Kong may make a request to a court of Hong Kong to seek assistance in obtaining examination of witnesses, and production of documents, for the purposes of:

- criminal proceedings which have been instituted before the requesting court, or
- on the ground that proceedings before the requesting court are likely to proceed if the evidence is obtained.

(iii) Requests Made in the Absence of a Treaty/Convention

Even in the absence of a bilateral agreement or applicable multilateral convention, MLAO permits provision of assistance on the condition that the requesting country gives an undertaking to render similar assistance to Hong Kong in the future.

(iv) Dual Criminality

Assistance requiring the use of coercive powers (compulsory measures) under the MLAO requires dual criminality. Assistance may be rendered in the absence of dual criminality for assistance which does not require the use of coercive powers (non-compulsory measures), such as taking voluntary statements and obtaining public records.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

All requests to Hong Kong for legal assistance under MLAO should be addressed to the Secretary for Justice, who is the head of the Department of Justice. It is not necessary for requests to be sent through diplomatic or consular channels. Requests may be sent directly to:

Secretary for Justice
The Mutual Legal Assistance Unit
Department of Justice
47/F, High Block
Queensway Government Offices
66 Queensway
Hong Kong
Telephone: (852) 2867 4343
Facsimile: (852) 2523 7959

Requests made under the Evidence Ordinance shall be addressed to the “Court of First Instance” and be sent directly to:

Chief Secretary for Administration’s Office
25/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong
Facsimile: (852) 2882 0099

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM HONG KONG

In general, when seeking mutual legal assistance from Hong Kong, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact Hong Kong’s Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance which you seek is available under the laws of Hong Kong, and the request will meet the legal requirements of Hong Kong.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the crime being investigated or prosecuted. Given the limited resources available to law enforcement and prosecuting authorities in Hong Kong, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the bilateral agreement or the convention (UNCAC, UNTOC, other) or other avenue of cooperation being referred to in seeking the assistance from Hong Kong.

Step 4: Identify the authority conducting the investigation / prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. The summary of facts should clearly establish the connection between the foreign investigation and the assistance sought from Hong Kong.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant offence and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from Hong Kong, and any particular requirements that must be met, for example, certification/authentication needs.

In addition, depending on the nature of the assistance sought, the following information must be included:

a. Witness statements/testimony:

- provide the personal details of the witness (including name, address, nationality, identification document number, etc)
- state the status of the witness, i.e. whether a defendant or suspect, or just a witness

- state the names of the persons who you would like to be present at the examination of the witness
- state whether a written deposition of evidence has to be obtained before a magistrate, or whether a voluntary statement would suffice
- describe clearly the matters on which the witness is to be examined and, if possible, provide a list of specific questions to be asked of the witness
- describe how the testimony of the witness is relevant to the criminal matter, and
- indicate whether the examination will be conducted by live television link.

b. Documentary evidence:

- describe the documents which are relevant to the criminal matter
- state the person who is likely to be in, or to come into, possession or control of such material
- state grounds for believing that the evidence is likely to be of substantial value to the criminal matter, and
- provide reasons for any request for production of originals.

c. Search and seizure:

- provide the full details of the particular person, premises or land to be searched
- describe the items or classes of items which are to be searched for and seized
- include reasons for believing the items to be searched for and seized are on (or under the control of) the person, in the premises, or upon the land identified, and
- describe how and why the items to be searched for and seized are relevant to the criminal matter.

d. Restraining criminal proceeds:

- identify the criminal proceeds that are to be restrained and their location
- state whether a proceeding to restrain the criminal proceeds is to be instituted, or has been instituted and has not been concluded
- state the reasonable grounds for believing that the proceeding that has been instituted or is to be instituted may result in the making of a restraining order on the relevant criminal proceeds in Hong Kong
- state whether an order restraining the criminal proceeds has been granted and the order remains in effect, and
- state whether the purpose of the restraining order is to:
 - i. recover payments or other rewards received in connection with the relevant offences, or their value
 - ii. recover property derived or realised, directly or indirectly, from payments or other rewards received in connection with the relevant offences or the value of such property
 - iii. recover property used or intended to be used in connection with the relevant offences, or the value of such property, or
 - iv. deprive a person of a pecuniary advantage obtained in connection with the relevant offences.

e. Enforcing Order to Confiscate Criminal Proceeds:

- identify the criminal proceeds that are to be confiscated and their location
- confirm whether the confiscation order is in force and is not subject to appeal
- provide a certified copy of the confiscation order

- state that all, or a certain amount of the sum payable under the confiscation order, remains unpaid in the requesting jurisdiction, or that other property recoverable under the confiscation order remains unrecovered in the requesting jurisdiction
- set out the persons who have been notified of the proceedings in accordance with the law of the requesting jurisdiction, and
- state whether the purpose of the confiscation order is to:
 - i. recover payments or other rewards received in connection with the relevant offences or their value
 - ii. recover property derived or realised, directly or indirectly, from payments or other rewards received in connection with the relevant offences, or the value of such property
 - iii. recover property used or intended to be used in connection with the relevant offences, or the value of such property, or
 - iv. deprive a person of a pecuniary advantage obtained in connection with the relevant offences.

Step 8: Highlight any specific confidentiality requirements

In Hong Kong, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosures may be necessary, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints, for example, pending court proceedings or a time-sensitive investigation. If there are relevant limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case, including the name and, where applicable, the contact information of your Central Authority. The Mutual Legal Assistance Unit of Hong Kong may wish to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

Hong Kong requires incoming requests for mutual legal assistance to be provided, in writing, in one of its official languages, namely Chinese and English.

Step 12: Limitations on use of evidence provided

Note that any evidence which Hong Kong provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first obtain Hong Kong's consent to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Hong Kong.

INDONESIA

I. INTRODUCTION

Indonesia is committed to cooperating widely with foreign jurisdictions in combating crime by providing mutual legal assistance (MLA) in criminal matters under *Indonesian Law Number 1 Year 2006 on Mutual Legal Assistance* (Law 1/2006).

The Minister of Law and Human Rights is the official authority, or the Central Authority of the Government of the Republic of Indonesia.

30]

An appeal for assistance must be related to an investigation, prosecution or examination before a court in accordance with the state law provision and required regulations of the requesting state.

Mutual legal assistance may be provided based on a treaty, but in the absence of treaty the assistance may be provided based on good relationship under the reciprocity principles (with other forms of statement of the reciprocity).

Dual criminality is mandatory for extradition. The requirement is conduct-based, and this conduct must be summarised in request documents. Indonesia has the discretion to refuse a request under Article 7 (a) Law 1/2006 on MLA.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Based on article 9 Law 1/2006 on MLA, acting for Central Authority is the Minister of Law and Human Rights. Documents and letters of requests to Indonesia for MLA under the MLA law may be submitted to:

H.E. Minister for Law and Human Rights
Directorate General of Legal
Administrative Affairs
Jl. H.R. Rasuna Said Kav. 6-7
Jakarta 12940 Indonesia
Telephone: +62 21 520 23 91
Facsimile: +62 21 526 10 82

The Technical Unit under Directorate General for Legal Administrative Affairs deals with legal assessment, drafting, and communication:

Directorate of International Law and
Central Authority
Jl. H.R. Rasuna Said Kav. 6-7 AHU
Building, 7th Floor
Jakarta 12940 Indonesia
Telephone: +62 21 5221619
Facsimile: +62 21 52963996
Email: direktorathi@gmail.com

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THE REPUBLIC OF INDONESIA

Step 1: Consult with the central authority before submitting the request

The Central Authority (Minister of Law and Human Rights) may request additional information if the request does not give sufficient information to enable the request to be approved. Contact officers will be available to support the assessment process.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in the Republic of Indonesia, requesting states are urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from the Republic of Indonesia.

Step 4: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/or prosecuting authority.

The Investigator and Prosecutor who deal with the criminal investigation or prosecution in Indonesia are:

- Indonesian National Police (INP) attn. International Relation Division
- Attorney General Office of the Republic of Indonesia, Legal Bureau, and
- Corruption Eradication Commission (KPK).

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Identify what assistance is being sought.

Scope of assistance:

- identifying and locating persons
- obtaining statements or other forms thereof
- providing documents or other forms thereof
- making arrangements for persons to provide statement or to assist in the investigation
- delivering letters
- executing the inquiry of search warrant and seizure
- the forfeiture of proceeds of crime
- the recovery of pecuniary penalties in respect of the crime
- the restraining of dealings in property, the freezing of property that may be recovered or confiscated, or that may be needed to satisfy pecuniary penalties imposed, in respect to the crime

- locating property that may be recovered, or may be needed to satisfy pecuniary penalties imposed, in respect to the crime, and/or
- other assistance in accordance with Procedural Law in Indonesia.

Step 8: Highlight any specific confidentiality requirements

General requirements:

a. Article 28 Republic of Indonesia MLA Law Number 1 of 2006

- (1) The Request for Assistance must include the following:
- a. the purpose of such request and a description of requested assistance
 - b. the name of Agency and Official conducting the investigation, prosecution or examination before the court related with said request
 - c. description of the crime, case settlement phase, statutory provisions, content of articles and sanctions imposed
 - d. description of the act or condition being alleged as criminal, except in case of the request for Assistance for conducting service of process
 - e. relevant judgment and information that such judgment has permanent legal force in the event of the request for assistance to execute a judgment
 - f. details of specific procedures or requirements desired to be complied with, including information concerning whether or not legal means of proof required are to be made under oath or pledge
 - g. requirement, if any, concerning confidentiality and the reason therefore, and

- h. the desired time limit for carrying out said request (if required).
- (2) The request for assistance, to the extent that it is necessary and possible, must also contain the following:
- a. the identity, citizenship, and domicile of the Person deemed able to provide statement or depositions related with the investigation, prosecution and examination before the court
 - b. a description concerning the requested statement or deposition
 - c. a description concerning required documents or other legal means of proof articles to be submitted, including a description concerning the Person deemed able to provide such evidence, and
 - d. information concerning expenses and accommodations required from the Person requested to be present in said Foreign State.

b. Assistance for conducting search and seizure of goods, articles or assets

- Requesting states may submit the request for assistance to the Minister for conducting search warrant and seizure of goods, articles or assets existing in Indonesia based on warrant and/or court stipulation for the purpose of investigation or examination before the court.
- In addition to the obligation to meet requirements as referred to in Article 28, the request as intended in paragraph (1) must also enclose the search and seizure warrants issued by competent officials in the requesting states.

c. Assistance for conducting search and seizure of goods, articles or assets

- In addition to the obligation to meet requirements as referred to in Article 28, the request as intended in paragraph (1) must also enclose the search and seizure warrants issued by competent officials in the requesting states.

d. Assistance for following up court decision of the requesting state

- In addition to requirements as referred to in Article 28, the request for assistance must also include the following:
 - i. description of said assets
 - ii. location of assets, and
 - iii. certificate of ownership.

Step 9: Identify any urgency in the execution of the request

Step 10: Provide a list of relevant contact points in your country

Step 11: Translate the request

Letters of request for assistance, supporting documents, information or other communications drawn up in the language of the requesting state and/or in English and the Indonesian translation (Bahasa Indonesia) thereof shall be made.

Step 12: Limitations on use of evidence provided

Note that any evidence that the Republic of Indonesia provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek the Republic of Indonesia consent.

JAPAN

I. INTRODUCTION

Japan provides mutual legal assistance under the guarantee of reciprocity, regardless of whether a treaty or convention exists between Japan and the requesting state.

(i) Non-Treaty Based Requests

a. General procedure

Where there is no treaty or convention in place between Japan and the requesting state, requests are executed on the basis of reciprocity and in accordance with requirements provided for in the Japanese laws (see section (b) below).

The Ministry of Foreign Affairs acts as the Central Authority to receive non-treaty based requests through diplomatic channels. The Ministry of Foreign Affairs forwards the request, together with their opinion on the request, to the Minister of Justice.

The Minister of Justice, after determining if the request meets legal requirements and is to be honoured, forwards the request to appropriate authorities having jurisdiction to execute the request. Such authorities include: the prosecutor; the National Public Safety Commission; and the Commandant of the Japan Coast Guard.

Once the request is executed and the collection of the evidence is completed, the evidence is transmitted to the requesting state via diplomatic channels with an opinion by each level up to and including the Minister of Justice.

b. Requirements for seeking non-treaty based assistance

A request for mutual legal assistance is executed pursuant to the following requirements stipulated by the *Law for International Assistance in Investigation and Other Related Matters* (LIAI):

- reciprocity – the requesting state must guarantee that it will honour requests of the same sort from Japan
- the assistance is necessary for the criminal investigation in the requesting state
- the offence for which assistance is sought is not a political offence, and the request for assistance is not made with a view to investigating a political offence
- dual criminality – the act constituting the offence for which assistance is requested would constitute a crime under the laws and regulations of Japan were it to be committed in Japan
- with respect to a request for the examination of a witness or provision of articles of evidence, the requesting state clearly demonstrates in writing that the evidence is essential to the investigation, and

- the Minister of Justice deems it appropriate to honour the request.

In addition, when a request for assistance involves confiscation, value confiscation or freezing assets for confiscation or value confiscation, some additional requirements under the *Law for Punishment of Organized Crimes, Control of Proceeds and Other Matters* (so-called 'Anti-Organized Crime Law (AOCL)') apply. Such requirements include:

- under the laws and regulations of Japan, if the act constituting the offence for which assistance is requested were to be committed in Japan, the said act would be subject to a penalty and/or an adjudication of confiscation/preservation or value confiscation/preservation of value confiscation, and/or the property concerned would fall under the kind of property can be confiscated/preserved by an adjudication in Japan
- there should be neither a criminal case pending before a Japanese court nor final and binding judgment by a Japanese court that involves the offence for which assistance is requested, and
- where assistance involves the preservation for the purpose of confiscation or value confiscation, there should be reasonable ground to suspect that the act constituting the offence for which assistance is requested has been committed, except when such request is:
 - i. based on an adjudication of preservation of confiscation or value confiscation made by a judge or a court of the requesting state, or
 - ii. made after the adjudication of confiscation or value confiscation has become final and binding.

c. Supplementary explanation on dual criminality requirement

As mentioned above, dual criminality is one of the legal requirements for providing assistance. At the same time, Japan does not examine the requirement of dual criminality by superficially comparing the constituent elements of crimes of both countries. Rather, Japan seeks whether the facts constituting the offence for which mutual assistance is requested and other facts related thereto contain, as a whole, a constituent element of a crime prescribed in the Japanese laws, regardless of whether such offence is categorised in the same manner or denominated by the same terminology. In this way, Japan examines and applies the requirement of dual criminality as flexibly as possible. Thus, there are few cases in which Japan refuses to render mutual legal assistance on the grounds that dual criminality requirement is not met.

Also note that assistance involving confiscation/preservation (executed in accordance with AOCL) requires 'concrete' dual criminality. In other words, 'punishability' under the applicable laws of Japan, which may be judged from such factors as 'self-defence,' 'legitimate conduct,' 'insanity,' and 'lapse of time,' is to be taken into account in determining whether or not the dual criminality requirement is met.

(ii) Requests Made Under a Treaty/Convention

a. General procedure

If there is an applicable treaty/convention between Japan and the requesting state, Japan provides assistance to a mutual legal assistance request made by the foreign investigating authorities as a matter of legal obligation under the treaty/convention. Such treaties/conventions include but not limited to: bilateral mutual legal assistance treaties/agreements (MLATs/MLAAs); United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; OECD

Anti-Bribery Convention; and Convention on Cybercrime.

LIAI and AOCL form the domestic legal bases for providing assistance to the treaty-based request, and all the assistance available for non-treaty based requests may be provided for treaty-based requests. Moreover, transfer of a sentenced inmate for testimony (stipulated by LIAI) may be provided exclusively for treaty-based requests.

The procedure for providing assistance in treaty-based requests is as follows:

- a request may be sent directly from the designated Central Authority of the requesting state to the Japanese Central Authority. The Minister of Justice is the Central Authority for the incoming procedure for bilateral MLATs/MLAAs
- the process for collecting evidence is the same as the procedure for non-treaty based requests, and
- the evidence/documents collected shall be forwarded directly from the Japanese Central Authority to the Central Authority of the requesting state.

b. Requirements for seeking confiscation, value confiscation or freezing assets under a treaty/convention

With regard to assistance in confiscation, value confiscation or freezing assets for confiscation or value confiscation for treaty/convention based requests, basically the same requirements that were required under non-treaty requests (as described in section (i) (b)) apply.

c. Requirements for seeking transfer of sentenced inmate to give testimony under a MLAT/MLAA

With regard to assistance in transfer of a sentenced inmate for testimony, MLATs/MLAAs require that assistance be provided in accordance with the laws of the requested state. As for Japan, the following requirements are set forth in LIAI:

- the treaty which is the basis for the mutual legal assistance request provides that a sentenced inmate should be transferred in order to enable their appearance as a witness for witness examination in criminal proceedings
- the offence for which assistance is requested is not a political offence, and the request for assistance is not made with a view to investigating a political offence
- dual criminality – the act constituting the offence for which assistance is requested would constitute a crime under the laws and regulations of Japan were it to be committed in Japan
- the domestic sentenced inmate consents in writing
- the domestic sentenced inmate is 20 years old or older
- the requested period for the transfer of the domestic sentenced inmate does not exceed 30 days
- a case regarding a crime that the domestic sentenced inmate has committed is not pending in a Japanese court, and
- the Minister of Justice deems it appropriate to honour the request.

d. Supplementary explanation on dual criminality requirement

The requirement of dual criminality is relaxed compared to that for non-treaty based mutual legal assistance. Under treaty-based assistance, assistance can be provided even when dual criminality is not met. Moreover, in some MLATs, assistance shall be provided even when dual criminality is not met, if the MLAT/MLAA provides so.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

(i) Non-treaty based request

When a state makes a non-treaty based request to Japan, the request shall be sent to Japan through diplomatic channels. Also, the formal communications shall be made through diplomatic channels. Please contact the Japanese Embassy in your state.

(ii) Requests made under a treaty/ convention

Under MLATs/MLAAs, the Central Authority, which is the Minister of Justice for incoming requests, receives the request for assistance directly from the Central Authority of the requesting state. All the communication concerning the mutual legal assistance is made directly between the Central Authorities.

(iii) Contact point for general information

The contact point in charge of information on the Japanese criminal justice system and legislation in general, prosecutions, and mutual legal assistance and extradition is the following:

International Affairs Division of Criminal Affairs Bureau of the Ministry of Justice
1-1-1 Kasumigaseki, Chiyoda-ku
Tokyo 100-8977 Japan
Telephone: +81 3 3592 7049
Facsimile: +81 3 3592 7063

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM JAPAN

In general, when seeking mutual legal assistance from Japan, the steps outlined below should be followed:

Step 1: Consult with the appropriate authority before submitting the request

It is recommended that the requesting authority contact the Japanese Embassy in your state if you have no treaty with Japan, or contact the Central Authority if you have treaty with Japan, in advance of making a request for mutual legal assistance – particularly in the most serious cases, to ensure the assistance you seek is available under the laws of Japan and the request will meet the legal requirements of Japan.

In addition, the following steps should be followed in every case.

Step 2: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (OECD AntiBribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from Japan.

Step 3: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 4: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. If the outline of the case is described in detail, it is easy for us to examine whether the request meets the requirements stated above, such as dual criminality and being a non-political offence. Also, please explain to what extent the investigation has progressed and describe the relevance and necessity of the assistance to the investigation.

Step 5: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 6: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from Japan and any particular requirements that must be met (for example, certification/authentication needs). In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** Specify the identity and location of the witness in as much detail as possible. Describe the relevance and necessity of the evidence, specifying the linkage between the witness and the case. Provide detailed questions to be asked of the witness.

When testimony is requested, the requesting state shall clearly demonstrate in writing that the evidence is essential to the investigation unless the request is based on MLAT.

- b. **Documentary evidence:** Specify the location, the title and the content of the document sought as precisely as possible. Describe the relevance and necessity of the evidence, specifying the linkage between the document and the case. If your criminal procedure requires a certificate proving, for example, chain of custody or process of the recording, request it clearly and describe the requirements of such certificate in detail.
- c. **Search and seizure/material evidence:** Specify the targeted object and its location in as much detail as possible. Describe the relevance and necessity of the evidence, specifying the linkage between the evidence and the case. Describe the reason why other evidence such as the photograph of the material or the written expert opinion upon examining the material is not sufficient for your investigation. Clearly demonstrate in writing that the evidence is essential to the investigation unless the request is based on MLAT.
- d. **Compulsory measure:** When it is necessary to take compulsory measures to provide assistance, provide reasonable grounds for suspecting the offence has been committed and the reason why it is necessary and justifiable to take the compulsory measure.
- e. **Enforcing order to freeze or confiscate criminal proceeds:** Describe the case in as much detail as possible so that it is clear that the request satisfies the statutory requirements stated above. Specify the targeted object and its location in as much detail as possible. When the request is based on the final judgment or order of a court, provide a certified copy of the judgment.

Step 7: Highlight any specific confidentiality requirements

In Japan, the existence and nature of requests for assistance may be kept confidential if this is requested. Since some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, the need and reasons for confidentiality should be expressly set out in the request if your case is particularly sensitive.

Step 8: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (for example, pending court proceeding/time-sensitive investigations, etc). If you face limitation periods, set out the precise dates. Note, however, that while GOJ will make the best efforts to meet the time limit, it is not guaranteed that it will be able to do so in every case.

Step 9: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event Japan's Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: Translate the request

Japan requires incoming requests for mutual legal assistance to be provided, in writing, in its official language, namely Japanese.

Step 11: Limitations on use of evidence provided

Note that any evidence which Japan provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek Japanese consent to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the *G8 Handbook on judicial cooperation in the fight against terrorism (2007)*, and the UN Office on Drugs and Crime's MLA Writer Tool (<http://www.unodc.org/mla/index.html>) for more information on making mutual legal assistance requests to Japan.

REPUBLIC OF KOREA

I. INTRODUCTION

Requests for mutual legal assistance for the gathering of evidence for criminal investigations, prosecutions and proceedings related to criminal matters as well as delivery of subpoenas or court orders may be made under:

- bilateral treaty or multilateral convention
- non-treaty letters of request with an assurance of reciprocity, or
- letters rogatory.

Mutual legal assistance is governed, in whole or in part, by the *Act on Mutual Legal Assistance in Criminal Matters* (MLAT Act).

(i) Requests Made Under a Treaty/Convention

Unless provided otherwise in an applicable bilateral treaty, a request should be made by the Central or Competent Authority of a foreign country through diplomatic channels. The Central Authority for the Republic of Korea is the Ministry of Justice (MOJ). It is recommended that a request and supporting materials must be accompanied by a Korean translation (an English translation is also accepted as an alternative). The International Criminal Affairs Division of the MOJ will review a request, and upon finding that all formalities and substantive requirements are met, send the request to the appropriate Prosecutors' Office for execution. Evidence and materials gathered through execution of a request

are sent to the foreign authority through diplomatic channels.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

Letters rogatory from a foreign court should be forwarded to the International Criminal Affairs Division of the MOJ. A request may be executed on a discretionary basis. The scope of assistance and procedures would generally be governed by the MLAT Act.

(iii) Requests Made in the Absence of a Treaty/Convention

Letters rogatory made in the absence of a treaty/convention may also be executed on a discretionary basis. For such a request to be executed the competent authority of a foreign country must provide an assurance of reciprocity. The scope of assistance and procedures would generally be governed by the MLAT Act.

(iv) Dual Criminality Requirements

Absent a specific provision in bilateral treaty, dual criminality is a ground for discretionary refusal.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

International Criminal Affairs Division
Criminal Affairs Bureau
Ministry of Justice, Republic of Korea
Gwacheon-Si Gwanmoon-Ro 88,
Government Complex Building #1,
Postal Code 427-720
Telephone: +82 2 2110 3850
Facsimile: +82 2 3480 3113

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THE REPUBLIC OF KOREA

In general, when seeking mutual legal assistance from the Republic of Korea, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance that you seek is available under the laws of the Republic of Korea, and the request will meet the legal requirements of the Republic of Korea. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in the Republic of Korea, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from the Republic of Korea.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

- a. If **witness statement/testimony** is being sought, please include the name and location of the witness, relationship of the witness to the case (that is, defendant/suspect/potential suspect/just a witness), explanation of how information sought from the witness may assist the investigation or prosecution.

- b. If **documentary evidence** is needed, please include identification information of the document, its location (that is, the name and address of the bank or the individual in custody of the document), and explanation of how information in the document may assist the investigation or prosecution. If the document being sought is in the custody of a private party and that party does not voluntarily submit it to the appropriate authority, then a search and seizure warrant will be required to execute the request.
- c. If the **execution of a search warrant** is sought, please include the precise location to be searched as well as items to be seized, explanation of how search and seizure may assist the investigation or prosecution, and explanation of why search and seizure is necessary.
- d. If **seizure/confiscation of criminal proceeds** is requested, include identification of the assets to be seized/confiscated, and an explanation on how specific assets relate to a specific criminal conduct.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from the Republic of Korea and any particular requirements that must be met (for example, certification/authentication needs).

In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** The request should clearly describe the subject matter of the statement sought. It is strongly recommended that a list of specific questions be provided. Please specify specific requirements (that is, whether the witness must take an oath before a judge, the rights or privileges to be advised of the witness, and whether presence of a defence counsel is required). Indicate clearly whether prosecutors or investigators wish to be present during the questioning, and consult at the earliest possible time with the Central Authority.
- b. **Documentary evidence:** It is important that specific documents required are clearly identified. Also, if documents need to be certified or authenticated in a certain way, such requirements also need to be clearly stated in the request.
- c. **Search and seizure:** Search and seizure requests require a warrant from the court and must be supported by facts establishing that it is necessary and showing that less intrusive measures are generally not available or appropriate under the circumstances.
- d. **Enforcing order to seize criminal proceeds:** Seizure/confiscation of criminal proceeds may be made by way of enforcing the foreign criminal court's order or judgment. A request thus must be accompanied by the copy of the order or judgment as well as an explanation of how specific assets are traced back to the conduct of the crime. Note that the Republic of Korea does not recognise civil forfeiture, and within 45 days of seizure, a notice that the person implicated with the assets seized has been charged must be sent to the Central Authority.

- e. **Enforcing order to confiscate criminal proceeds:** Seizure/confiscation of criminal proceeds may be made by way of enforcing the foreign criminal court's order or judgment. A request thus must be accompanied by the copy of the order or judgment as well as explanation of how specific assets are traced back to the conduct of the crime.

Step 8: Highlight any specific confidentiality requirements

In the Republic of Korea, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the Republic of Korea Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

Republic of Korea requires incoming requests for mutual legal assistance to be provided, in writing, in Korean (recommended) or English.

Step 12: Limitations on use of evidence provided

Note that any evidence which the Republic of Korea provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek the Republic of Korea's consent to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the Republic of Korea.

MALAYSIA

I. INTRODUCTION

The *Mutual Assistance in Criminal Matters Act 2002 [Act 621]* provides the legal basis for the provision of mutual assistance in criminal matters between Malaysia and foreign states. The Act came into operation on 1 May 2003 and is to be read with the *Mutual Assistance in Criminal Matters Regulations 2003*.

(i) Requests Made Under a Treaty/Convention

Under section 17 of the Act, Malaysia may make requests and may provide assistance in response to a request for assistance in criminal matters to a state pursuant to a treaty on mutual assistance in criminal matters (MLAT) that is in force between the two states. Act 621 and the relevant MLAT will define the obligation to provide assistance, the scope of assistance that may be obtained and the content requirement of the request.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

Malaysia prefers to use the term “mutual assistance” to avoid the need to distinguish between “legal assistance” provided via the Central Authority to Central Authority regime and “judicial assistance” provided directly between courts pursuant to letters rogatory.

Letters rogatory may be issued by an overseas court or tribunal for evidence to be obtained in Malaysia for the purpose of criminal proceedings in the overseas jurisdiction.

The form of a letter of request or letter rogatory and its enforcement requirements are prescribed in Order 66 and Order 39 of the *Rules of Court 2012*.

(iii) Requests Made in the Absence of a Treaty/Convention

Under section 18 of the Act, in the case of a non-treaty partner, Malaysia may provide mutual assistance in criminal matters to that state in accordance with a Special Direction of the Minister charged with responsibility for legal affairs if the Minister, on the recommendation of the Attorney General, agrees to accede to the request.

(iv) Dual Criminality Requirements

Lack of dual criminality is a mandatory ground for refusal of assistance under Malaysia’s bilateral treaties and under the Act. In the absence of dual criminality, the Attorney General will not be able to grant assistance.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The designated Central Authority under the Act is the Attorney General of Malaysia. Section 7 of the Act provides that a request by Malaysia shall be made by or through the Attorney General whereas section 19 of the Act provides that a request to Malaysia shall be made to the Attorney General and through the diplomatic channel.

Address of the Central Authority:

Attorney General of Malaysia
c/o International Cooperation Unit
Attorney General's Chambers
No. 45 Persiaran Perdana
Precinct 4
62100 Putrajaya
MALAYSIA
Telephone: (+603) 8872 2000
Facsimile: (+603) 8890 2218

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM MALAYSIA

Detailed information including step-by-step guidelines to be followed when seeking mutual assistance in criminal matters to Malaysia may be obtained from a guideline published by the Attorney General's Chambers of Malaysia entitled "*Obtaining Assistance from Malaysia in Criminal Cases - Guidelines for Making Applications under the Mutual Assistance in Criminal Matters Act [Act 621]*".

This publication is available for sale and can be purchased from the Central Authority, or online via the portal of the Attorney General's Chambers of Malaysia: www.agc.gov.my.

In general, when seeking mutual assistance from Malaysia, the steps outlined below should be followed:

Step 1: Consider whether the information or evidence could be obtained via informal channels

Law enforcement authorities should consider seeking informal (agency-to-agency, or police-to-police) assistance before making a formal mutual assistance request, as information can generally be provided more quickly on an informal basis.

Step 2: Consult with the central authority before submitting the request

The Malaysian Central Authority encourages foreign Central Authorities to consult the Malaysian Central Authority before making a request, particularly in urgent cases and in proceeds of crime requests, to ensure the assistance sought is available under Malaysian law, and the request will meet Malaysia's requirements.

Step 3: Ensure the request is proportionate to the alleged crime

Given the limited resources available to law enforcement and prosecuting authorities in Malaysia, the requesting authority is advised to ensure that the request is proportionate to the alleged crime. If significant resources will be required to execute a request and the offence being investigated does not constitute a serious offence or foreign serious offence under Act 621, the request may be given low priority.

Step 4: Indicate the mechanism used to seek assistance

In drafting the request, begin by clearly identifying the treaty, convention or other avenue of cooperation being referred to in seeking the assistance from Malaysia.

Step 5: Identify the authority conducting the investigation / prosecution

The request should clearly indicate the authority in the requesting country conducting the investigation and/or prosecution and provide contact information for follow-up queries, if any.

Step 6: Summarize the case

Provide a detailed outline of the case under investigation/prosecution, including a summary of the evidence that supports the investigation/prosecution.

The outline should also include the following information:

a. For witness statements/testimony:

- all available personal details of the witness (including name, nationality, location, contact information, passport information and gender, etc.)
- the status of the witness (suspect/accused, or a witness)
- the relevance of the witness in the criminal matter being investigated and/or prosecuted
- if known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made for the witness to be compelled to give evidence
- a list of questions to be asked of the witness, and
- the form in which the evidence needs to be taken to be admissible in the requesting country.

b. For documentary evidence:

- identify the specific documents sought
- state the location where the documents are believed to be held

- explain the connection between such documentary evidence and the criminal matter being investigated and/or prosecuted, and
- indicate how such evidence will assist in the investigation and/or prosecution.

c. For search and seizure:

- provide reasonable grounds for believing that the article or thing to which the request relates is located in Malaysia
- provide a clear description of the evidence to be seized, and
- identify the location to be searched.

d. For enforcing an order to restrain and/or forfeit the proceeds of crime:

- provide confirmation that criminal investigation and/or criminal proceedings have begun in the requesting country
- provide confirmation that the person against whom the order is sought has been convicted
- provide reasonable grounds for believing that the property concerned is located in Malaysia
- provide information about the location and particulars of the property to be restrained, forfeited or used to satisfy a pecuniary order
- provide reasonable grounds to link the criminal conduct of the person to the property located in Malaysia as well as to link the ownership of the property or effective control of the property to the alleged offender (including evidence of transfers or other financial information)
- include any information about whether there is any third party interest in the property in Malaysia
- include any information about the risk of dissipation of the property
- include an official, certified copy of the relevant order(s)

- include an official, certified copy of the conviction of the person, if applicable
- include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes), and
- for conviction-based forfeiture orders, provide confirmation that the conviction and the order are final and are not subject to appeal.

Step 7: Set out the applicable legal provisions

Provide an extract or verbatim text of the applicable legal provisions related to the investigation and/or prosecution, including applicable penalties.

Step 8: Identify the assistance being sought

Outline, in specific terms, exactly what the requesting authority is seeking to obtain from Malaysia and any particular requirements that must be met (for example the certification/authentication needs).

Step 9: Highlight any specific confidentiality requirements

In Malaysia, the existence and nature of a request for assistance are subject to confidentiality. However if there are specific concerns, these should be stated in the request. Further, since some disclosure may be necessary, particularly where compulsive measures are required to provide the assistance, the need and reasons for confidentiality should be expressly set out in the request if the case is especially sensitive.

Step 10: Reciprocity and specialty undertakings

Where the requesting country is not a country with which Malaysia has a treaty, or is not a

party to a relevant international convention, such country shall provide reciprocity and specialty undertakings to this effect:

a. Undertaking of reciprocity

“The Government of [name of the requesting country] undertakes that it would comply with a request by the Government of Malaysia to the Government of [name of the requesting country] for assistance of this kind in respect of an equivalent offence.”

b. Undertaking of specialty

“The Government of [name of the requesting country] undertakes that the information requested for will not be used for a matter other than the criminal matter in respect of which the request was made.”

Step 11: Mandatory assurances and undertakings

Malaysia will also require the following assurances and undertakings from the requesting country when any request is made to the Central Authority:

- that the request does not relate to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature
- that the request does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would have constituted a military offence under the laws of Malaysia which is not also an offence under the ordinary criminal law of Malaysia
- that the request is not made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person’s race, religion, sex, ethnic origin, nationality or political opinions

- that the request does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in the requesting country or has undergone the punishment provided by the law of the requesting country, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence, and
- should the Central Authority of Malaysia require the return of any evidence obtained pursuant to the request at the conclusion of the criminal proceedings and of all consequential appeals, the evidence shall be returned to the Central Authority of Malaysia.

Step 12: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (for example pending court proceeding/time sensitive investigation, etc.). If the requesting authority faces a limitation period, the precise limitation should be stated in the request.

Step 13: Provide a list of relevant contact points in your country

The request should include contact details for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Malaysian Central Authority may wish to seek clarification or obtain additional information.

Step 14: Translate the request

Malaysia requires incoming requests for mutual assistance to be provided in writing, in the English language.

Step 15: Limitations on use of evidence provided

Any evidence which Malaysia provides in response to a mutual assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, the consent of the Central Authority of Malaysia must first be obtained.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime’s *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Malaysia.

MEXICO

I. INTRODUCTION

Requests for legal assistance must be in writing and executed in accordance with the laws of Mexico. If the necessary requirements are not met, the request will be returned to the requesting authority to remedy, with details of the deficiencies that need to be addressed.

(i) Requests Made Under a Treaty/Convention

Requests for legal assistance must adhere to international treaties and agreements between the United Mexican States and other countries. When a request for legal assistance derives from a country which has an international legal assistance treaty in criminal matters in force with Mexico, the procedures prescribed by the treaty must be followed. The principle of reciprocity applies in the absence of a treaty.

Requests for international criminal legal assistance must include the following:

- competent authority that formulates the request
- purpose and reason for the request, including a brief statement of the facts
- full transcript of the laws of the offence and the penalty
- to the extent possible, the identity and nationality of the person concerned
- name and address of the addressee, if applicable
- proceedings to be requested, and
- in urgent cases, the reasons for the request, indicating the date by which the information is required.

When necessary, applications for international criminal legal assistance will also include:

- any requirement of confidentiality as the requesting party deems applicable
- the details of a particular procedure the requesting party wishes to have followed
- an indication of the date by which the application must be satisfied, with reasons
- the questions for testimony, declarations (investigatory or judicial), or in the expert report in Mexico, and
- any other information that might be useful for Mexico in complying with the application for international criminal legal assistance.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

In accordance with the provisions of Chapter II entitled 'Of Warrants or International Letters Rogatory' of the *Federal Code of Civil Procedure*, warrants or letters rogatory may be transmitted to the Central Authority of Mexico, through judicial channels, through consular or diplomatic agents or by the competent authority of the requesting state or of the Central Authority of Mexico as applicable.

Note: In the absence of a bilateral treaty, legal assistance will be based on the principle of reciprocity.

(iii) Letters Rogatory that Require Homologation of Judgments

Letters of request will only need homologation (approval by a court) where the assistance sought requires the use of coercive powers. Requests for warrants or letters rogatory requiring the use of coercive powers should be supported with the resolution issued by the competent court of the member country.

Warrants related to notifications, taking of evidence and matters of mere procedure shall be served without an incident form.

(iv) Dual Criminality Requirements

International criminal legal assistance may be provided even when the act for which the request is filed does not constitute an offence in Mexico.

When the request relates to actions to restrict the possession, ownership or control of places or things, the Central Authority of Mexico may refuse to provide international criminal legal assistance, if the act giving rise to the request is not punishable under its law.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The competent Central Authority in Mexico for requests for international legal assistance in asset recovery cases within the framework of the UN Convention against Corruption (Article 46, para.13 of the UNCAC) is:

Fernando Reséndiz Wong

Dirección General de Extradiciones y Asistencia Jurídica

Procuraduría General de la República Avenida Paseo de la Reforma Nº 211-213, Segundo Piso, Colonia Cuauhtémoc, Delegación Cuauhtémoc, México, Distrito Federal, C.P. 06500

Telephone: +52 55 53 46 01 13

Facsimile: +52 55 53 46 09 02

E-mail: fresendiz@pgr.gob.mx

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM MEXICO

In general, when seeking mutual legal assistance from Mexico, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

Informal consultation before the formal presentation of a request for legal assistance can be realised by directly contacting the Central Authority in Mexico, namely the Attorney General's Office, which will assess as soon as possible its ability to provide the requested assistance.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated.

To enable the Central Authority of Mexico to fulfil a request for legal assistance, the purpose for the request must be specified, as well as a description of the requested assistance.

Step 3: Indicate the mechanism used to seek assistance

It is essential that the requesting authority provides the legal basis for the assistance sought and a description of any particular procedure that it wishes to be practiced when running the request for legal assistance, as long as they are not inconsistent with the domestic law of Mexico.

International legal instruments under which a request for international legal assistance can be made are:

- a bilateral treaty or agreement
- multilateral agreements, and
- the principle of reciprocity.

Step 4: Identify the authority conducting the investigation/prosecution

The request must clearly specify the name of the institution and the competent authority in the requesting state that is responsible for the investigation or criminal proceedings resulting in the application.

Step 5: Summarise the case

The requesting party shall provide a description of the facts of investigations or criminal proceedings, the text of the laws that criminalize the relevant conduct as an offence and, when necessary, the amount of damage.

The Central Authority of Mexico also requires the following information:

a. The identification and person's location and objects subject to investigation or judicial process

- Upon request, Mexico will identify the measures in their legislation to locate and identify the people and objects in the request and will inform the requesting party on the progress and results.

b. Testimony / Witness / Accused or expert

- If the requesting party seeks the attendance of a person as a witness, defendant, or expert who is in Mexico's territory, Mexico will proceed to subpoena and transfer in accordance with the legal assistance request made.
- The appearance of the person could only be made if he or she declares his or her acceptance in writing and may not be subject to enforcement measure or penalty if he or she does not accept.
- Mexico will provide the person's response in writing to the requesting party and, when necessary, request the hearing by subpoena, which shall contain the following exceptions or guarantees in the requesting party:
 - i. No person whatever their nationality, will be prosecuted, detained or subjected to any restriction of personal liberty in Mexico. This warranty does not apply if the person, having the opportunity to leave the territory of the requesting party does not do so within thirty (30) days of the date he or she was notified officially that his or her presence is no longer required or if he or she has returned voluntarily.
 - ii. No person will be forced to declare actions, or to assist in investigations or proceedings other than those mentioned in the application.

c. Provision of information and documents

- The request for legal assistance should be accompanied by information and documents the requesting party considers appropriate for the consideration of the application.

d. Seizures, assurance or forfeiture

- The requesting party must provide the exact location of objects to be seized, assured or forfeited, and a certified copy of the authorising judgment. In addition, it is necessary to provide the location and description of where to register the object(s). Please provide a description of the property and its relationship to the suspect. Please provide the judicial order for any case of confiscation.
- Mexico will comply with requests for search and seizure of property and evidence, to the extent possible under its domestic law, provided the requesting party cites the reasons for believing that the objects, products or instruments of crime are located in Mexican territory.
- When the goods are located, and at the request of the requesting party, Mexico will agree to provide assurance and take steps to prevent the transfer, sale, transaction, or destruction, in accordance with its legislation.

e. Non-conviction based asset forfeiture

- A request for non-conviction based asset forfeiture must comply with the requirements of Article 66 of the *Federal Forfeiture Law*. However, this law is only applicable to certain offences specified in article 22 of the *Constitution of the United Mexican States*, such as organised crime, crimes against health, kidnapping, vehicle theft and people trafficking.

- The competent authority of a foreign government presents a legal assistance request on the basis of international legal instruments for which it is party the United Mexican States or by virtue of international reciprocity
- The application of international legal assistance shall be handled by the Attorney General's Office or the Central Authority to establish the international instrument concerned and in his absence by the Ministry of Foreign Affairs.
- Based on the application of international legal assistance, the Public Prosecutor in the court will exercise the forfeiture action and request the precautionary measures referred into the *Forfeiture Act*.

Step 6: Set out the applicable legal provisions

The request for international legal assistance must set out in full the laws of the offence and the relevant penalties.

Step 7: Identify the assistance being sought

The application for international legal assistance must specify the object and reason for the request.

Step 8: Highlight any specific confidentiality requirements

Mexico shall maintain the confidentiality of the request for assistance, its contents and supporting documents. If the request cannot be executed without violating the principle of confidentiality, Mexico will inform the requesting party, who will determine whether the request should be fulfilled regardless.

The requesting party must maintain the confidentiality of information and evidence provided, within the limits necessary for use in the investigation or proceedings concerning the application.

Step 9: Identify any urgency in the execution of the request

In urgent cases, Mexico can start to initiate a request for legal assistance if received by fax, or email, if it agrees to the urgency of the request. The requesting country can then transmit the signed original of the request for assistance within ten days.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the Mexico Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

Evidence and documents transmitted shall be translated and apostilled (authenticated) by the competent authorities, or be exempt from the authentication process as agreed by the parties within the framework of an international legal instrument.

Step 12: Limitations on use of evidence provided

The requesting party must not disclose or use confidential information or evidence provided for purposes other than those indicated in the request without Mexico's consent.

Mexico may request that the information or evidence provided be kept confidential in accordance with any conditions prescribed.

Information or evidence that is not characterised as confidential and is made public in the requesting party within the procedure described in the request for assistance will not be subject to restrictions.

Through the Central Authorities and within the limits of law, judicial authorities or the Public Prosecutor of each party may, without an application that has been filed to that effect, exchange information and evidence regarding the criminally punishable facts gathered during the course of its own investigation when they consider that this transmission is such that the other party will file an application for legal assistance, begin criminal proceedings or facilitate the development of an ongoing criminal investigation. The authority that will provide the information may, in accordance with its law, hold to certain conditions the use thereof by the receiving authority. The recipient authority is bound by those conditions.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Mexico.

NEW ZEALAND

I. INTRODUCTION

In New Zealand, mutual legal assistance is largely governed by the *Mutual Assistance in Criminal Matters Act 1992* (MACMA). MACMA governs both requests made by New Zealand to other countries and requests made by other countries to New Zealand. New Zealand can make or receive a request for mutual assistance from any country. Mutual assistance requests are processed in accordance with MACMA, which allows for requests to be made to New Zealand by prescribed foreign countries, convention countries (that is, requests made pursuant to a treaty/convention by a state party to the treaty) and all other foreign countries on a case-by-case or ad hoc basis.

Requests under MACMA should be made to the Attorney-General of New Zealand. In practice, requests for mutual assistance are received by the Crown Law Office, the New Zealand Central Authority for Mutual Assistance in Criminal Matters, on behalf of the Attorney-General. Requests are usually sent through diplomatic channels. Requests need to be accompanied by a certificate from the Foreign Central Authority confirming that the request is made in respect of a criminal investigation or criminal proceeding.

New Zealand can execute search warrants, take voluntary statements from witnesses and assist with locating or identifying persons, service of process and the restraint and recovery of proceeds of crime. They can also assist with obtaining evidence if court proceedings have been instituted in the

foreign country and can assist in arranging the production of documents or other articles in New Zealand if there are reasonable grounds for believing that the documents can be produced in New Zealand.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

All requests should be addressed to:

The Attorney General
Crown Law Office
PO Box 2858
Wellington 6011
New Zealand

Any correspondence or queries about requests should be directed to the Crown Law Office as follows:

Manager of Mutual Assistance

Crown Law Office

PO Box 2858

Wellington 6011

New Zealand

Email: criminal@crownlaw.govt.nz

Telephone: 0064 4 494 5588

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM NEW ZEALAND

In general, when seeking mutual legal assistance from New Zealand, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the New Zealand Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance which you seek is available under the laws of New Zealand and the request will meet the legal requirements of New Zealand. Advance warning is critical to rapid enforcement of requests to restrain funds where there is a real risk the assets could dissipate overnight. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting

authorities in New Zealand, a requesting country is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority. A discretionary ground for refusal of assistance under MACMA is that the provision of assistance would impose an excessive burden on the resources of New Zealand.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from New Zealand.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution and whether you or the authority have already been in contact with officials or any agency in New Zealand.

Step 5: Summarise the case

The request should describe the nature of the criminal matter and include a summary of the evidence that supports the investigation/prosecution. The summary provided should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

The summary of evidence in the request should:

- include sufficient information to enable New Zealand to assess whether it can provide the assistance sought and the relevance of any evidence held in New Zealand

- provide information about why the investigating and/or prosecuting authorities believe relevant evidence is located in New Zealand, and
- identify the suspect(s).

Step 6: Set out the applicable legal provisions

Identify and set out the full text of all relevant offence provisions, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what assistance is sought from New Zealand and in what form, and any particular requirements that must be met (for example, any procedures that must be followed to ensure the evidence obtained is admissible in the Court of the requesting country and any particular certification or authentication requirements).

In addition, the following information must be included as applicable:

a. Witness statements/testimony:

- Indicate whether a voluntary statement is sought or whether compelled evidence on oath before a Judge or court registrar is required. Please note that under New Zealand law witness statements can only be provided on a voluntary basis, and witnesses cannot be compelled to give evidence in court during the investigation stage of proceedings. Witnesses may only be summonsed to give evidence once criminal proceedings have commenced in the requesting state.
- Confirm there are reasonable grounds for believing the person to whom the request relates could give or provide evidence or assistance relevant to a criminal matter, including a clear

explanation of how the information sought from the witness is relevant to the case.

- Indicate whether the witness is considered a suspect or is subject to the criminal proceedings in question.
- Confirm the evidence required from a witness in New Zealand is evidence that the witnesses would be compelled to give in a proceeding in the requesting state.
- Details of any specific procedure the requesting state wishes to be followed by New Zealand in giving effect to the request, including details of the manner and form of the evidence to be taken.
- If the request relates to evidence given on oath in court, indicate whether it is necessary to obtain witness statements in advance of the court proceedings and the preferable timeframe for this.
- Include a list of specific questions to be asked of the witness.
- Indicate whether the defence or prosecution wants to call or cross-examine a witness (including via video link).
- Indicate whether the evidence to be taken needs to be sworn or affirmed.
- Include all available personal details of the witness (including name, nationality, location, passport information and gender etc).

b. Documentary evidence:

- If possible, identify the specific documents sought.
- State the location where the documents are believed to be held.
- Explain why there are reasonable grounds for believing the documents can be produced in New Zealand.
- Indicate whether the criminal matter is in the investigative or procedural stage

(note that New Zealand law provides for witnesses to be compelled to produce documents only if criminal proceedings are in place. During the investigative stage of the matter documents may otherwise only be produced voluntarily or by way of search warrant).

- Include the reasons why the evidence will be relevant to the case.
- Indicate whether the defence or prosecution wants to examine or cross-examine the person who produces documents (including via video link).

c. Search and Seizure:

- Include a clear description of the evidence to be seized.
- State the precise location to be searched.
- Explain why there are reasonable grounds for believing the items to be seized are at the location to be searched (this is a requirement to obtain a search warrant in New Zealand).
- Provide the text of the relevant criminal provision, including the maximum penalty for the applicable offence (New Zealand law requires that the suspected offending is punishable by a sentence of two or more years imprisonment).
- Explain why there are reasonable grounds for believing the items seized are relevant to the criminal matter.

d. Enforcing Order to Restrain Criminal Proceeds:

- Identify that there is a criminal investigation in the requesting country in relation to:
 - i. tainted property
 - ii. property that belongs to a person who has unlawfully benefited from a significant foreign criminal activity
 - iii. an instrument of crime, or

iv. property that will satisfy some or all or part of the property to which the criminal investigation relates is located in New Zealand.

- Explain why there are reasonable grounds to believe there is property to that effect located in New Zealand.
- Provide an original sealed copy of the foreign restraining order with the mutual assistance request. An exact copy of a sealed or authenticated copy of a foreign order may be provided initially, but an original copy of the order must be provided within 21 days of the date of registration of the foreign order in New Zealand.

e. Enforcing Order to Forfeit Criminal Proceeds:

- Identify that a forfeiture order has been obtained in the requesting country in relation to:
 - i. tainted property
 - ii. property that belongs to a person who has unlawfully benefited from a significant foreign criminal activity
 - iii. an instrument of crime, or
 - iv. property that will satisfy some or all or part of the property to which the criminal investigation relates is located in New Zealand.
- Confirm that the property in question could be forfeited under the foreign forfeiture order.
- Explain why there are reasonable grounds to believe there is property to that effect located in New Zealand.
- Provide an original sealed copy of the forfeiture order with the mutual assistance request. An exact copy of a sealed or authenticated copy of a foreign order may be provided initially, but an original copy of the order must be provided within 21 days of the date of registration of the foreign order in New Zealand.

f. Travel of person from New Zealand to foreign country:

- If the request involves a person travelling from New Zealand to the foreign country, details of allowances to which the person will be entitled and of the arrangements for accommodation for the person while the person is in the foreign country pursuant to the request.

Step 8: Highlight any specific confidentiality requirements

In New Zealand, the existence and nature of requests for assistance are subject to confidentiality. However, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any timeframe within which compliance with the request is desired and the reason for the time constraints (for example, any pending court proceedings, relevant court dates or whether the nature of the request or status of the investigation requires an urgent response).

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities. You should include the contact information of your Central Authority and, where possible, the email address and other contact details of a person at the requesting authority who can be contacted about the request.

Step 11: Translate the request

New Zealand requires incoming requests for mutual legal assistance to be provided in writing and in English.

Step 12: Limitations on use of evidence provided

Any evidence which New Zealand provides in response to a mutual assistance request may only be used for the specific purpose stated in the request. If the requesting country wishes to use the evidence for any other purpose(s), consent must first be sought from the New Zealand Central Authority.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to New Zealand.

In addition, the New Zealand Crown Law Office website (<http://www.crownlaw.govt.nz/pagepub/docs/afa/mutualassistance.asp>) provides useful and detailed guidance for making a mutual legal assistance request to New Zealand.

PAPUA NEW GUINEA

I. INTRODUCTION

Papua New Guinea (PNG) does not require mutual assistance requests to be made under a treaty and does not use UNCAC as a basis for mutual assistance requests. PNG's legal basis for processing all mutual assistance requests is the *Mutual Assistance in Criminal Matters Act 2005* (MACMA). Requests can be made relying on UNCAC but MACMA will take precedence in relation to PNG's requirements in mutual assistance. PNG is not currently a party to any bilateral treaties which govern mutual legal assistance requests but that does not preclude treaties being made in the future.

PNG can provide mutual assistance to all countries according to MACMA.

Dual criminality is a discretionary ground for refusal of assistance under PNG's MACMA. In the absence of dual criminality, it would be within the discretion of the Minister for Justice and Attorney General to make a decision on whether to grant assistance.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Papua New Guinea Central Authority can be contacted as follows:

The Director

Legal Policy & Governance Branch

Department of Justice & Attorney General

P.O Box 591

WAIGANI

National Capital District

PAPUA NEW GUINEA

Telephone: +675 301 2956

Facsimile: +675 325 6304

Email: international.cooperation@justice.gov.pg

Requests can also be sent through diplomatic channels.

A request for Mutual Assistance to PNG under the *Mutual Assistance in Criminal Matters Act 2005* can be made by letter and must be made to the Minister for Justice & Attorney General.

Minister for Justice & Attorney General
Department of Justice & Attorney General
P.O Box 591
WAIGANI
National Capital District
PAPUA NEW GUINEA

In practice, requests will be processed by Legal Policy & Governance Branch (details above).

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM

In general, when seeking mutual legal assistance from Papua New Guinea, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

The Requesting Country's central authority should contact Papua New Guinea's Legal Policy and Governance Branch in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance which being sought is available under the laws of PNG, and the request will meet the legal requirements of PNG. The Requesting Country should also send a draft request by email first for this purpose. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in PNG, a requesting state is urged to consider the need for the evidence in question. If the provision of the assistance would impose an excessive burden on the resources of Papua New Guinea, the request may be given low priority or be refused.

Step 3: Indicate the mechanism used to seek assistance

There would be no relevant treaty to state as a basis when seeking mutual assistance from PNG since PNG does not have any treaty in relation to mutual assistance as yet and the basis for mutual assistance in PNG is the *Mutual Assistance in Criminal Matters Act 2005*. Therefore the request should state whether reciprocity would be afforded of a Papua New Guinean request made in comparable circumstances.

Step 4: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/ or prosecuting authority.

Step 5: Summarise the case

A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts, conduct and circumstances of the investigation should be included. The facts should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

he summary of facts should:

- include sufficient information to enable PNG to ensure there are no grounds for refusal of assistance and to undertake dual criminality test
- provide information about why the investigation and/or prosecuting authorities believe relevant evidence is located in PNG, and
- identify the suspect(s).

Under PNG's *Mutual Assistance in Criminal Matters Act*, some types of assistance require specific information from the Requesting Country. These are assistance in relation to witness statement/testimony, documentary evidence, execution of search warrant and seizure, and proceeds of crime orders and transfer of prisoners to give evidence (this is provided for in detail under step 7).

Step 6: Set out the applicable legal provisions

The request should state the full text of the law on all relevant offence and penalty provisions related to the investigation and/or prosecution including applicable penalties.

Step 7: Identify the assistance being sought

A detailed description of the assistance sought, preferably in the form of a list. State whether the material is sought in an investigation or prosecution or in an action to recover the proceeds of crime. Outline, in specific terms, exactly what you are seeking to obtain from PNG, and any particular requirements that must be met for example, where there are any specific certification/authentication requirements for the evidence provided in response to the request, or if certain procedures must be followed when taking evidence from a witness.

In addition, considering the nature of the assistance sought, the following information must be included:

- a. If **witness statement/testimony** is being sought, please provide the following information in the request:
 - State how the requesting country would want the witness statement or testimony to be obtained. Specify whether the statement is to be obtained voluntarily or by proceedings conducted on oath before a court. (Note that PNG MACMA does allow for examination or cross-examination of any person giving evidence or producing a document or other article at the proceeding through a video link with the requesting country).
 - Provide a list of questions to be put to the witness.
 - Include all available personal details of the witness (including name, nationality, location, passport information and gender etc).
 - State the status of the witness (suspect/accused, or simply a witness).
 - Include a clear explanation of how the information sought from the witness is relevant to the case.
 - If known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made for the witness to be compelled to give evidence (note that witnesses can generally be compelled to give evidence but not necessarily always according to PNG's *Evidence Act 1975*. Note also that the person to whom the proceeding in the requesting country relates is competent, but not compellable to give evidence if the person would not be compellable to do so in the requesting country to which the request relates according to PNG's MACMA).

- b. If **documentary evidence** is needed, please provide the following information in the request:
- If possible, identify the specific documents sought.
 - State the location where the documents are believed to be held or with which agencies/entities.
 - Include the reasons why the evidence will be relevant to the case.
 - Specify in what form the requesting country requires the evidence to be provided to satisfy its requirements for admissibility of evidence.
 - Indicate whether the defence or prosecution wants to examine or cross-examine the person who produces documents (including via video link).
- c. If the **execution of a search warrant and seizure** is sought, please provide the following information in the request:
- Include a clear description of the evidence to be seized.
 - State the precise location to be searched.
 - Include an explanation why this measure is required.
 - State how the items seized will be relevant to the case.
 - It must be established that a proceeding or investigation is underway in a foreign country in relation to a 'foreign indictable offence', meaning an offence against the law of another country that, if the relevant act or omission had occurred in PNG would be an indictable offence (meaning one which may be prosecuted on indictment and for which the maximum penalty is death or a term of imprisonment for at least 1 year).
 - There must be reasonable grounds for believing that evidence relevant to the investigation or proceeding is located in PNG.
- d. If the request relates to **proceeds of crime orders**, please provide the following information
- Establish that foreign forfeiture orders and pecuniary penalty orders are no longer subject to appeal in the foreign country.
 - Establish why the property is suspected to be located in PNG.
 - If the order was made in relation to a person's conviction of an offence, the conviction must not be subject to further appeal in the foreign country.
 - Provide a sealed or authenticated copy of the forfeiture order or pecuniary penalty order or restraining order.
- e. If the request relates to the **transfer of a prisoner from PNG to give evidence at a proceeding or assist in an investigation in relation to a 'criminal matter' in the Requesting Country** the following requirements must be met:
- the prisoner must consent or the Requesting Country must give the undertakings required under PNG's MACMA (contact the PNG Central Authority to discuss the appropriate undertakings), and
 - the request must state the grounds upon which it is believed the prisoner is capable of providing evidence relevant to the proceeding or assistance relevant to the investigation.

Step 8: Highlight any specific confidentiality requirements

In PNG, the existence and contents of foreign requests are treated confidentially except to the extent necessary to execute the request. However, some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance. If the matter is particularly sensitive, the request should expressly set out the need and reasons for confidentiality (for example, if the suspect

has no knowledge of the investigation relating to the request).

Step 9: Identify any urgency in the execution of the request

State when a response is required. If the request is urgent, details of why it is urgent (such as upcoming court date). If there are pending limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include the name and address (including e-mail address) of the person who PNG authorities should contact and an address to which material in response to the request should be sent. The contact details of both the action officer in the Central Authority and the relevant investigators/prosecutors should be provided.

Step 11: Translate the request

Papua New Guinea requires requests and all supporting documents to be provided in writing in English.

Step 12: Limitations on use of evidence provided

Note that any evidence which Papua New Guinea provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, the Requesting Country must first seek PNG's consent (from the Minister for Justice) to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Papua New Guinea.

Please forward all mutual assistance enquiries to the PNG Central Authority at international.cooperation@justice.gov.pg

PERU

I. INTRODUCTION

In Peru international judicial cooperation is regulated by the *VII Book of the Criminal Procedure Code* (the VII Book), which has been in force since 1 February 2006 by mandate of the *Law N° 2867*. It is governed by the treaties or conventions subscribed to by Peru or, failing that, by the reciprocity principle and the domestic legislation, in a framework of respect for human rights, according to the article 508.1 of the *Criminal Procedure Code*.

64]

The VII Book designates the Attorney General's Office as Peru's Central Authority. It also regulates the general conditions, the grounds for rejection, the requirements, and the internal procedure of all the acts of international judicial cooperation.

Peru provides a wide range of assistance, unless the request conflicts with national legislation.

(i) Requests Made Under a Treaty/ Convention

Peru has subscribed to a variety of treaties on judicial assistance in criminal matters, and is a party to multilateral instruments containing provisions on this matter. Requests for assistance based on a treaty or convention shall observe the requirements, procedure (for example, the presentation form and submission of results) and other provisions of the relevant instrument. The national law is applicable in the cases not provided for in the treaty or convention.

(ii) Non-Treaty Letters of Request

In the absence of a multilateral treaty or convention, the request of the requesting state shall be based upon the reciprocity principle, observe the requirements of our legislation and:

- name of the requesting foreign authority that is responsible for the investigation and judgment
- specify the nature of the investigation or judgment
- give details of the crime that is the subject of the case and a description of the facts, and
- provide a complete and precise description of the assistance sought.

(iii) Dual Criminality Requirements

Dual criminality is a requirement only for judicial assistance requests related to the following measures:

- account blocking
- attachments
- seizing or forfeiting of criminal assets
- freezing of funds
- house searches
- raids
- control of communications
- identifying or locating the proceeds of crime or the instruments used to commit a crime, and
- other restrictive measures.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Attorney General's Office – Republic of Peru

Attorney General: Doctor José Antonio Peláez Bardales

Unit of International Judicial Cooperation and Extraditions

Avenida Abancay cuadra 5 s/n Piso 9

Lima Cercado L-01

Peru

Email: ucjie@mpfn.gob.pe;
jpelaez@mpfn.gob.pe;
shinojosa@mpfn.gob.pe

Telephone: 00511-4284349;
00511-2085555; extensions:
5018, 5076, 5012, 6797

Facsimile: 00511-2085555;
extension 5049

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM PERU

In general, when seeking mutual legal assistance from Peru, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance you seek is available under the laws of Peru, and the request will meet the legal requirements of the Peruvian laws. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in Peru, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from Peruvian laws.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from Peru and any particular requirements that must be met (example: certification/authentication needs).

In addition, considering the nature of the assistance sought, the following information must be included:

a. If witness statement/testimony is being sought:

- Clearly indicate if it is the testimony from an accused or a witness, including his name, address, identity document, nationality and date of birth.
- In the request explain the relation of such a person with the described facts, and why the statement or testimony is relevant to the investigation or process. Besides, annex a list of questions.
- Indicate if some formality regulated by the law of the requesting State has

to be observed in the execution of the request. Such requirements will be met provided that it is not contrary to Peruvian legislation.

- Indicate if the requesting Authority may witness the testimony/statement, with prior authorisation of the required judge.

b. If documentary evidence is needed:

- Specify what kind of document is required in original or copy (simple or certified). If possible, state its location.
- Explain the connection between the required document and the facts described in the request, as well as its relevance for the purposes of the investigation or the process.

c. If seizure/confiscation of criminal proceeds is requested:

- Accurately identify the assets covered by the measure. If possible, state their location.
- Indicate the connection between the assets and the facts or the accused person.
- Transcribe or include the text of the relevant laws which are the subject of the investigation or process, for the purpose of the dual criminality requirement. To be able to adopt a measure, the offence on which the request is based must be punishable in both states.
- Explain the reason why the adoption of the measure of seizure/confiscation is necessary.

d. If the temporary transfer of detainees subject to a criminal process or conviction is necessary for their appearance as witnesses, the following is required:

- The detainee or convicted prisoner shall give free and informed consent.

- The requesting state shall commit to:
 - i. keep the detainee or convicted prisoner in custody within its territory
 - ii. return the detainee or convicted prisoner, once the proceeding is over
 - iii. not prosecute the detainee or convict for crimes that preceded his/her departure from the Peruvian territory, and
 - iv. not let the person give a statement or testimony in any proceeding not specified in the request.
- The requesting state shall assume all costs originating from the transfer.

Step 8: Highlight any specific confidentiality requirements

The Republic of Peru, in the management and execution of the acts of cooperation, meets the confidentiality rules that according to our legislation are applicable to the criminal procedures and investigations. Peru also takes into consideration the petition of confidentiality set out in the request, regarding it and any action adopted during the execution.

The Attorney General’s Office will coordinate with the Central Authorities of the requesting state to determine mutually convenient conditions of confidentiality.

If a request cannot be executed without breaching confidentiality, where confidentiality has been requested, the Republic of Peru shall inform the requesting state, before giving effect to the request, and the Requesting State then is given the option to proceed nonetheless.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation,

etc.). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

Peru requires incoming requests for mutual legal assistance to be provided, in writing, in its official language, namely Spanish.

Step 12: Limitations on use of evidence provided

Note that any evidence which Peru provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek consent from the Attorney General’s Office for further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime’s *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the Republic of Peru.

Please forward any mutual assistance enquires to the Peruvian Central Authority at: jpelaez@mpfn.gob.pe, ucjie@mpfn.gob.pe and shinojosa@mpfn.gob.pe.

THE PHILIPPINES

I. INTRODUCTION

The Mutual Legal Assistance (MLA) Process in the Philippines is governed by each MLA treaty that the country enters into. Each treaty seeks to improve the effectiveness of cooperation between the parties in the investigation, prosecution and suppression of crime. Requests may also be made to the Philippines under relevant multilateral conventions, such as UNTOC and UNCAC.

68]

(i) Requests Made Under a Treaty/Convention

Generally, each MLA treaty provides for assistance in:

- taking testimony or statements from persons
- providing documents, records or pieces of evidence
- exchanging information
- executing searches and seizures
- tracing and/or forfeiting the proceeds and instrumentalities of criminal activities
- locating and identifying witnesses or suspects
- facilitating the personal appearance of witnesses
- return of assets, and
- such other assistance as may be agreed upon.

Assistance may be refused if:

- the Philippines regards the offence as being of a political nature or an offence only under military law
- the request is made for the purpose of investigating, prosecuting or punishing a person on account of race, sex, religion, nationality, ethnic origin, or political opinion
- the request would prejudice the state's sovereignty, security, public order or other interests, or
- the execution of the request is likely to prejudice an investigation or criminal proceeding in the requested state.

(ii) Dual criminality not required

Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the domestic laws of the Philippines.

(iii) Letter Rogatory Requests

Absent a treaty or executive agreement, the Philippines recognises the customary method of formally requesting assistance through letters rogatory.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Central Authority for MLA requests is the Secretary of the Department of Justice in Manila, The Philippines:

Padre Faura St.

Ermita, Manila

Telephone: (632) 523-8481

Email: communications@doj.gov.ph

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM PHILIPPINES

In general, when seeking mutual legal assistance from the Philippines, the steps outlined below should be followed:

- A request for assistance shall be made in writing and shall include the following:
 - i. the name and address of the authority in the requesting state which is conducting the proceedings to which the request relates
 - ii. the subject matter and nature of the proceedings
 - iii. a description of the offence to which the request relates including its applicable penalty
 - iv. a summary of the information giving rise to the request
 - v. a description of the evidence or other assistance sought
 - vi. the purpose for which evidence is sought, and

vii. details of any timeframe within which compliance with the request is desired.

- All requests, supporting documents and any communication made shall be in English.
- All requests are to be addressed to the Department of Justice. The Department of Justice shall arrange for the request execution through its competent authorities.
- After the request has been executed, the competent authority shall forward to the Department of Justice the information or evidence gathered. The Department of Justice will then promptly inform the central authority of the requesting state of the outcome of the request.
- The Department of Justice shall keep the request for assistance, its contents and supporting documents and any response to such a request confidential.
- The central authority of the requesting state shall return any document or article furnished to it in the execution of a request as soon as practicable, unless the Department of Justice waives the return of the documents/articles.
- Other steps/procedures are outlined in the specific mutual legal assistance treaties entered into by the Philippines with other states.

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance which you seek is available under the laws of the Philippines, and the request will meet the legal requirements of the Philippines.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in the Philippines, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention or other avenue of cooperation being referred to in seeking the assistance from the Philippines.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution.

Step 6: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from the Philippines and any particular requirements that must be met, for example, certification or authentication requirements.

In addition, depending on the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** Include the identity, date of birth, nationality and location of a person from whom evidence is sought; and a list of questions to be asked of the person.
- b. **Documentary evidence:** Provide a precise description of the document sought, the custodian of such document and the relevance of the document to the investigation or proceeding.
- c. **Execution of a search warrant:** Provide a precise description of the place or person to be searched and of the articles to be seized.
- d. **Enforcing Order to Seize Criminal Proceeds:**
 - A requesting state may seek the assistance of a Requested State to forfeit or otherwise seize the proceeds or instrumentalities of offences that are located in the Requested State. A Requested State, in turn, may refer information provided to it about the proceeds and instrumentalities of crime to its authorities for appropriate action under its domestic law and report back to the requesting state on action taken.
 - Any request must include a description of the property sought to be seized or confiscated and its location.
 - More generally, parties are required to assist each other to the extent permitted by their respective laws in proceedings for the forfeiture of the proceeds and instrumentalities of crime.

Step 8: Highlight any specific confidentiality requirements

In the Philippines, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

The Philippines requires incoming requests for mutual legal assistance to be provided in writing in the English language.

Step 12: Limitations on use of evidence provided

Note that any evidence which the Philippines provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek consent for further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the Philippines.

RUSSIAN FEDERATION

I. INTRODUCTION

Cooperation with competent authorities of foreign states on legal assistance in criminal matters is carried out on the basis of multilateral and bilateral international treaties or on the basis of the principle of reciprocity.

In the Russian criminal procedure legislation, a request for legal assistance is a procedural document with the status set forth in Article 53 of the *Criminal Procedure Code of the Russian Federation* and the international treaties that determine the scope, procedure and conditions for mutual legal assistance between the Russian Federation and foreign states.

(i) Treaty Requests for Assistance

The Russian Federation has concluded special bilateral and multilateral international treaties on mutual legal assistance with 70 states. In particular, Russia is a party to the *European Convention on Mutual Assistance in Criminal Matters of 1959* and the *Additional Protocol of 1978*, as well as the *Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993* and the *Protocol of 1997* concluded within the framework of the Commonwealth of Independent States.

Legal assistance can also be rendered in the context of investigation of crimes covered by the *United Nations Convention against Corruption of 2003*, the *United Nations Convention against Transnational Organized Crime of 2000*, the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990* and other multilateral

conventions that include provisions on mutual legal assistance in criminal matters.

The Russian Federation has concluded bilateral treaties on mutual legal assistance in criminal matters with 40 states including Algeria, Viet Nam, India, Yemen, Cuba and Mongolia.

(ii) Non-Treaty Requests for Assistance

In cases where there is no treaty on legal assistance in criminal matters, legal assistance can be rendered on the basis of the principle of reciprocity.

The principle of reciprocity shall be confirmed by a written obligation of the competent authorities of the requesting state to render similar legal assistance to the requested state on the basis of the principle of reciprocity.

(iii) Dual Criminality Requirement

If an act is not recognised as a crime by the legislation of the Russian Federation, legal assistance can be rendered if the applicable treaty on mutual legal assistance with the requesting state permits this (for instance, paragraph 3 of Article 1 of the *Treaty between the Russian Federation and the United States of America on Mutual Legal Assistance in Criminal Matters of 1999*).

Note, however, that requests to search, seize property and confiscate proceeds of crime is only possible if the crimes specified in the request are punishable according to the laws of both the requesting state and the requested state.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

If there is no mutual legal assistance treaty in place, requests for legal assistance should, as a general rule, be sent to the Prosecutor General's Office of the Russian Federation.

If a treaty on mutual legal assistance exists, the request should be sent to the agency of the Russian Federation that is designated as the Central Competent Authority in the multilateral or bilateral treaty.

- According to the majority of bilateral treaties, particularly the Treaties on Mutual Legal Assistance in Criminal Matters concluded with Canada (1997) and the Treaty with the USA (1999), the Prosecutor General's Office of the Russian Federation is designated as a Central Authority for Relations on Legal Assistance in Criminal Matters.
- However, in some bilateral treaties, for example in the Treaty on Mutual Legal Assistance in Criminal Matters between the Republic of Angola and the Russian Federation of 2006, the Treaty on Legal Assistance and Legal Relations in Civil and Criminal Matters between the Islamic Republic of Iran and the Russian Federation of 1996 not only the Prosecutor General's Office but also the Ministry of Justice are designated as a Central Authority.
- The Ministry of Justice of the Russian Federation and the Prosecutor General's Office of the Russian Federation are designated as Central Authorities responsible for the implementation of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime.

Note: The Ministry of Justice of the Russian Federation is responsible for civil issues, including civil aspects of criminal cases, while the Prosecutor General's Office of the Russian Federation is responsible for criminal law issues.

Contact information:

Prosecutor General's Office of the Russian Federation

Main Department of International Legal Cooperation

15a, Bolshaya Dmitrovka, GSP-3

Moscow 125993 Russia

Telephone: +7 495 692 32 06

**Facsimile: +7 495 692 29 79,
+7 495 692 16 60**

E-mail: transgprf@mal.ru

Ministry of Justice of the Russian Federation

14, Zhitnaya, GSP-1

Moscow 119991 Russia

Telephone: +7 495 955 59 99

Facsimile: +7 495 955 57 79

Department of International Law and Cooperation

Telephone: +7 495 980 18 29

Facsimile: +7 495 677 06 87

(Information published on the website of the Ministry of Justice of Russia)

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THE RUSSIAN FEDERATION

The following steps should be followed in making requests for legal assistance to the Russian Federation. The requirements set out below are based on the provisions of international treaties and the criminal procedure law of the Russian Federation.

Step 1: Circumstances in which advance consultations may be helpful

When sending requests for legal assistance in criminal matters, including corruption-related matters, no prior consultation with a central competent authority is usually needed. This is because the basic requirements for the form and substance of the request for legal assistance are set forth by international treaties, and the central competent authorities of the Russian Federation formulate their requirements for such requests based on the provisions of such treaties.

However, if the requested state has questions on the content of the request, the necessary consultation will be provided.

In November 2009, the Prosecutor General's Office of the Russian Federation established a national point of contact to support practical international cooperation in detecting, arresting, confiscating and restitution of assets generated by corruption activities.

The following contact persons have been designated:

Alexander S. Kupriyanov

Head of Directorate

Legal Assistance of the Chief Directorate of International Legal Cooperation

Telephone: +7 495 692 29 04

Facsimile: +7 495 692 16 60

E-mail: transgprf@mail.ru

Nidzhat Rafael Yusifov

Senior Prosecutor

Directorate of Legal Assistance of the Chief Directorate of International Legal Cooperation

Telephone: +7 495 692 83 80

Facsimile: +7 495 692 16 60

E-mail: transgprf@mail.ru

Asian S. Yusufov

Deputy Head of Directorate

Supervision of Enforcement of Anti-Corruption Legislation

Facsimile: +7 495 692 16 66

E-mail: a.yusufov@genproc.gov.ru

Step 2: Indicate the basis on which legal assistance is sought

A request should refer to the international treaty that constitutes the basis for the request for legal assistance.

Where there is no treaty in place between our two countries, legal assistance shall be rendered on the basis of reciprocity. The requesting state shall guarantee the principle of reciprocity in a letter of commitment promising to render similar legal assistance to the requested state based on the said principle.

Step 3: Indicate the investigating/prosecuting authority

A request shall contain the full and precise name of the authority making the request. That is, the investigating authority, as well as the case/file number of the foreign investigation or prosecution.

Step 4: Describe the circumstances of the case under investigation/prosecution

It is advisable that the request include the following:

- identification of the crime in question
- a description of the circumstances of the crime
- information on the extent of damage caused by the crime
- an indication of the grounds for carrying out each requested activity and its objectives

- full identification information on individuals, in the respect of which the request is sent (including information on the date and place of their birth, nationality, occupation, place of residence or place of stay, their status in the criminal proceedings). If the full information is unavailable, this must be expressly stated in the request, and
- for legal entities, indicate their names, legal and factual addresses. If the location of the entity in respect of which the request is sent is unknown, steps should be taken in advance of making the request to determine their identification information and addresses (for example via Interpol channels), because the vast majority of international treaties on the provision of legal assistance in criminal matters does not envisage investigative activities.

Step 5: Indicate applicable legislative provisions

Give abstracts from all legislative acts that pertain to the crimes under investigation or prosecution, including the list of sanctions/penalties that apply to those crimes.

Step 6: Other documents to attach to the request

In addition to the relevant legal and penalty provisions, the following documents shall be attached to a request for legal assistance to the Russian Federation:

- resolutions passed in compliance with the legislation of the requesting state on initiation of the requested legal proceedings (resolutions on recognition as victim, civil claimant; execution of seizure and search warrants, forfeiture etc), and
- in case of requests to execute legal proceedings for the initiation of which a court ruling is required under the legislation of the requesting state, relevant court rulings should be attached.

Authenticity of the request and attached documents shall be certified with the coat-of-arms seal and signed by the relevant official of the requesting state.

Step 7: Describe requested legal assistance

The requested legal assistance should have logical links with the descriptive part of the request. Otherwise, additional information will be required, which may prolong the implementation of the request.

It is advisable that the requested legal assistance be described in the form of separate paragraphs.

In case the implementation of the request requires the presence of the representatives of the requesting state, the text should contain the relevant request indicating the aim of their presence, information on the officials (full name, position, telephone), and the expected time of their arrival.

In addition, considering the nature of the assistance sought, the following information should be included:

a. Assistance in obtaining testimonial

evidence: The request should contain:

- full identification information on the persons to be interrogated (including their date and place of birth, citizenship, occupation, place of residence, procedural status in the criminal case)
- in case of the absence of full information, it should be specified that the requesting state does not possess any other information
- questions to be put before the person whose testimony is needed, and
- if there is a need for appearance in the territory of the requesting state of a witness or other participants of the criminal proceedings, provided for by applicable international treaty, the request or the summons shall list the

guarantees, envisaged in the treaty, for the individual summoned (payment of expenses, immunity, etc).

- b. **Assistance in the transmission of the documents requested:** If it is necessary to produce documents (including bank/financial documents), include the location of the bank or the organisation, which may have the documents, the bank account related to the documents, the list of the documents to be seized and the deadline for their seizure.

In addition, note the following:

- the request should include the titles of the requested documents and indicate their relevance to the offence committed and the investigation
- the requested state may transmit notarially certified copies or photocopies of the requested materials or documents unless the requesting state asks for the originals
- the requested state may postpone the transmission of the requested objects, materials or documents if the objects, materials or documents concerned are needed for criminal proceedings in progress, and
- the originals of the documents transmitted in executing the requests should be returned to the requested state by the requesting state at the earliest possible date unless the requested state renounces them. In the request for the originals of documents, the requesting state should guarantee their return to the requested state at the earliest possible convenience.

- c. **Assistance in search and seizure:** If the request asks that a search be conducted, the requesting state must expressly identify the address of the individual or the legal entity to be searched, and include a list of the documents to be seized during the search.

In addition, note the following:

- An explanation of the relevance of the items or documents to be seized for the criminal case and a justification for these actions (search, seizure) is required under the legislation of the requested state.
- As provided for by provisions of Article 183 of the *Code of Penal Procedure of the Russian Federation*, when there is a need to seize certain items or documents significant for a criminal case and when it is exactly known where and to whom they belong, one can proceed to their seizure. The seizure is carried out upon an order of an investigation officer. Seizure of items or documents, containing public or other secrets protected by federal law, of items and documents, containing information about deposits and accounts of citizens in banks and other credit institutions, as well as of items mortgaged or pawned, is carried out based on a judicial decision.
- If there is a need to proceed to the seizure of the abovementioned documents and if the legislation of the requesting state also requires rendering of a judicial decision, such judicial decision should be attached to the request. If the seizure of the above-mentioned documents does not require rendering of an order or a judicial decision, it should be mentioned in the request and it is desirable to attach an extract from procedural criminal law on the procedure of similar investigative actions in the territory of the requesting state.
- When there is a need to proceed to a seizure of documents (including banking/financial documents), the organisation or the bank where the documents are supposedly kept, number of the account related to these

documents, list of the documents to be seized and period of time for the seizure should be specified.

- When the request contains a demand for search, the address of physical or legal person where the search is to be carried out, a list of items and documents to be seized in the course of the search should be specified. An appropriate order of an investigation officer or a judicial decision should be attached (when a search is carried out in an apartment).

The Russian Federation executes requests for search and seizure of property provided that:

- dual criminality requirements are met
 - the relevant crime is punishable by both the legislation of requesting and requested state
- the relevant crime is extraditable under the law of the requested country, and
- the execution of a search and seizure ruling does not contradict the legislation of the requested state.

- d. **Assistance in the seizure of criminal proceeds:** Should it be necessary to seize proceeds of crime, indicate the location of the property, reasons for this request, justifying the connection between the committed crime and the alleged assets.

Appropriate judicial decisions or an explanation of the procedure for the arrest of proceeds in compliance with the legislation of requested state must be attached to the request.

- e. **Assistance in the confiscation of criminal proceeds:** As provided for by the provisions of Article 104.1 of the *Penal Code of the Russian Federation*, confiscation of property is a mandatory non-repayable seizure and transformation into public property by virtue of a verdict of guilty on certain category of crimes.

- In this context, when there is a need to confiscate proceeds of crime, an effective verdict of guilt is required.
- A certified copy of the verdict and a certificate on its entry into legal force should be attached to the request. Account details and bank departments of the requested state to transfer the confiscated proceeds should be specified.
- Requests for confiscation of proceeds of crime are executed when there is a treaty providing execution by contracting parties of such requests and only in cases when the relevant crime is punishable by the legislation of both requesting and requested states.
- To ensure the execution of this category of requests all possible measures are taken within the national legal system with a view to their execution to the extent specified in the application, and inasmuch as it is related to the proceeds of crime located in the territory of the requested state.

Step 8: Indicate the need to protect confidentiality

In the request, it is advisable to indicate the need to protect confidentiality of the information in the request indicating, if there is such a requirement, the reasons why it is deemed necessary.

Step 9: Indicate the deadline for the request

Indicate the anticipated deadline for executing the request and the reason for this deadline.

Step 10: Provide the contact list in your country

Include the full address and other contact details (phone and fax number) of the requesting authorities. This will assist in resolving, as soon as possible, any issues that may arise in the course of executing the request.

Step 11: Provide the translation of the request

The request and the attached documents should be accompanied by a translation into the Russian language.

Step 12: Restrictions on the use of the information obtained

Information obtained in the course of executing the request can be used only for the purposes outlined in the request. The use of the obtained materials for other purposes should be coordinated with the requested state. Therefore, the request should provide assurances that the information and documents provided by the Russian Federation in execution of the request shall be used only for the purposes indicated in the request, as well as obligations to return the original documents and other evidentiary material confiscated during the implementation of the request.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the *G8 Handbook on judicial cooperation in the fight against terrorism (2007)* for more detailed information on the Russian Federation's mutual legal assistance process, and the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the Russian Federation.

SINGAPORE

I. INTRODUCTION

The *Mutual Assistance in Criminal Matters Act*, Chapter 190A (MACMA), governs the provision of mutual legal assistance in Singapore.

Singapore can provide assistance in criminal matters – without the need for there to be a mutual legal assistance treaty between the requesting state and Singapore – on the basis of reciprocity.

When processing MLA requests, Singapore will need to be provided with certain assurances and undertakings by the requesting state. As these are intended to be legally binding, the request will need to be made by an appropriate authority from the requesting state that can give such undertakings on behalf of the requesting state.

On the issue of dual criminality, this is required for the following types of assistance that are governed by the MACMA:

- taking of witness statements for criminal proceedings
- issuance of production orders
- arranging attendance of a person in foreign country
- custody of persons in transit through Singapore
- enforcement of foreign confiscation orders
- search and seizure
- locating or identifying persons, and
- service of process.

For the types of assistance which are not governed by the MACMA, e.g. recording of witness statements by foreign law enforcement authorities, there is no requirement for dual criminality.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Completed requests may be sent by the Central Authority of the country making the request to the following address:

Director-General
International Affairs Division
The Attorney-General's Chambers
1 Upper Pickering Street
Singapore 058288
Republic of Singapore

In cases of urgent requests, a copy of the request may also be sent by fax to +65 6702 0513 or by email to AGC_CentralAuthority@agc.gov.sg. However, a hard copy of the request is still required to be sent over.

Countries with which Singapore has a mutual legal assistance treaty should also comply with any relevant provisions of the treaty with regard to the transmission of requests.

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM SINGAPORE

In general, when seeking mutual legal assistance from the Republic of Singapore, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance which you seek is available under the laws of the Republic of Singapore, and the request will meet the legal requirements of the Republic of Singapore. In addition, the following steps should be followed in every case.

Step 2: Ensure the request is proportionate to the alleged crime

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Given the limited resources available to law enforcement and prosecuting authorities in the Republic of Singapore, a requesting state is urged to consider the need for the evidence in question. If significant resources will be required to execute a request and the offence being investigated is very minor, the request may be given low priority or rejected pursuant to the MACMA.

Step 3: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the applicable treaty or convention (e.g. UNCAC, UNTOC) in seeking the assistance from the Republic of Singapore.

Step 4: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution. In particular, please provide the Republic of Singapore with the case officer, preferably from the appropriate Central Authority, in the event that communications with the case officer is necessary.

Step 5: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

- a. If **witness statement/testimony** is being sought, please provide sufficient information to identify the person to be interviewed, e.g. his full name, address, passport or other identification number. In addition, please state whether there is any ongoing criminal proceedings as defined under section 2(1) of the MACMA in the requesting state, and if so, the status of these proceedings. A list of the questions to be asked of the witness should also be provided.
- b. If **bank records** are needed, please provide the bank account number and other details sufficient to identify the bank account in question, and the purpose for obtaining the bank records.
- c. If the **execution of a search warrant** is sought, please provide clear details of the premises to be searched and detailed description of the items to be searched and seized. As search and seizure is a highly coercive measure, the requesting state will need to provide full and clear reasons why this measure is necessary, and for the requested scope of the search and seizure.

- d. If seizure/confiscation of criminal proceeds is requested please include the following information in the request:
 - i. the foreign confiscation order, made in any judicial proceedings instituted in that country, against property that is reasonably believed to be located in Singapore
 - ii. the order is in force and not subject to further appeal in the requesting state
 - iii. if the person affected by the order did not appear in the proceedings, did he receive notice of the proceedings with sufficient time to enable him to defend them, and
 - iv. a certificate pertaining to evidence in relation to proceedings and orders in the requesting State.

Step 6: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text of all relevant legal provisions under investigation and/or prosecution, including applicable penalties.

Step 7: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from the Republic of Singapore and any particular requirements that must be met (example: certification/authentication needs).

In addition, considering the nature of the assistance sought, please provide the relevant information in order to meet the legal requirements as set out in the parts below:

- a. **Witness statements/testimony:** For evidence to be recorded by a Singapore Judge, see section 21 MACMA.
- b. **Documentary evidence:** See section 22 MACMA.
- c. **Search and seizure:** See sections 33 and 34 MACMA.

- d. **Enforcing order to seize criminal proceeds:** See section 29 MACMA and paragraph 6 of the Schedule to the MACMA.
- e. **Enforcing order to confiscate criminal proceeds:** See sections 29 and 30 MACMA.

Step 8: Highlight any specific confidentiality requirements

In the Republic of Singapore, the existence and nature of requests for assistance are subject to confidentiality. However, as some disclosure may be necessary, particularly where compulsory measures are required to provide the assistance, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

Step 9: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is desired and the reason for the time constraints (example: pending court proceeding/time-sensitive investigation, etc.). If you face limitation periods, set out the precise dates.

Step 10: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: Translate the request

The Republic of Singapore requires incoming requests for mutual legal assistance to be provided, in writing, in its official language(s), namely in the English language.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which the Republic of Singapore provides in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, your country must first seek the Republic of Singapore consent to the further use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the Republic of Singapore AttorneyGeneral's Chambers' website on MLA (http://app.agc.gov.sg/What_We_Do/International_Affairs_Division/Mutual_Legal_Assistance.aspx) and UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the Republic of Singapore.

CHINESE TAIPEI

I. INTRODUCTION

Chinese Taipei can consider a request from any foreign state to gather evidence in a criminal matter or to identify, restrain and forfeit the proceeds of crime whether or not a bilateral or multilateral treaty relationship with that foreign state exists. Chinese Taipei law does distinguish between government-to-government requests, whether made on a treaty or nontreaty basis. If the request is not made on a treaty basis, it can only be made on a reciprocal principle basis. Besides that, the Chinese Taipei Central Authority can receive requests directly from foreign Central Authorities in hard copy if the request is made on a treaty basis, while a request made on a reciprocal principle basis should be sent to the Chinese Taipei Authority by diplomatic channels.

[83

(i) Requests Made Under a Treaty/Convention

Requests made under a bilateral or multilateral treaty/convention are executed under domestic laws. Chinese Taipei authorities can execute search warrants, take evidence from a witness in Chinese Taipei (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Chinese Taipei can also provide other assistance such as voluntary witness statements or service of documents.

(ii) Requests Made in the Absence of a Treaty/Convention

Chinese Taipei can consider a request for assistance from any foreign state in the absence of a treaty/convention, if the requesting state shall declare reciprocal support for Chinese Taipei in a similar case, according to Article 4 of the law in supporting foreign courts on consigned cases.

Under the principle of reciprocity, Chinese Taipei authorities are able to execute search warrants, take evidence from a witness in Chinese Taipei (including by video link), arrange for the production of documents or other articles, and take action to enforce orders restraining and forfeiting the proceeds

of crime. Chinese Taipei can also provide other assistance such as voluntary witness statements and service of documents.

(iii) Dual Criminality Requirements

Chinese Taipei does not insist that a request require dual criminality to be met, if the request need not be carried out by any compulsory measure, such as searching or seizing. If the request does require any compulsory measure, the dual criminality ground must be met.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Chinese Taipei Central Authority can be contacted as follows:

Ministry of Justice

Department of International and cross-Strait Affairs

6F., 235, Sec. 1 GUIYANG St.,

Taipei

Taiwan

Telephone: +886 2 21910189 #7207

Email: yulungyin@mail.moj.gov.tw

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM CHINESE TAIPEI

In general, when seeking mutual legal assistance from Chinese Taipei, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

The Chinese Taipei Central Authority encourages foreign Central Authorities to make contact before making a request, particularly in urgent cases, to ensure the assistance sought is available under

Chinese Taipei's law, and the request will meet Chinese Taipei's requirements. The Chinese Taipei Central Authority is happy to discuss its requirements by telephone or email, and can also review draft requests.

Step 2: Indicate the basis on which the request is made

The request should identify the basis on which it is made including any bilateral or multilateral treaty/convention. If there is no relevant treaty/convention, the request should state whether reciprocity would be afforded to a Chinese Taipei request made in comparable circumstances.

Step 3: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/or prosecuting authority.

Step 4: Summarise the case

The request should describe the nature of the criminal matter and summarise the relevant facts. The summary of facts should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

The summary of facts should:

- include sufficient information to enable Chinese Taipei to undertake a dual criminality assessment, although we do not deem dual criminality as a necessary condition when we decide whether to provide assistance or not
- provide information about why the investigating and/or prosecuting authorities believe relevant evidence or an item is located in Chinese Taipei, and
- identify the suspect(s).

Step 5: Set out the applicable legal provisions

The request should include the full text of all relevant offences and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 6: Identify the assistance being sought

The request should outline, in specific terms, exactly what assistance is sought from Chinese Taipei, and any particular procedural requirements that must be met, for example, where there are any specific certification/authentication requirements for the evidence provided in response to the request, or if certain procedures must be followed when taking evidence from a witness.

In addition, depending upon the nature of the assistance sought, the following information should be included:

a. Witness statements/testimony:

- include a list of questions to be asked of the witness
- indicate whether the defence or prosecution wants to examine or cross-examine a witness (including via video link)
- indicate whether evidence provided needs to be sworn/affirmed
- include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
- state the status of the witness (suspect/accused, or simply a witness)
- include a clear explanation of how the information sought from the witness is relevant to the case, and
- if known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made

for the witness to be compelled to give evidence.

b. Documentary evidence:

- if possible, identify the specific documents sought
- state the location where the documents are believed to be held
- include the reasons why the evidence will be relevant to the case, and
- indicate whether the defence or prosecution wants to examine or cross-examine the person who produces documents (including via video link).

c. Search and seizure:

- include a clear description of the evidence to be seized
- state the precise location to be searched
- provide evidence to explain why this measure is required, and
- state how the items seized will be relevant to the case.

d. Enforcing an order to restrain and/or forfeit the proceeds of crime:

- include an official, certified copy of the relevant order(s)
- include an official, certified copy of the conviction of the person
- include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)
- provide confirmation that the conviction and the order are final and are not subject to appeal
- include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
- include as much information as possible to link the criminal conduct of the person to the assets located in Chinese Taipei (including evidence of transfers or other financial information)

- if the order is a pecuniary penalty/ judgment debt order, include any information about whether the assets in Chinese Taipei are under the effective control of the person, and
- include any information about whether there is any third party interest in any of the property in Chinese Taipei.

e. Provision of existing evidentiary material (i.e. material lawfully obtained in a Chinese Taipei investigation)

- identify what evidentiary material is sought
- indicate whether a proceeding in relation to a serious offence against the laws of the requesting country (for which the penalty is death or imprisonment for not less than 12 months) has commenced (e.g. has the suspect been indicted?), and
- explain how the evidence will be relevant to the investigation or prosecution.

Note: The Chinese Taipei Central Authority encourages foreign law enforcement agencies to discuss requests of this nature with the Ministry of Justice in advance of making a formal request to ensure the material is available.

f. Transfer of prisoners to give evidence in person in a foreign proceeding or investigation:

- indicate whether a proceeding in relation to a criminal matter has commenced (for example, has the suspect been indicted?) or whether the matter is still at the investigation stage
- state the grounds on which it is believed the prisoner is capable of providing evidence relevant to the proceeding or assistance relevant to the investigation

- if known, indicate whether the prisoner consents to giving evidence in the proceeding or assistance in the investigation, and
- include undertakings pertaining to the safe passage of the prisoner (contact the Chinese Taipei Central Authority to discuss the appropriate undertakings).

Note: Non-prisoners can voluntarily travel to a foreign country for the purpose of providing evidence in a foreign investigation or proceeding, and a mutual assistance request may not necessarily be required.

Step 7: Highlight any specific confidentiality requirements

In Chinese Taipei, the existence and contents of foreign requests are treated confidentially except to the extent necessary to execute the request. If the matter is particularly sensitive, the request should expressly set out the need and reasons for confidentiality (for example, if the suspect has no knowledge of the investigation relating to the request).

Step 8: Identify any urgency in the execution of the request

The request should expressly identify any time period within which the assistance is sought, and the reason for this time constraint (such as a pending court proceeding or a time-sensitive investigation). If there is a statutory limitation period on the prosecution of the offence, please provide the relevant dates.

Step 9: Provide a list of relevant contact points in your country

The request should include contact details for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Chinese Taipei Central Authority may wish to seek clarification or obtain additional information. The Chinese Taipei Central Authority prefers to communicate by email to progress matters efficiently.

Step 10: Translate the request

Chinese Taipei requires requests to be provided in writing in Chinese.

Step 11: Limitations on use of evidence provided

Any evidential material provided by Chinese Taipei in response to a request may only be used for the specific purpose stated in the request. If the requesting country wishes to use the evidence for any other purpose(s), consent must be sought from the Chinese Taipei Central Authority.

IV. OTHER USEFUL REFERENCES

The Chinese Taipei Central Authority encourages requesting countries to refer to the Chinese Taipei Central Authority's website (<http://www.moj.gov.tw/mp095.html>).

Please forward any mutual assistance enquiries to the Chinese Taipei Central Authority at yulungyin@mail.moj.gov.tw

THAILAND

I. INTRODUCTION

With our aim to cooperate with and to assist other countries in fighting international and transnational crimes, the Kingdom of Thailand (Thailand) can consider a request from any state for mutual legal assistance in a criminal matter. Thailand will consider a request regarding the investigation, inquiry, prosecution, forfeiture of property and other proceedings relating to criminal matters, whether or not a bilateral treaty with that state exists. However, in the absence of bilateral treaty, the requesting state must make a clear undertaking of reciprocity.

88]

States which have a mutual assistance treaty with Thailand shall submit a request for assistance directly to the Central Authority. States which do not have a mutual assistance treaty with Thailand shall address requests for assistance to the Central Authority through diplomatic channels. All requests for mutual assistance are processed by the Central Authority in the International Affairs Department, Office of the Attorney General.

(i) Requests Made Under a Treaty/Convention

Requests made under a bilateral treaty are executed under the *Act on Mutual Assistance in Criminal Matters, B.E. 2535 (A.D. 1992)* (the Act) subject to the provisions of the relevant treaty. States which have a mutual assistance treaty with Thailand shall submit requests for assistance directly to the Central Authority. Depending on the assistance sought, the Central Authority shall transmit the request

for assistance to the following competent authorities for execution:

- Requests for taking statements of persons; providing documents, articles, and evidence out of Court; serving documents; searching and seizing documents or articles; and locating persons shall be transmitted to the Commissioner-General of the Royal Thai Police.
- Requests for taking the testimony of persons and witnesses; adducing documents and evidence in the Court; and forfeiture or seizure of property shall be transmitted to the Director General of the Department of Criminal Litigation.
- Requests for transferring persons in custody for testimonial purposes shall be transmitted to the Director General of the Department of Corrections.

- Requests for initiating criminal proceedings shall be transmitted to the Commissioner General of the Royal Thai Police and the Director General of the Department of Criminal Litigation.

(ii) Non-Treaty Letter of Request

Thailand can consider a request for assistance from any state in the absence of a treaty, on the condition the requesting state undertakes to grant Thailand assistance if a request was made in comparable circumstances. The requesting state must clearly state in a request that it will provide Thailand with similar assistance as it is seeking from Thailand.

The Thai Central Authority will forward the request to the most appropriate agency, as set out above.

(iii) Dual Criminality Requirement and General conditions for mutual legal assistance

Assistance to a foreign state shall be subject to the following conditions:

- Unless a treaty between Thailand and the requesting state provides otherwise, the offence to which the request relates must be an offence punishable under Thai laws. In all cases the request must be consistent with the provisions of the Act.
- A request may be refused if it affects national sovereignty or security, or other crucial public interests of Thailand, or relates to a political offence;
- Assistance shall not be granted if a request relates to a military offence.

II. CENTRAL AUTHORITY CONTACT INFORMATION

The Thai Central Authority can be contacted as follows:

**International Affairs Department
Office of the Attorney General
Rajaburi Direkriddhi Building
Government Complex
Chaeng Watthana Road, Lak si
Bangkok 10210,
Thailand
Telephone: +66 2 142 1660
Facsimile: +66 2 143 9797
Email: interf@ago.go.th**

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THAILAND

In general, when seeking mutual legal assistance from Thailand, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

It is recommended that the requesting authority in your country contact the Thai Central Authority in advance of making a request for mutual legal assistance, particularly in urgent cases, to ensure the assistance sought is available under the Thai Laws, and the request will meet the legal requirements of Thailand. In addition, the following steps should be followed in every case.

Step 2: Indicate the mechanism used to seek assistance

The request should identify the basis on which it is made, including whether or not there is a bilateral treaty between Thailand and the requesting state. If there is no relevant treaty or convention the request should state whether reciprocity would be afforded if a Thai request was made in comparable circumstances. The list of the countries with which Thailand has treaties on mutual legal assistance in criminal matters at the time of publication of this guide, and the dates when the treaties entered into force, is attached in the Annex.

Step 3: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/or prosecuting authority.

Step 4: Summarise the case

The request should indicate the nature of the offence and summarise the relevant facts. The summary of facts should, at a minimum, include information as follows:

- Sufficient information to enable the Thai Central Authority to undertake a dual criminality assessment.
- Sufficient information to locate/identify suspects, properties, evidence, and witnesses related to the request, as the case may be.

Step 5: Set out the applicable legal provisions

The request should include the full text of all relevant offence and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 6: Identify the assistance being sought

- The request from the requesting state should contain, at a minimum, the following details:
- the name of the authorities of the requesting state which seeks assistance
- the matter of the request, including details and other information which may be useful for the execution of the request, and
- the purpose of seeking assistance and why the assistance is necessary.

In addition, depending upon the nature of the assistance sought, the following information should be included:

a. Inquiry and producing evidence:

- Specify the name and place of residence of the witness or the person who is in possession of the articles or documents required for use as evidence.
- Include a list of questions to be asked of the witness.
- Include a copy of the indictment if the request relates to the taking of evidence in the Thai Court.

b. Provision of documents and information in the possession of Government Agencies:

- Describe such documents or information and the name of the agency that has possession of the documents or information.
- Include the purpose for which the said document will be used.

c. Serving legal documents:

- Enclose the documents which are to be served.
- Provide the name and place of residence of the person upon whom the documents are to be served.

d. Search and Seizure:

- Explain the facts and evidence which support the search and seizure warrant.
- Provide a description of the article which is to be seized and its location, or the place of residence of the person who has possession of the article. The description should provide sufficient details to be acted upon.
- State the purpose for which the said article will be used.

e. Transferring persons in custody for testimonial purposes:

- Where the request relates to the transfer of a person kept in custody in Thailand to testify as a witness in the requesting state: Specify the name of such person, place of custody, the facts of the case presently on trial in the requesting state and the issues for his testimony, including his rights and duties under the laws, the treaties, or commitments of the requesting state towards Thailand.
- Where the request relates to the transfer of a person kept in custody in the requesting state to testify as a witness in Thailand: Specify the name of the person to be transferred and the documents evidencing that the person has given consent to testify as a witness in Thailand. Include the facts related to the remaining period of custody, the case presently on trial in Thailand and a list of questions which the public prosecutor in charge of the testimony is to ask of the person.

f. Locating persons:

- State the name, identity and the place of residence, or the place which is reasonably believed to be the location of the person. State the connection between the person and the investigation, inquiry, prosecution or any other proceedings relating to criminal matters in the requesting state.

g. Initiating proceedings upon request:

- Provide reasons why the requesting state is seeking to initiate proceedings in Thailand.
- Provide details of the evidence which the requesting state considers supports a decision to institute criminal proceedings in Thailand.
- To the extent possible, include the name, identity and place of residence of the alleged offender against whom the criminal proceedings in Thailand will be initiated against.

h. Forfeiture or seizure of property:

- Describe the property and its location or the place of residence of the person in possession of the property, in sufficient detail to be acted upon.
- For forfeiture requests: Enclose the original or the authenticated copy of the final judgment of the Court of the requesting state which orders the forfeiture.
- For seizure requests: Enclose the original or authenticated copy of the order of the court of the requesting state which orders the seizure.

Step 7: Highlight any specific confidentiality requirements

There is no specific requirement for Thailand to treat the request as confidential. However, if the requesting state wishes the Thai Central Authority to treat the request as confidential, the request should expressly set out the need and reasons for confidentiality.

Step 8: Identify any urgency in the execution of the request

The request should expressly identify the time period within which the assistance is sought, and the reason for this time constraint. If there is a statutory limitation period on the prosecution of the offence, please expressly provide the applicable dates.

Step 9: Provide a list of relevant contact points in your country

The request should include details of contact information for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Thai Central Authority may need to obtain additional information regarding your request.

Step 10: Translate the request

Thailand requires the request to be provided in Thai or English. If the request is made in a language other than Thai or English, it must be accompanied by an authenticated Thai or English translation.

Step 11: Limitations on use of evidence provided

Any evidence provided by Thailand in response to a mutual legal assistance request may only be used for the specific purpose stated in the request. If further use of the evidence is required, the requesting state must first seek Thailand's consent to the further use.

92]

IV. OTHER USEFUL REFERENCES

Requesting states are encouraged to refer to the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to Thailand.

Also, please forward any mutual assistance enquiries to the Thai Central Authority at inter@ago.go.th.

ANNEX

Treaties on Mutual Legal Assistance in Criminal Matters

Countries that Thailand has treaties with on mutual legal assistance in criminal matters and the dates when the treaties entered into force.

Countries	Signature Date	Place of Signature	Date of Entry into force
1. U.S.A.	19 March 1986	Bangkok	10 June 1993
2. U.K.	12 September 1994	Bangkok	10 September 1997
3. Canada	3 October 1994	Ottawa	3 October 1994
4. France	11 September 1997	Paris	1 June 2000
5. Norway	20 May 1999	Bergen	22 September 2000
6. China	21 June 2003	Chiang Mai	20 February 2005
7. Korea	25 August 2003	Seoul	6 April 2005
8. India	8 February 2004	Phuket	7 June 2003
9. Poland	26 February 2004	Bangkok	4 October 2009
10. Sri Lanka	30 July 2004	Bangkok	-
11. Peru	3 October 2005	Lima	3 October 2005
12. Belgium	12 November 2005	Bangkok	23 July 2010
13. Australia	27 July 2006	Kuala Lumpur	18 June 2009
14. Ukraine	-	-	-

UNITED STATES

I. INTRODUCTION

The Central or Competent Authority of a foreign country may request assistance from the United States in the gathering of evidence for criminal investigations, prosecutions and proceedings related to criminal matters. All requests, whether they are (1) bilateral treaty or multilateral convention requests, (2) letters rogatory (court issued non-treaty requests) or (3) non-treaty letters of request are presented to the Office of International Affairs of the Criminal Division of the Department of Justice (OIA), the designated U.S. Central Authority. As further explained below, all three of these types of requests are generally handled and processed in a similar manner by OIA.

(i) Requests Made Under a Treaty/ Convention

Requests made under a Mutual Legal Assistance Treaty (MLAT) are executed pursuant to the terms of the treaty and United States domestic law, specifically Title 28 United States Code Section 3512 and Title 28 United States Code Section 1782.

After an MLAT request has been reviewed by OIA, generally, it is sent to one of the 94 federal U.S. Attorney's Offices for execution. The request is sent to the U.S. Attorney's Office where the evidence or witness is located. The usual practice is for the Assistant U.S. Attorney in that district to apply to the U.S. district court for an order appointing

him or her as a commissioner to execute the foreign request. Among the powers that are granted the commissioner under U.S. law is the authority to issue subpoenas to compel the appearance of a witness to provide testimony or produce documents. Once the requested evidence is obtained by the commissioner, it is transmitted to OIA and then on to the foreign authorities, in accordance with the terms of the treaty.

Generally, the procedures used in providing assistance under multilateral conventions are very similar to the procedures described above and are further dictated by the terms of the underlying agreements.

(ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests)

Absent an MLAT or other applicable treaty, letters rogatory from a foreign court should be forwarded to OIA for execution. Pursuant to U.S. domestic law, requests may be executed on a discretionary basis, even if there is no treaty or multilateral agreement with the requesting country. For the most part, the United States will provide cooperation. Assistance can be provided at the investigative stage of the proceedings, including, as examples, (1) obtaining copies of government or corporate records; (2) conducting witness interviews; and (3) obtaining handwriting exemplars. Generally, almost all evidence requiring the use of compulsory process (subpoena or judicial order) may be sought in accordance with U.S. law.

(iii) Non-Treaty Letters of Request

Just as with a letter rogatory, absent an MLAT or other applicable multilateral convention, a letter of request from a foreign authority should be forwarded to OIA for execution. Pursuant to U.S. domestic law, these requests may be executed on a discretionary basis. Generally, the United States makes its best efforts to provide cooperation.

(iv) Dual Criminality is Generally Not Required

As a general rule, dual criminality is not required when seeking legal assistance from the United States. However, when seeking a search warrant or other intrusive measure in the United States as part of an MLAT request, pursuant to Title 18 United States Code Section 3512, dual criminality is required. There may also be some instances in which an MLAT request seeks the restraint and forfeiture of assets where dual forfeitability is required. Also, some requests may relate to conduct that is protected under U.S. laws regarding free speech and may be denied on that basis.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

In the United States, all requests for mutual legal assistance in criminal matters are submitted to OIA, the United States Central Authority. The contact information is provided below:

**Office of International Affairs
Criminal Division
United States Department of Justice
1301 New York Avenue, N.W.
Washington, D.C. 20005
Telephone: +1 202 514 0000
Facsimile: +1 202 514 0080**

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THE UNITED STATES

In general, when seeking mutual legal assistance from the United States, the steps outlined below should be followed:

Step 1: Consult with the u.s. central authority before submitting the request

If it is the first time asking the United States for legal assistance, or with any complex or unusual request, please contact the U.S. Central Authority (OIA) in advance of making a request. This is particularly true in the most serious cases, to ensure the assistance being sought is available under U.S. law and will meet U.S. legal requirements. In addition, the following steps should be followed in every case.

Step 2: Indicate the mechanism used to seek assistance

In drafting your request, begin by clearly identifying the treaty, convention (UNCAC, UNTOC, OECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from the United States.

Step 3: Identify the authority conducting the investigation/prosecution

Clearly indicate which authority in your country is conducting the investigation and/or prosecution.

Step 4: Summarise the case

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation/prosecution. This outline should also include the following:

- a. If **witness statement/testimony** is being sought, include:
 - name and location of the witness
 - relationship of the witness to the case, such as whether the witness is a potential suspect or defendant or simply a fact witness, and
 - explanation as to how the information sought from the witness relates to the case and assists the investigators or prosecutors in advancing their case.
- b. If **documentary evidence** is needed, include:
 - identification of the specific documents that are being requested, including the name of the document, its location and other specific identifying information (for example, bank records are located at ABC Bank, 123 Main Street, City, State, USA, involving account number 56789, and are needed from January 2010 to the present), and

- explanation as to how the documents sought relate to the case and assist the investigators or prosecutors in advancing their case.
- c. If the **execution of a search warrant** is sought, include:
 - up-to-date facts explaining that there is ‘probable cause’ to believe that the search warrant will likely elicit evidence of a crime or contraband
 - identification of the precise location of the search
 - identification of the particular items or types of items to be seized
 - explanation as to why the requested search is necessary, and
 - explanation as to how the seized evidence is relevant to the case and how it might assist the investigators or prosecutors in advancing their case.
 - d. If **seizure/confiscation of criminal proceeds** is requested, include:
 - identification of the assets to be restrained (including account numbers or other identifying information)
 - explanation of the relationship between the specific assets to be restrained in the United States and the criminal conduct of the wrongdoer
 - explanation of any connection between any wrongdoer and any corporate entities in whose name the assets may be held
 - identification of any restraining order that has been issued by a court of the requesting country, and
 - identification of any final forfeiture or confiscation judgments obtained in the requesting country as well as the procedural history of these judgments.

Step 5: Set out the applicable legal provisions

Identify and set out the verbatim text of all relevant legal provisions under investigation or prosecution, including applicable penalties.

Step 6: Identify the assistance being sought

Outline, in specific terms, exactly what you are seeking to obtain from the United States and any particular requirements that must be met (for example, certification/authentication needs). In addition, considering the nature of the assistance sought, the following information must be included:

- a. **Witness statements/testimony:** The request should clearly describe the subject matter of the testimony or statement sought and preferably a list of potential questions for the witness. The specific location and contact information of the witness in the United States should be provided. If statements are requested, include instructions as to what procedures should be followed, such as whether the statements should be taken under oath. In addition, indicate whether any prosecutors or investigators wish to travel to the United States to participate in the interviews. If the witness is a suspect or accused, include any rights or privileges (for example, the right to silence or the right to counsel) that the witness might have under the laws of the requesting country and which should be conveyed to the witness before taking the statement.
- b. **Documentary evidence:** The legal assistance request should identify the specific documents that are being sought so that the executing authority in the United States can easily locate the documents and fully respond to the request. The request should also explain the manner in which the requesting country seeks to have these documents

certified or authenticated. Many bilateral MLATs with the United States include forms that can be used for this purpose.

- c. **Search and seizure:** Under U.S. law, the issuance of a search and seizure warrant requires a showing of ‘probable cause’ in accordance with the Fourth Amendment of the U.S. Constitution. ‘Probable cause’ means that a person of ordinary prudence and caution would have a reasonable basis to believe that the location is likely to contain evidence or information about criminal activities. A request for a search warrant should contain sufficient information to establish ‘probable cause’ to believe that the evidence sought constitutes evidence of the commission of a criminal offence or represents contraband, the fruits of a crime or criminally deprived property. The request for a search warrant should also include reasonable grounds to believe that the evidence sought can be found at the specified location, along with a detailed description of the items to be seized, with sufficient specificity so as to identify them (for example, asking for specific records between certain limited dates or for specific personal property associated with the underlying crime). So that law enforcement action is justified on this basis, the information contained within the request must also be accurate and up-to-date, not ‘stale’ or so dated that it is unclear whether the information remains accurate. Pursuant to U.S. domestic law, search warrants are only available to countries making requests pursuant to a treaty or convention.
- d. **Enforcing an order to seize criminal proceeds:** Under U.S. law (Title 28 United States Code Section 2467), the United States has the ability to enforce foreign restraining and forfeiture orders pursuant to an MLAT request or pursuant to requests made under certain multilateral

conventions, including the 1988 Vienna Convention, the U.N. Convention against Corruption, and the U.N. Convention against Transnational Organized Crime. The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to forfeiture under U.S. law, had the underlying acts been committed in the United States. To restrain the assets, the requesting country must provide in the MLAT/convention request a copy of the restraining order from the requesting country's court that specifically identifies the assets in the United States to be restrained, or in the alternative, an order which restrains all of the assets belonging to the accused. There may be certain rare, limited circumstances where an affidavit by a foreign official can substitute for the court's restraining order; however, OIA should be consulted before using this approach.

- e. **Enforcing order to confiscate criminal proceeds:** Under U.S. law (Title 28 United States Code Section 2467), the United States has the ability to enforce foreign forfeiture orders pursuant to an MLAT request or pursuant to requests made under certain multilateral conventions, including the 1988 Vienna Convention, the U.N. Convention against Corruption, and the U.N. Convention against Transnational Organized Crime. The crime for which the property is to be restrained and ultimately forfeited must be one that would subject the property to forfeiture under U.S. law, had the underlying acts been committed in the United States. To enforce the forfeiture order, the requesting country must provide in the MLAT/convention request a certified copy of the final, non-appealable forfeiture judgment, a summary of the facts of the case and an affidavit establishing that the requesting country complied with due process, including giving notice of all proceedings to all persons with an interest in the property in sufficient time

to claim any rights to it. There may also be some limited circumstances in which a U.S. domestic *in rem* forfeiture action may be brought by the United States against assets in the United States based on certain crimes committed abroad.

Step 7: Highlight any specific confidentiality requirements

In the United States, filings with courts are public documents unless otherwise requested. The existence and nature of requests for assistance can be kept confidential, however, if the requesting authority specifically asks for confidentiality and provides a reason for it in the request. Confidentiality is not provided without explicitly asking for it in the request. Note that some disclosure may be necessary, even after a request for confidentiality, particularly where compulsory measures are required to provide the assistance.

Step 8: Identify any urgency in the execution of the request

Identify any time limit within which compliance with the request is needed and the reason for the time constraints (for example, pending court proceedings/time-sensitive investigation, etc). If you face limitation periods, set out the precise dates.

Step 9: Provide a list of relevant contact points in your country

Include a list of the names and contact numbers for key law enforcement/prosecution authorities familiar with the case. You should include the name and, where applicable, the contact information of your Central Authority, in the event the foreign authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: Translate the request

The United States requires that incoming requests for mutual legal assistance to be provided in writing in its official language, namely English.

Step 11: Limitations on use of evidence provided

The limitation on use of information provided pursuant to an MLAT request is governed by the terms of the treaty. In the absence of a treaty, any evidence that the United States provides in response to a legal assistance request may only be used for the specific purpose stated in the request. If a different use of the evidence is required, the requesting authority must first seek the United States' consent to such a use.

IV. OTHER USEFUL REFERENCES

Requesting countries are encouraged to refer to the *G8 Handbook on judicial cooperation in the fight against terrorism (2007)* for more detailed information on the United States' mutual legal assistance process, and the UN Office on Drugs and Crime's *MLA Writer Tool* (<http://www.unodc.org/mla/index.html>) for additional guidance on making mutual legal assistance requests to the United States.

VIET NAM

I. INTRODUCTION

Viet Nam can consider a request from any foreign country to gather evidence in a criminal matter, whether or not a bilateral or multilateral treaty relationship with that foreign country exists. Vietnamese law does not distinguish between government-to-government requests, whether made on a treaty or non-treaty basis, and 'letters rogatory.' The Vietnamese Central Authority can receive requests directly from foreign Central Authorities in hard copy or electric form (but electric form must be followed by the submission of a hard copy).

(i) Requests Made Under a Treaty/Convention

Requests made under a bilateral or multilateral treaty or convention are executed under *The Law on Mutual Legal Assistance 2007* (Law on MLA) and the *Criminal Procedure Code 2003*, subject to the provisions of the relevant treaty or convention.

Forms of mutual legal assistance in criminal matters between Viet Nam and foreign countries may include:

- service of documents and other records
- summoning of witnesses, experts, and persons who have rights and obligations in the case
- collection and provision of evidence
- criminal prosecution
- exchange of information, and
- other forms of mutual legal assistance in criminal matters.

(ii) Requests Made in the Absence of a Treaty/Convention

Viet Nam can consider a request for assistance from any foreign country in the absence of a treaty or convention. Vietnamese authorities may execute a request which is made in the absence of a treaty or convention in a similar manner to the above-mentioned.

(iii) Dual Criminality Requirements

Dual criminality is a mandatory ground for refusal of assistance under Viet Nam's bilateral treaties and under Viet Nam's domestic law on MLA.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Vietnamese Central Authority can be contacted as follows:

International Cooperation and Mutual Legal Assistance in Criminal Matters Department

Mutual Legal Assistance in Criminal Matters Division

Supreme People’s Procuracy

44 Ly Thuong Kiet street

Hoan Kiem district

VIET NAM

**Telephone: +84 4 38 255 058 ext. 103
or 105**

Facsimile: +84 4 39 361 637

Email: tttp_mla@vks.gov.vn

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM VIET NAM

In general, when seeking mutual legal assistance from Viet Nam, the steps outlined below should be followed:

Step 1: Consult with the central authority before submitting the request

Foreign Central Authorities can contact the Vietnamese Central Authority before making a request, particularly in urgent cases, to ensure the assistance sought is available under Vietnamese law, and the request will meet Viet Nam’s requirements.

Step 2: Indicate the basis on which the request is made

The request should identify the basis on which it is made, including any bilateral or multilateral treaty or convention (such as the UNCAC or UNTOC). If there is no relevant treaty or convention the request should state whether reciprocity would be afforded if a Vietnamese request was made in comparable circumstances.

Step 3: Identify the authority conducting the investigation/prosecution

The request should identify the relevant investigating and/or prosecuting authority.

Step 4: Summarise the case

The request should describe the nature of the criminal matter and summarise the relevant facts. The summary of facts should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

The summary of facts should:

- include sufficient information to enable Viet Nam to undertake a dual criminality assessment
- provide information about why the investigating and/or prosecuting authorities believe relevant evidence is located in Viet Nam, and
- identify the suspect(s).

Step 5: Set out the applicable legal provisions

The request should include the full text of all relevant offence and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 6: Identify the assistance being sought

The request should outline, in specific terms, exactly what assistance is sought from Viet Nam, and any particular procedural requirements that must be met. Examples of particular procedural requirements include where there are any specific certification/authentication requirements for the evidence provided in response to the request, or if certain procedures must be followed when taking evidence from a witness.

In addition, depending upon the nature of the assistance sought, the following information should be included:

- a. Service of documents:** A request for serving a document requiring the attendance of a witness or expert shall be sent to the Vietnamese Central Authority at least ninety (90) days before the date on which the attendance is required in the foreign country. In urgent cases, the Vietnamese Central Authority may waive this requirement.
- b. Witness statements/testimony:**
- include a list of questions to be asked of the witness
 - indicate whether evidence provided needs to be sworn/affirmed
 - include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
 - state the status of the witness (suspect/accused, or simply a witness)
 - include a clear explanation of how the information sought from the witness is relevant to the case, and
 - if known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made for the witness to be compelled to give evidence.

c. Documentary evidence:

- if possible, identify the specific documents sought
- state the location where the documents are believed to be held
- include the reasons why the evidence will be relevant to the case.

d. Search and seizure:

- include a clear description of the evidence to be seized
- state the precise location to be searched
- include an explanation why this measure is required, and
- state how the items seized will be relevant to the case.

e. Transfer of sentenced persons to give evidence in a foreign proceeding or investigation:

- indicate whether a proceeding in relation to a criminal matter has commenced (for example, whether the suspect been indicted) or whether the matter is still at the investigation stage
- state the grounds on which it is believed the sentenced persons are capable of providing evidence relevant to the proceeding or assistance relevant to the investigation
- if known, indicate whether the sentenced persons consents to giving evidence in the proceeding or assistance in the investigation, and
- include undertakings pertaining to the safe passage of the sentenced persons.

Step 7: Highlight any specific confidentiality requirements

In Viet Nam, the existence and contents of foreign requests are treated confidentially except to the extent necessary to execute the request. If the matter is particularly sensitive, the request should expressly set out the need

and reasons for confidentiality (for example, if the suspect has no knowledge of the investigation relating to the request).

Step 8: Identify any urgency in the execution of the request

The request should expressly identify any time period within which the assistance is sought, and the reason for this time constraint (such as a pending court proceeding or a time-sensitive investigation). If there is a statutory limitation period on the prosecution of the offence, please provide the relevant dates.

Step 9: Provide a list of relevant contact points in your country

The request should include contact details for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Vietnamese Central Authority may seek clarification or obtain additional information from the relevant agency. The competent authorities of foreign countries can communicate with the Vietnamese Central Authority by email to progress matters efficiently (but official requests must still be in writing).

Step 10: Translate the request

Viet Nam requires requests to be provided in writing in Vietnamese or English.

Step 11: Limitations on use of evidence provided

Any evidential material provided by Viet Nam in response to a request may only be used for the specific purpose stated in the request. If the requesting country wishes to use the evidence for any other purpose(s), consent must be sought from the Vietnamese Central Authority.

IV. OTHER USEFUL REFERENCES

The Vietnamese Central Authority encourages requesting countries to refer to the website of the Supreme People's Procuracy (<http://www.vksndtc.gov.vn>), and

Please forward any mutual assistance enquiries to the Vietnamese Central Authority at tttp_mla@vks.gov.vn.

PART 2

Sample Mutual Legal Assistance Request

SAMPLE MLA REQUEST TO APEC ECONOMIES

Note: This Sample Request is included for illustration purposes only. When drafting a request for assistance to an APEC economy, the requesting state must refer to the detailed Step-by-Step Guide of that country to ensure the requirements for seeking assistance in a given case are being met.

This Sample Request is based on an example contained in the 2012 G20 guide 'Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries'.

**** On letterhead and translated into the official language of requested state**

URGENT*/CONFIDENTIAL

(*delete the above if not urgent)

REQUEST FOR MUTUAL LEGAL ASSISTANCE BY THE REQUESTING STATE TO THE REQUESTED APEC ECONOMY MADE PURSUANT TO THE BILATERAL MUTUAL LEGAL ASSISTANCE TREATY BETWEEN THE REQUESTING AND THE REQUESTED STATE

I. OVERVIEW OF THE INVESTIGATION AND PENDING PROSECUTION

The National Police Force and the National Prosecuting Service of the requesting state are investigating an alleged Fraud on its government (namely 'Influence Peddling'), contrary to section 555 of the *Penal Code* of the requesting state. This offence is alleged against:

Minister X

Date of Birth: January 1, 1951

Resident of 555 Tulipe Lane, City of Oak, Requesting State

Minister X has been charged with the above-stated offence and is currently on bail pending the commencement of his trial on December 1, 2011. Apart from the criminal proceedings against Minister X, he is also the subject of a parliamentary investigation under the *Conflict of Interest Code of the Requesting State* and at risk of removal from office if he is found to have breached his official duties under the *Code*.

In relation to the criminal investigation/prosecution, the National Police Force and the National Prosecuting Service of the requesting state require the following assistance:

- To obtain certified bank records from the Foreign Bank of the requested APEC economy located at 222 Lane Road in the City of Pine in the requested APEC economy.
- To obtain the compelled statement of Ms. S, residing at 333 Road Way, in the City of Pine, in the requested state. Ms. S is the daughter of Minister X and is believed by the investigators to have received the proceeds of Minister X's alleged criminal activity.
- To be permitted to attend in the requested state to conduct the court-ordered and sworn witness examination of Ms. S.

The above assistance is required as evidence in the anticipated prosecution of Minister X and to trace the proceeds of the alleged criminal activity with a view to future seizure and confiscation. In this regard, seizure and confiscation orders will be sought in the requesting state on the basis of the evidence gathered in the requested APEC economy. At a future date, the requesting state intends to submit a supplemental request to the requested APEC economy seeking the enforcement of seizure and confiscation orders.

This request is both urgent and confidential for the reasons described in sections VI and VII below.

II. RELEVANT LEGAL PROVISIONS

The relevant *Penal Code* of the requesting state provides:

Every one commits an offence who, being an official, demands, accepts or offers or agrees to accept from any person for himself or another person a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with the transaction of business with or any matter of business relating to the government.

Punishment

Section 555(2) provides:

Everyone who commits an offence under this section is liable to imprisonment for a term not exceeding five years.

Definition of 'Official'

Section 554 of the *Criminal Code* of the requesting state defines 'official' as follows:

'official' means a person who holds an office, or is appointed or elected to discharge a public duty.

III. SUMMARY OF THE CASE

(a) Summary of the Allegations against Minister X

In March of 2008, Minister X was elected to Parliament in the requesting state and began receiving a Minister's salary at that time. As a Minister, he was required, under the *Conflict of Interest Code* of the requesting state, to publicly disclose his private interests on an annual basis through an established mandatory disclosure policy.

In January of 2009, the investigators of the requesting state received an anonymous tip in which it was alleged that Minister X was compromising his public position by lobbying for government monies in favour of private corporations to which he provided legal representation. It was further alleged in the anonymous tip that Minister X had gained significant financial advantage for himself in making these representations.

On the basis of the anonymous tip, the investigators commenced an investigation. They concluded that Minister X had improperly accepted payments in the amount of \$280,000.00 and a loan of \$100,000.00 from two companies (ABC Inc. and DEF Corp.) for his efforts in attempting to secure government grants on their behalf. The evidence supporting these allegations and linking money transfers to a bank in the requested APEC economy is summarised below.

(b) Evidence Obtained in Support of the Allegations / Sources

(i) Public Records Linking Minister X to ABC Inc. and DEF Corp.

The investigators obtained the public records pertaining to Minister X's declared private interests and determined that, prior to and after his election, he was being paid as the legal representative for ABC Inc. and DEF Corp. According to incorporation records also obtained by the investigators during the course of their inquiries, the principal shareholder of ABC Inc. and DEF Corp. is Ms. K.

(ii) Statement of Ms. K (Principal Shareholder of ABC Inc. and DEF Corp.) Concerning Remuneration and Loan Allegedly Paid to Minister X

The investigators interviewed Ms. K as a witness. She revealed that Minister X's role in representing ABC Inc. and DEF Corp. began in January of 2008 (before his election), and included making representations to various levels of government in the requesting state on behalf of, and for the benefit of, Ms. K's companies. She further stated that the purpose of these representations was to secure substantial government grants for her two companies. Finally, Ms. K revealed that, for his various attempts to obtain grants for her companies, Minister X received fees totalling \$300,000.00 – of which \$280,000.00 was earned and paid after he was elected to the Senate in March of 2008. In addition, Ms. K told the investigators that, at his request, she granted Minister X a loan in the amount of \$100,000.00 in October of 2008 – also in consideration of his attempts to secure government grants for the benefit of her companies.

According to Ms. K, most of Minister X's efforts to obtain government grants for her companies were unsuccessful. However, Minister X did succeed in securing one grant in the amount of \$1,500,00.00 from the National Industry Department. This grant was for the benefit of ABC Inc., and was used to fund various domestic infrastructure projects initiated by ABC Inc.

(iii) Statement of Mr. C (Senior Official at the National Industry Department) Regarding Grant Given to ABC Inc.

The investigators subsequently interviewed Mr. C, a senior official of the National Industry Department (NID). Mr. C revealed that Minister X had indeed lobbied for a grant on behalf of ABC Inc. in May of 2008, and that the National Industry Department agreed to issue the grant after questioning Minister X about any benefit or advantage he had received or was expected to receive from ABC Inc. for his submissions on their behalf. Minister X allegedly assured Mr. C that he was receiving no remuneration or benefit of any kind from ABC Inc. for his legal representation, and that his motivation in seeking the grant was purely for the betterment of the country as a whole. In this regard, he stated that ABC Inc.'s industrial initiatives were sure to improve the national economy, which needed a boost at the relevant time.

Note: For APEC economies that require dual criminality as a precondition to granting mutual legal assistance, further factual details may be necessary. For example, in this Sample Request, the following additional information would assist those APEC economies that have this requirement to assess dual criminality:

'Minister X was a Member of Parliament and, therefore, involved in decisions relating to the NID's budget, as well as the enactment of legislation impacting on the activities of the NID. In addition, Minister X belonged to the NID which oversees NID-related matters. Mr. C revealed to the police that he felt compelled to comply with Minister X's request for a grant for ABC Inc. for fear of retaliation by Minister X, in his capacity as Member of Parliament.'

(iv) Statement of Ms. H (Former Staff Member Working with Minister X) Regarding Cheques Received by Minister X from ABC Inc. and DEF Corp.

The investigators also interviewed Ms. H, a former staff member who had worked with Minister X shortly after his election and was dismissed four months later. Ms. H told the investigators that while employed with Minister X, she noticed that he was receiving numerous cheques from ABC Inc. and DEF Corp., in the amounts of between \$55,000.00 to \$85,000.00. The cheques were identified as 'payment for seeking grants'. She stated that she became concerned about the source of these payments and raised it with Minister X. He allegedly told her that he had disclosed this income through the conflict of interest process applicable to Ministers and that no impropriety was identified.

Two months after Ms. H raised her concerns with Minister X, she was dismissed – ostensibly on the grounds of incompetence. Mr. H has brought a civil action against Minister X for wrongful dismissal and the matter is pending.

Note that the public records obtained by the investigators in relation to Minister X's mandatory disclosure duties (referred to above) do not show any of the payments referred to by Ms. H.

(v) Search Warrant Executed at the Residence of Minister X Revealed Bank Transfers from his Personal Account in the Requesting State to a Foreign Account in the Requested State

In October of 2009, a search warrant was executed at the residence of Minister X at 555 Tulipe Lane, City of Oak, in the requesting state. Among the items seized were bank statements showing deposits made by ABC Inc. and DEF Corp. to Minister X's personal bank account (no. 5555 5555 5555) at the Book Bank of the requesting state between March 29, 2008 and October 1, 2008 as follows:

- March 29, 2008 – cheque no. 2345 6789 in the amount of \$55,000.00
- May 15, 2008 – cheque no. 3456 7891 in the amount of \$55,000.00
- June 25, 2008 – cheque no. 1111 2222 in the amount of \$85,000.00
- August 11, 2008 – cheque no. 3333 4444 in the amount of \$85,000.00
- October 1, 2008 – cheque no. 7777 8888 in the amount of \$100,000.00

TOTAL: \$380,000.00

The investigators subsequently obtained bank records from the Book Bank in the requesting state in relation to bank account no. 5555 5555 5555. These records indicate that 28 transfers, each in the amounts of \$10,000.00 (totally \$280,000.00), were made from Minister X's personal account no. 5555 5555 5555 at the Book Bank of the requesting state to account no. 2222 2222 2222 held by a Ms. S at the Foreign Bank of the requested APEC economy, located at 222 Lane Road in the City of Pine in the requested state. According to publicly available information on Minister X's personal circumstances, Ms. S is Minister X's daughter, who is currently a resident of 333 Road Way in the City of Pine in the requested APEC economy.

(vi) Attempts to Obtain the Voluntary Statement of Minister X's Daughter (Ms. S) Who Resides in the Requested State

In February, March and May of 2009, with the assistance of police authorities in the requested APEC economy, the investigators of the requesting state attempted to obtain a voluntary statement from Ms. S concerning the 28 payments allegedly made by Minister X into her account. She was being sought as a witness only. Ms. S is neither an accused person, nor a suspect in the investigation in question. To date, all attempts to obtain her voluntary statement have been unsuccessful.

(c) Conclusion

Based on the evidence gathered to date, as summarised above, the investigators believe that Minister X improperly used his position to secure government grants for the benefit of Ms. K's two companies; that he received financial benefit for doing so; and transferred the monies received from Ms. K to the Foreign Bank of the requested APEC economy.

IV. REQUESTED ASSISTANCE

In order to further the investigation and/or prosecution, the investigation/prosecuting authorities of the requesting state require the following assistance from the requested APEC economy:

- 1 To obtain certified bank records for account no. 2222 2222 2222 held by Ms. S at the Foreign Bank of the requested APEC economy, located at 222 Lane Road in the City of Pine. Bank records are sought for the period of March 2008 to October 2008. The records sought include, but are not limited to:
 - account opening applications
 - account balance
 - signature cards
 - account statements showing the deposit and withdrawal of funds
 - deposit and withdrawal slips
 - cheques, including cancelled cheques
 - money orders, bank drafts, receipts, invoices
 - correspondence and communication in any form
 - memorandums and letters of instruction
 - safety deposit box(es), contract(s) and inventory of content(s)
 - powers of attorney, and
 - trust documents.
- 2 The court-ordered statement of Ms. S (DOB: April 12, 1974, a dual citizen of the requested state and the requesting state), residing at 333 Road Way in the City of Pine. The following is a non-exhaustive list of the questions to be posed of Ms. S:
 - Can she confirm her relationship to Minister X?
 - What are the circumstances surrounding the 28 transfers of \$10,000 each from Minister X's personal account in the requesting state to Ms. S's account in the requested state?
 - Did Minister X indicate where he had obtained those funds? Does she have any correspondence from Minister X concerning the funds?

- Did Minister X direct Ms. S to do anything with those funds?
- What did she do with the monies received?
- The witness should also be asked to produce any records or documents to which she may refer in her examination.

In order to be admissible under our law, the following formalities must be met:

- the witness must be sworn
- the witness should be cautioned, on the record, that she may be subject to charges in the requesting state for any untrue or misleading information given in the course of her witness examination, and
- a verbatim transcript must be produced.

Note: As indicated above, Ms. S is neither an accused person, nor a suspect in the matter for which her statement is sought.

- 3 Permission for the investigating and prosecuting authorities to attend in the requested state to conduct (or assist in) the court-ordered witness examination of Ms. S.

V. CERTIFICATION REQUIREMENTS

In order to meet the requesting state's evidentiary requirements as they pertain to business records, the bank records sought from the Foreign Bank of the requested APEC economy are to be certified as follows:

- a. if original documents are available, a person who is able to identify and authenticate them is to sign the reverse thereof, and
- b. where copies are produced, it is requested that the witness who is able to identify and authenticate the copies complete the attached *Affidavit Concerning Business Records*.

[111

VI. URGENCY

The requesting state asks that their request be given high priority. Both Minister X and Ms. S are aware of the criminal investigation and may take steps to remove any assets that still remain in Ms. S's account at the Foreign Bank of the requested APEC economy. In addition, the evidence is needed for use in the upcoming trial of Minister X, which will take place December 11, 2011. The prosecuting authorities of the requesting state are obliged to make timely disclosure of any prosecution evidence to Minister X and his legal counsel well in advance of that date.

VII. CONFIDENTIALITY

Confidentiality of the existence and contents of this request is essential to preserving the ongoing criminal proceedings against Mr. X and to allow for the future seizure and confiscation of the assets that may remain at the Foreign Bank of the requested APEC country. Should your authorities be unable to execute this request in a manner that preserves confidentiality, we would ask that you contact the Central Authority of the requesting state (see contact details below) to discuss whether the request should still be executed in whole or in part.

Note: Where applicable, use the Confidentiality section to identify any past or anticipated media interest in the case under investigation/prosecution and outline any public interest concerns raised by the case.

VIII. CONTACT PERSONS IN THE REQUESTING STATE

The following are the names and contact numbers of the Central Authority and the key investigators/prosecutors involved in this matter in the requesting state:

Ms. P

Central Authority of the Requesting State

3000 Sun Street

City of Oak, Requesting State

Telephone: (222) 222 2222

Facsimile: (333) 333 3333

Email: Ms.P@CentralAuthority.com

Officer D

National Police Force of the Requesting State

2000 Star Street

City of Oak, Requesting State

Telephone: (444) 444 4444

Facsimile: (555) 555 5555

Email: OfficerD@NationalPolice.com

Mr. E

Senior Prosecutor

National Prosecuting Service of the Requesting State

1000 Moon Street

City of Oak, Requesting State

Telephone: (777) 777 7777

Facsimile: (888) 888 8888

Email: Mr.E@NationalProsecutingService.com

IX. CONTACT PERSONS IN THE REQUESTED STATE

Detective V of the Central Police Force of the requested state is familiar with this case and has provided some informal assistance to the requesting state. His contact information is: Telephone (999) 999 9999 / Facsimile (121) 121 1212 / Email DetV@CentralPoliceForce.com.

Dated at the requesting state, this 2nd day of November, 2011.

Signed by _____

Central Authority of the requesting state
(or competent authority if the request is a non-treaty request)