



**REQUESTING
MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS FROM
G20 COUNTRIES**

A STEP-BY-STEP GUIDE

2012

FOREWORD

Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-step Guide 2012 (Guide) provides states seeking mutual legal assistance from G20 countries with a step-by-step overview of the requisite procedures of G20 countries to ensure requests are received and processed as efficiently as possible. Its creation was mandated by the G20 Anti-Corruption Working Group, which embraced the suggestion of an instructive mutual legal assistance guide in a concept paper written by Australia, China and Indonesia on Recommendation 5 of the G20 Anti-Corruption Action Plan* regarding international cooperation.

The G20 Anti-Corruption Working Group recognises that mutual legal assistance is an essential tool in the global fight against transnational crime. States engaged in the investigation, prosecution and suppression of criminal activity must increasingly rely on each other to bring alleged offenders to justice and recover the proceeds of crime. In particular, combating serious crime such as corruption, organised crime and terrorism is a growing cross-border concern, and all nations face the risk that corrupt officials may flee or transfer stolen assets abroad. Given that G20 countries represent approximately 90 percent of the world's gross domestic product, the attractiveness to criminals of fleeing, or transferring proceeds and assets of crime, into G20 countries is a potent threat. This publication therefore aims to improve processes to bring these criminals to justice and recover the proceeds of their crimes.

Numerous mechanisms exist for states to seek international cooperation from G20 countries, such as bilateral treaties and multilateral conventions. However, if requests do not contain the required information they cannot be executed efficiently or at all. The harm of unsuccessful investigations and prosecutions, particularly in vulnerable states, cannot be overestimated. These states need access to basic and straightforward information on what G20 countries need in order to execute their requests. Common challenges faced when seeking mutual legal assistance from developed states include a lack of understanding of states' legal requirements, a lack of appropriate contact information, difficulty in acquiring informal consultation prior to making formal requests, and knowledge of the correct mutual legal assistance request procedures.

The Guide provides a low-tech, user-friendly sketch of the key preconditions that must be met before assistance may be granted by G20 countries. Particular focus is placed on the requirements for obtaining common types of legal assistance, including court-ordered documentary evidence, executing search warrants, seizing and confiscating assets, and obtaining witness testimonies or statements. The Guide also lists contact information for the relevant country authorities to facilitate communication between states.

In addition, a sample request has been included to demonstrate how the step-by-step process may be applied, and addresses two types of assistance that might be requested. However, requesting states are encouraged to refer to the detailed procedures of the relevant G20 country when drafting a request, in order to ensure that the requirements for seeking cooperation in a given case are being met, as these may vary from case to case and in relation to the particular type of assistance sought.

The Guide complements existing and more comprehensive tools on mutual legal assistance, most notably the functional *Mutual Legal Assistance Writer Tool* of the UN Office on Drugs and Crime and the G8's *Judicial Cooperation Handbook*.

In collaborating on this Guide, G20 countries have demonstrated their support of the G20 Anti-Corruption Action Plan and their commitment to leading by example in the fight against transnational crime and promoting the implementation of the UN Convention against Corruption.

* <http://www.g20.utoronto.ca/2010/g20seoul-anticorruption.html>

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PART I

INDIVIDUAL STEP-BY-STEP GUIDES FOR SEEKING MUTUAL LEGAL ASSISTANCE FROM G20 COUNTRIES

ARGENTINA

I. INTRODUCTION

The basic principle of the international mutual legal assistance system of Argentina is established in article 1 of the domestic law called the Law on International Cooperation in Criminal Matters (No. 24767), which states that

[t]he Argentine Republic shall afford the widest possible measure of assistance, to any State requesting it, in the investigation, the prosecution and the punishment of offenses that fall within the jurisdiction of the requesting State.

Any authorities involved shall employ the maximum degree of diligence so that the request can be executed promptly in order not to distort the nature of the assistance sought.

This principle inspires the whole Argentine system on mutual legal assistance.

(i) Requests Made Under a Treaty/Convention

Assistance is ruled by the treaties on mutual legal assistance signed by Argentina, or by the rules on the matters contained in the regional and international conventions, or treaties subscribed on specific crimes. Mutual legal assistance takes place on the basis of ratified bilateral, regional or multilateral conventions in most cases.

(ii) Non-Treaty Requests

Where there is no applicable instrument binding the requesting country and Argentina, the assistance shall be conducted according to the law on international cooperation in criminal matters, on condition of reciprocity.

(iii) Dual Criminality is Generally Not Required

It is a rule that the Argentine Republic shall provide international assistance even when the facts investigated by the requesting foreign authorities, on which the request is based, is not deemed to constitute a crime by Argentine legislation. This general rule is subject to certain restrictions regarding measures that may violate individual rights recognized of private parties, such as seizure of property, search warrants, surveillance of persons, postal interception or phone tapping.

Further, and as a by-product of the aforementioned basic principle of full cooperation enshrined by Argentine law, Argentina provides legal assistance even in cases investigated by foreign courts in which the facts being investigated also fall within the scope of Argentina's jurisdiction.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Argentine Ministry of Foreign Affairs, International Trade and Worship, is the Central Authority for almost all treaties on legal assistance in criminal matters, except the bilateral treaty with the United States of America.

Contact information

Ministerio de Relaciones Exteriores, Comercio Internacional y Culto

Dirección de Asistencia Jurídica Internacional

Esmeralda 1212, piso 4, oficina 402, Ciudad Autónoma de Buenos Aires, Código Postal 1007

Telephone: +54 11 4819-7172

Facsimile: +54 11 4819-7000 ext. 8121

Email: dajin@mrecic.gov.ar

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

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

Step 1: CONSULT WITH THE ARGENTINE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority contact the Argentine Central Authority in advance of making a request for mutual legal assistance, particularly in the most serious cases, to ensure the assistance that is being sought is available under the laws of Argentina, and the request meets the legal requirements of Argentina's legislation.

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 Republic of Argentina. In case there is no applicable instrument, Argentine law grants assistance based on the existence or offer of reciprocity by the requesting party.

Step 3: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION OR PROSECUTION

Clearly indicate which authority in your country is conducting the investigation and/or prosecution. It is absolutely necessary for the Argentine Central Authority to have the requesting judicial authority precisely identified.

Step 4: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation and/or prosecution and link the facts with the assistance requested.

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 is being sought from the Republic of Argentina 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 state the nature of the requested measure, so that it is clear that the statement/testimony is as witness and not as an accused. Provide the list of questions to be asked to the witness. If there is any specific condition or procedure to be taken, the requesting party shall make its requirement expressly known. In such event the request shall be granted provided that no constitutional guarantees are violated.
- b. **Documentary evidence**: Identify to the extent possible the required documentation. It is crucial that you clearly state the particular requirements needed (for example originals, copies, or certification/authentication).
- c. **Search and seizure**: Provide extensive details on the identification of the person

whose premises are to be searched. Provide all information available on the location of the premises to be searched. Give all relevant information available on the type of objects to be searched or seized. Fully explain the link between the suspect and the property, and mention necessary undertakings to be taken for the safekeeping and certification of the seizures.

- d. **Enforcing order to confiscate criminal proceeds**: The resolution which orders the confiscation of criminal proceeds should be final and definitive. A certified copy of that resolution should be provided, and dual criminality is required. A right to defense should have been granted. Argentina forsee, under reciprocity basis, authorising the sharing of confiscated assets between Argentina and the requesting country when confiscation is directly or indirectly a result of coordinated law enforcement actions.

Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In the Republic of Argentina, 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 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 constraint (For example, pending court proceedings or time-sensitive investigations). 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 case the Argentine Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

The Republic of Argentina requires incoming requests for mutual legal assistance to be provided in writing. Requests should be written in Spanish, the Argentine Republic's official language.

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 Argentina.

The webpage of the Argentine Central Authority is www.cooperacion-penal.gov.ar.

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 non-treaty basis, and ‘letters rogatory.’ The Australian Central Authority can receive requests directly from foreign Central Authorities in hard copy or electronic form.

(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 Australia’s bilateral treaties and under the MA Act. 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 police-to-police) assistance before making a formal mutual legal assistance request, as information can be provided more quickly. 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, 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 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 (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: SPECIFY 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, under the MA Act 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:**

Note: Australian law currently only permits non-conviction based restraint or confiscation action for Canada, South Africa, UK, Ireland and USA. Under amendments recently made to Australia's mutual assistance regime (which will commence on 20 September 2012), Australia will be able to register and enforce foreign non-conviction based proceeds of crime orders made in any country and seek a temporary non-conviction based restraining order on behalf of any country.

- 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 Australia (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 Australia 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 Australia.
- e. **Provision of existing evidentiary material (i.e. material lawfully obtained in an Australian 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 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/Extraditionandmutualassistance/Pages/default.aspx>), and
- 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 mutualassistance@ag.gov.au.

BRAZIL

I. INTRODUCTION

The Brazilian legal system is based on Civil Law tradition. The Federal Constitution is the supreme rule of the country and is characterized by its mostly rigid written form. The Constitution organizes the country as a Federative Republic.

The judicial powers are vested upon the Federal Supreme Court, the Superior Court of Justice, the Regional Federal Courts and Federal Judges. There are also specialized courts to deal with electoral, labor and military disputes. The Superior Court of Justice is responsible for upholding federal legislation and treaties. The five Regional Federal Courts have constitutional jurisdiction on cases involving appeals towards the decision ruled by federal judges, and are also responsible for cases of national interest and crimes foreseen in international pacts, among other duties. The jurisdiction of the Federal Judges include: being responsible for hearing most disputes in which one of the parties is the Union (State); ruling on lawsuits between a foreign state or international organization and a municipality or a person residing in Brazil; and judging cases based on treaties or international agreements of the Union against a foreign state or international body.

Once the sovereignty, *ordre public* and the essential principles of Brazil law are not violated, Brazil can provide mutual legal assistance either based on a treaty (including conventions) or on a non-treaty basis. Brazil allows, on the basis of reciprocity, the execution of incoming requests for legal assistance even on the absence of bilateral or multilateral agreements in force.

As a general rule, the necessary information required for mutual legal assistance is:

- legal basis of the request (if there is a treaty, please specify it or mention ‘letter rogatory’)
- requesting authority
- summary of the proceeding in the requesting country
- information and identification of the investigated persons, if applicable
- transcription of the legal provisions (articles of the penal and criminal procedure code)
- facts
- description of the requested measures, and
- any special procedure to be observed.

(i) Requests Made Under a Treaty/Convention

In case there is a treaty in place, the competent authority of the requesting country shall prepare a formal written request containing the required information described above and transmit it directly to the Brazilian Central Authority appointed in such treaty.

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

In the absence of a treaty/convention, the competent authority of the requesting country shall prepare a formal written request and transmit it via diplomatic channels to the Brazilian authorities. The Brazilian Ministry of Foreign Affairs will transmit such request to the Brazilian Central Authority.

(iii) Dual Criminality is Generally Not Required

In the field of mutual legal assistance, as a general rule, Brazil does not require dual criminality. Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under the legislation of both countries.

However, the Brazilian law does require dual criminality in cases of extradition. It is important to highlight that, according to Brazil's case law, dual criminality does not mean the equivalence of the elements defining the criminal offence in the requesting state and in the requested state. It is considered sufficient if the investigated conduct can be sanctioned with a criminal penalty or a regulatory fine.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Ministry of Justice

National Secretariat of Justice

Department of Assets Recovery and International Legal Assistance

General-Coordination of Assets Recovery

SCN – Quadra 06, Conjunto A, Bloco A, 2º andar, Ed. Venâncio 3000

Brasília-DF – CEP – 70716-900

Telephone: +55 61 2025 8900

Facsimile: +55 61 2025 8915

Email: cooperacaopenal@mj.gov.br

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

Brazil has not adopted a rigid form that must be followed by the competent foreign authorities who submit requests for mutual legal assistance. However, internationally recognized standards for this type of request must be observed.

In general, when seeking mutual legal assistance from Brazil, 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 sought is available under the Brazilian laws, and the request will meet national legal requirements.

After that, the request may be sent to the Central Authority. It is up to the Department of Assets Recovery and International Legal Cooperation (DRCI), of the Ministry of Justice, among other tasks, to coordinate the execution of the international legal cooperation and instruct, opine and coordinate the execution of both active and passive international legal cooperation, both in criminal and civil matters.

Requests from foreign jurisdictions may be sent to the DRCI. After the formal analysis of the required information contained in such requests, which will vary depending on the requested measure, DRCI will submit such a document to the Superior Court of Justice (STJ), for the granting of the *exequatur* by a decision of the President of such Court, i.e. the authorization that allows for the enforcement in Brazil of a foreign judicial proceeding. The *exequatur* does not assess the merit of the foreign request, it only verifies if the procedure contained in the request does not offend Brazilian constitutional principles.

Thus, the passive requests for mutual legal assistance in criminal matters that fall under the competence of the Brazilian Federal Justice and do not require advisory opinion from the STJ

are forwarded by DRCI to the Centre for International Legal Cooperation (CCJI) of the Attorney General's Office. The CCJI then distributes the requests to the Federal Public Prosecution Offices designated to judicially promote the acts needed for cooperation.

Depending on its nature, the request shall alternatively or concomitantly be transmitted by DRCI to the Federal Police Department for execution, owing to the likely need to take measures related to police work. Finally, the requests for assistance for acts that, under the Brazilian legislation, do not need intervention of the Judiciary Branch may be transmitted directly by the Central Authority to the competent administrative authority for execution.

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 Brazil, 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 Brazil. If no treaty is in force, assistance may be granted on the basis of reciprocity.

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: SUMMARIZE 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 all available identification information, including complete name, parent's name and identification document number or passport number, complete address and the questions to be posed to such person. The interrogatory is conducted by the Brazilian authority and the participation of foreign authorities is normally allowed in the condition of observers. In addition, it is very important to indicate the relation of such person with the investigated crime and why such testimony will be useful in the foreign procedure.
- b. If **documentary evidence** is needed, please detail in a clean and succinct way the required documents and required measures to obtain such documents.
- c. If the **execution of a search warrant** is sought, please provide copy of the judicial decision or ancillary documentation ordering such search warrant in the requesting country, detailed information regarding the assets, documents or values involved, location of the assets, documents and values and explanation about the necessity to proceed with this urgency measure.
- d. If **seizure/confiscation of criminal proceeds** is requested, please provide copy of the confiscation order or similar documentation ordering such seizure/confiscation in the

requesting country, detailed information regarding the criminal proceeds, as well as location and any helpful information regarding such criminal proceeds.

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

Brazil provides mutual legal assistance for the purpose of proceedings related to criminal matters, including measures taken in connection with the investigation or prosecution of criminal offenses, and provisional measures referring to proceeds or instrumentalities of crime, such as the restraint, seizure or confiscation, and also the disposal and return of assets. As such, it is necessary to outline, in specific terms, exactly what you are seeking to obtain from Brazil, and any particular requirements that must be met (for example, certification/authentication needs). In the matter of certification and authentication needs, Brazil usually assumes that any documents transmitted by means of the Central Authorities shall not require any form of certification or authentication.

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

a. **Witness statements/testimony:**

- If a person from whom evidence is requested in the Brazilian territory may be compelled to appear in order to testify or produce documents, records, or articles of evidence by summons or such other method as may be permitted under the Brazilian law.
- If the person summoned asserts a claim of immunity, incapacity or privilege under the laws of the requesting country, if the evidence shall nonetheless be taken and the claim be made known to the requesting country for resolution by the authorities of that Party.
- If the Brazilian Central Authority shall furnish information in advance about the date and place of the taking of the evidence.
- If Brazil may permit the presence of such persons as specified in the request during the execution of the request, and may, pursuant to its legislation, allow such persons to present questions.

b. **Documentary evidence:** If banking documentation is requested, we suggest the indication of the name and address of the bank, account number, account holder name, time period for the production of the bank statements, types of banking documents requested (account opening documents, statements, wires, loan agreements, among others), relation of the bank account with the crimes committed. According to Brazilian laws, in order to obtain the breach of the banking secrecy, an internal judicial decision must be prepared by the competent Brazilian judicial authorities, as a guarantee of fundamental rights contained in our Bill of Rights.

c. **Search and seizure:**

- The Brazilian Code of Criminal Procedure foresees the seizure of assets held by the accused person. The assets originating from crime are kept unavailable. Generally these measures are not necessarily linked to the assets which were object of a crime. Brazil counts, for example, with the seizure, arrest and real

estate legal mortgage. These measures guarantee remedies for the affected party and the payment of legal and general costs.

- The seizure can be ordered if there is a clue indicating that such assets were originated from crime. All of the assets which derive of crime can be seized. The seizure can be ordered during the police investigation or during the criminal procedure. In case the sentence acquits the defendant, the seizure is released. If the sentence condemns the defendant, the judge can determine the evaluation of the assets and the disposal by public auction.
 - The arrest is a wider measure and can be ordered considering all of the property of the defendant, in order to secure damages for victims and/or payment of legal costs. And the real estate legal mortgage can be ordered in relation to real estate belonging to the accused person.
 - These measures do not have any reserve regarding the type of crime. They are applied to all types of offenses foresaw in the Penal Code.
- d. **Enforcing an order to seize criminal proceeds:** As a general rule, Brazil does not enforce foreign forfeiture judgements. An internal decision must be prepared by a competent judge in order to seize and forfeit assets, as a guarantee to fundamental rights contained in our Bill of Rights.
- e. **Enforcing order to confiscate criminal proceeds:** It is possible to provide assistance in proceedings involving the identification, tracing, provisional measures, such as restraint, seizure and confiscation of the proceeds and instrumentalities of crime in accordance with the domestic law.

If the Brazilian Central Authority becomes aware that proceeds or instrumentalities of crime are located in the territory of another country and may be liable to provisional measures, such as restraint, seizure or confiscation under the laws of that country, it may so inform the authorities of the other country.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

Brazil shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. In the same way, the requesting country shall request prior consent from Brazil to use or disclose information or evidence obtained by means of assistance for purposes other than those stated in the request.

Step 9: IDENTIFY ANY URGENCY IN THE EXECUTION OF THE REQUEST

The Brazilian Central Authority shall promptly execute the request itself or, when appropriate, shall transmit it to the officials having authority to do so. The competent officials shall do everything in their power to execute the request.

Upon request, the competent authority of Brazil shall implement provisional measures in order to preserve an existing situation, to safeguard threatened legal interests or to preserve evidence.

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 Brazilian Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: TRANSLATE THE REQUEST

Requests shall be submitted in the language of the requesting country, accompanied by a translation into Portuguese.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which Brazil 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 Brazil'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 Brazil.

CANADA

I. INTRODUCTION

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 offense 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 offense 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) Non-Treaty Letters of Request

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 is Generally Not Required

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**

**Counsellor of International Criminal Operations
Canadian Embassy
Paris, France
Telephone: + 33 1 4443 2308
Facsimile: + 33 1 4443 2995**

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 CANADIAN 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 offense 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: SUMMARIZE 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 *G8 Handbook on judicial cooperation in the fight against terrorism (2007)* for more detailed information on Canada'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 Canada.

CHINA

I. INTRODUCTION

- (i) Requests Made Under a Treaty/Convention submitted by G20 countries 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.*
- (ii) Letters Rogatory Requests (Court-Issued Non-Treaty Requests) submitted by G20 countries are generally unacceptable unless it has been submitted and granted via China's diplomatic channel.*
- (iii) 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.*
- (iv) 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 contacts 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 your feedback, correction and comments. After receiving the CNCA's feedback, you may finalize 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 meet 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, the G20 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 offense 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 Anti-Corruption Bureau within the public prosecution authorities across China, led by the Supreme People's Procuratorate. Crimes relating to custom will be overseen by the Anti-Smuggling Bureau of the General Administration of Custom of China and its agencies.

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

Step 5: SUMMARIZE THE CASE

- a. If witness statement/testimony is being sought, please provide the witness' 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 be specifically referring 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 will the verdict be made, etc.

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 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 the 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.

FRANCE

I. INTRODUCTION

The French judicial authorities provide extensive assistance in criminal matters to other countries seeking assistance via letters of request. Requests from foreign authorities are treated in principle in the same way as identical measures from French authorities.

(i) Requests Made Under a Treaty/Convention

Most exchanges relating to mutual legal assistance in criminal matters in France take place on the basis of ratified multilateral or bilateral conventions, which prevail over French domestic law on condition of reciprocity.

(ii) Non-Treaty Letters of Request

Where no international convention is applicable, the general provisions of the Code of Criminal Procedure apply, and requests for mutual legal assistance are executed on the basis of the reciprocity principle.

In this case, requests for judicial assistance coming from foreign judicial authorities are sent through diplomatic channels. In urgent cases, requests for mutual assistance sought by foreign authorities may be sent directly to the competent judicial authorities.

Requests for legal assistance are executed pursuant to French Law, but the legal requirements of the foreign country can be taken into account as far as they do not limit the exercise of procedural rights foreseen by the French Code of Criminal Procedure.

The request will not be executed if it is liable to threaten public order or the fundamental interests of the nation. The requesting authority is informed in this case that no action, total or partial, may be taken in relation to the request.

(iii) Dual Criminality is Generally Not Required

In mutual legal assistance matters, dual criminality is not generally required. According to France's Criminal Procedure Code and jurisprudence, dual criminality is not required where no coercion is necessary to execute the request. However, such a requirement may arise from the relevant convention or from specific laws.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

In France, the Central Authority for legal assistance in criminal matters is the Bureau of International Mutual Assistance in Criminal Matters («Bureau de l'Entraide Pénale Internationale»). It is part of the Criminal Affairs and Pardons Division, located in the Justice Ministry in Paris.

Contact information:

Ministère de la Justice et des Libertés
Direction des Affaires criminelles et des Grâces
Bureau de l'Entraide Pénale Internationale
13 place Vendôme 75042 Cedex 01
Telephone: +331 44 86 14 22
Facsimile: +331 44 86 14 11

France also has liaison magistrates on assignment in twelve countries (Algeria, Canada, Croatia, Germany, Italy, Morocco, Netherlands, Poland, Spain, United Kingdom and United States) and is host to liaison magistrates from eight countries (Canada, Germany, Italy, Morocco, Netherlands, Spain, United Kingdom and United States). These magistrates facilitate the processing of requests for mutual legal assistance between French judicial

authorities and the authorities of these countries. They provide advice and support in this matter.

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

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

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST IN MOST SERIOUS CASES

In the most serious cases, it is recommended that the Central Authority in your country contact the French Central Authority in advance of making a request for mutual legal assistance to ensure the assistance you seek is available under the laws of the French Republic and the request will meet the legal requirements of France's legislation.

An incomplete request for legal assistance will not systematically be returned in such cases, but additional information may be requested.

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 assistance from France. If no convention is applicable, clearly specify that your request is made pursuant to the reciprocity principle.

Step 3: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

Clearly indicate which authority in your country is conducting the investigation and/or prosecution. It is absolutely necessary for the French Central Authority to identify precisely the requesting judicial authority.

Step 4: SUMMARIZE THE CASE

Provide a detailed outline of the case under investigation or prosecution, including a summary of the evidence that supports the investigation. This summary should clearly link the facts and the assistance requested, as well as the importance of the evidence requested for the investigation.

Step 5: SET OUT THE APPLICABLE LEGAL PROVISIONS

Identify and set out the verbatim text (enclose a copy) of all relevant legal provisions under investigation and/or prosecution, including applicable penalties and the relevant procedural rules of your legislation.

Step 6: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from France 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:** Provide a list of questions to be asked of the witness. Clearly specify the procedural rules applicable in your legislation for the hearing of witnesses or suspects. These rules will be taken into account as far as they

do not limit the exercise of procedural rights or privileges foreseen by the French Procedure Code. More specifically, provide all relevant details regarding:

- the information to be delivered to the witness/suspect on his rights
- the oath to be taken by the witness
- the extent to which the witness has an obligation to appear, and the possibility to use coercion, and
- the competent authority must clearly specify if the witness shall be heard by a judge according to your legislation, and not by a police officer.

- b. **Search and seizure:** Provide extensive details on the location of the premises to be searched.

Give all relevant information on the type of objects to be seized.

If evidence may be held on a computer system set up within the premises where the search is requested, give all relevant technical information at your disposal.

If the express consent of the person in whose residence the operation takes place is necessary, specify expressly.

Mention all necessary undertakings for the safekeeping and certification of the seizures.

- c. **Enforcing order to seize criminal assets:** Provide the name, address, nationality, date and place of birth of all information concerning the location of the suspect whose criminal conduct has given rise to a seizing order.

Provide the particulars of the assets which are intended to be seized, and explain in detail the link between the suspect and this property.

When relevant, provide any information on the rights of third parties in relation to this property.

Provide all relevant information on the link between the asset and the suspected offense.

Specify whether this asset is the object, the instrument or the product of the crime or if the seizure aims at freezing all the assets of the person under examination. In this case, where several offenses are investigated, specify for which offense the freezing of all the assets of the suspected person is foreseen in your legislation (as these requests can be subject to a need for dual criminality).

Provide an official, certificated copy of the freezing order.

- d. **Enforcing order to confiscate criminal proceeds:** Provide the name, address, nationality, date and place of birth and all information concerning the location of the person whose criminal conduct has given rise, after a verdict of guilt, to a decision of confiscation.

Provide the particulars of the assets which are intended to be confiscated and details on the link between the suspect and this property. Provide any information on the rights of third parties in relation with to property.

Specify whether this asset is the object, the instrument or the product of the crime or if the confiscation is extended to all the assets of the convicted person.

Provide an official, certificated copy of the decision on confiscation (unabridged). Specify whether or not this decision is final.

If an application for the execution of a freezing order has previously been made in relation to the confiscated property, provide all references of this request.

Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In France, 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 and where the exercise of the rights of third parties has to be guaranteed, if your case is particularly sensitive, the need and reasons for confidentiality should be expressly set out in the request.

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 investigation, ongoing detention pending trial, 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 we wish to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

Where no applicable convention stipulates otherwise, France requires requests for legal assistance to be made in French or accompanied with a translation.

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which France provided 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 France's 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)* for more detailed information on France'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 France.

GERMANY

I. INTRODUCTION

Germany can provide mutual legal assistance either based on a treaty/convention or on a non-treaty basis.

Provided the essential principles of German law are not violated, the national law of the Federal Republic of Germany allows, on the basis of reciprocity, for execution of incoming requests for legal assistance without bilateral or multilateral agreements having been made under international law. This applies to mutual legal assistance (requests for the examining of witnesses, requests for the seizure and surrender of documents, requests for information, requests for the provision of files, and requests for the seizure and surrender of money, etc) as well as extradition requests, requests for transit and requests for taking over the enforcement of sentences.

Requests from foreign authorities are subject to the same procedural requirements as those that apply to a German criminal investigation. This means that, for example, there is no distinction under procedural law whether the hearing of a witness is conducted on the basis of a foreign request or in the context of a national criminal investigation.

(i) Requests Made Under a Treaty/Convention

The European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and the Additional Protocol thereto of 17 March 1978 apply in relations between the Federal Republic of Germany and the signatory states; in some cases, bilateral supplementary agreements apply. In relation to EU Member States, special rules relating to the above European Convention are set out in the Schengen Convention of 19 June 1990 (Art 39 ff., 48 ff.), in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and the additional Protocol thereto of 16 October 2001, as well as bilateral supplementary agreements.

Germany also applies provisions on mutual legal assistance contained in offense-specific agreements in the framework of the Council of Europe as well as the United Nations.

If bilateral or multilateral agreements have been concluded between Germany and other states, these are the main authoritative texts governing mutual legal assistance. In those cases which have not been regulated at all or not exhaustively in the relevant international agreements, the correspondent national regulations in the Law on International Legal Assistance in Criminal Matters of December 23, 1982 (IRG) are applicable.

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

See (iii): German law does not distinguish between ‘letters rogatory’ and ‘non-treaty letters of request.’

(iii) Non-Treaty Letters of Request

If mutual legal assistance is not covered by a relevant international agreement, international assistance is based on the Law on International Legal Assistance in Criminal Matters (IRG) of 23 December 1982 (particularly Sections 59-67a IRG). As stated at (i) above, if bilateral or multilateral agreements have been concluded between Germany and other states, these are the main authoritative texts governing mutual legal assistance. Where such agreements exist, the IRG is only applicable in those cases which have not been regulated at all or not exhaustively in the relevant international agreements.

Section 59 IRG contains a general authorisation to provide mutual legal assistance and therefore governs the admissibility of mutual legal assistance not covered by international agreement. If no specific authorisation to provide a service as referred to in Sections 62 to 67

IRG is applied, Section 59 paragraph 1 and 2 IRG allows legal assistance in a criminal matter to be granted regardless of whether the foreign proceedings are conducted by a court or by a government authority, and whether the assistance is to be provided by a court or by a government authority. According to Section 59 paragraph 3, IRG legal assistance may be provided in cases in which German courts or government authorities could provide each other legal assistance. The possibilities of providing mutual legal assistance are thus in principle determined by the German law on Criminal Procedure which determines the procedures and preconditions for investigative measures. In addition, the principles on the rule of law as enshrined in the German Constitution have an impact on the examination of the admissibility of requests for mutual legal assistance.

(iv) Dual Criminality Requirements

German law does require dual criminality in cases of extradition and enforcement of sentences. In the field of mutual legal assistance, however, dual criminality is generally not required. An exception applies in cases where legal assistance involves taking coercive measures. Thus Germany has made a declaration to that effect in respect of requests for search and seizure on the basis of Article 5(1)(a) of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 ('Search and seizure of property is permitted only if the conditions in Article 5(1)(a) and (c) of the European Convention on Mutual Assistance in Criminal Matters have been met.' Federal Law Gazette 1976, II, p. 1799). The same applies to mutual legal assistance not covered by international agreements as referred to in Article 66(2), point 1, and Section 67, paragraph 2 IRG.

Dual criminality is not, however, to be understood to require equivalence of the elements defining the criminal offense in the requesting state and in the requested state. It is sufficient if the conduct investigated can be sanctioned with a criminal penalty or a regulatory fine. Within the EU special rules apply in view of a catalogue of offenses where EU Member States waive the dual criminality check in certain areas of judicial cooperation.

II. GERMAN CENTRAL AUTHORITY – CONTACT INFORMATION

Notwithstanding the role of the German Ministry of Foreign Affairs (for diplomatic channels of communication) and of the judicial authorities of the individual states ('Länder') for direct communication, the German Central Authority for mutual legal assistance in criminal matters is the following, subject to individual treaties:

Bundesamt für Justiz (Federal Office of Justice)

Adenauerallee 99 - 103

53113 Bonn, Germany

Telephone: +49 228 99410 0

Facsimile: +49 228 99410 5591.

Within the Federal Office of Justice, mutual legal assistance matters are currently handled by Oberregierungsrat Dr. Holger Karitzky (telephone: +49 228 99410 5310). In individual cases, particularly those of an urgent nature, special channels for requests for assistance can be agreed upon by way of bilateral or multilateral arrangements by virtue of which further contact persons may be determined.

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

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

Step 1: CONSULT WITH THE GERMAN CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contacts the German 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 German law and the request will meet Germany's legal requirements.

Step 2: 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 Germany.

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: SUMMARIZE 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:
 - the name, nationality and location of the witness(es)
 - their status in the case (suspect/accused or simply a witness)
 - a clear explanation on 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 **search and seizure** 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 **telecommunications surveillance** is requested, explain why the measure is required and how the gained data could be relevant for your file. Specify the telecommunications means to be supervised, if possible provide the exact connection data, and define the period of time the surveillance should be accomplished.

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 Germany 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 Germany 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 Germany to be searched and identify the items to be seized. Submit an order issued by a competent national authority with respect to the seizure of the objects to be surrendered. If such a seizure order cannot be issued under your national law because the objects are located abroad, submit a declaration made by your competent national authority which states that the requirements for seizure of the objects would be fulfilled (that is, these objects could be taken into official custody) if they were located in your country. If surrender of the seized objects is sought, submit an assurance that the rights of third parties will remain unaffected and that objects surrendered subject to reservation will be returned immediately upon request. With regard to dual criminality requirements, it can be referred to I. (iv).
- d. **Enforcing an order to seize criminal proceeds:** According to German law, there are no specific requirements with a view to the seizure of criminal proceeds.
- e. **Enforcing order to confiscate criminal proceeds:** Provisions contained in the IRG provide that a final foreign ruling may be declared executable by an 'exequatur ruling' with regard to the forfeiture or confiscation ordered. The main formal and substantive preconditions for this are the following:
 - the competent authority of the foreign state must have submitted the complete, legally binding and enforceable decision
 - in the proceedings on which the foreign decision is based the sentenced person must have had the opportunity to be heard and to have an adequate defence and the decision must have been taken by an independent judiciary
 - the act forming the basis of the foreign judgement must be punishable according to German law
 - under German law, execution must not be barred by lapse of time, and
 - in Germany there is no binding decision being taken with regard to the offense the foreign decision is based on.

If a final court exequatur ruling has been handed down, the competent authority decides on the authorization of the request. Authorization in accordance with the IRG is equivalent to the final domestic ordering of forfeiture or confiscation, and hence has the impact of the relevant sections of the German Criminal Code.

- f. **Collection and surrender of monitoring of telecommunications surveillance:**
Submit an order issued by a competent national authority with respect to the requested surveillance or, if that is not possible or the telecommunications surveillance has already been accomplished within domestic proceedings, assure that the measure would also be admissible according to the law of your country. In addition, declare that the expertise will only be used for the purposes of the request and that the records would be destroyed as soon as not needed any more for the purposes of prosecution.

Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Germany, 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 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 investigation). 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 German Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

In general, as to incoming requests, a German translation is required. Within the scope of application of several bi- or multilateral agreements exceptions have been made.

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that usually – that is, provided no special regulations of any bi- or multilateral agreement concerning this matter are applicable – any evidence which Germany 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 Germany's consent.

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 Germany'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 Germany.

INDIA

I. INTRODUCTION

The request for mutual legal assistance in criminal matters is received through the Ministry of Home Affairs. The Ministry of Home Affairs is the Central Authority in such matters and decides whether the assistance is to be provided or not. The legal provision for receiving a letter of request from a country or place outside India to a court or an authority for investigation in India is provided under section 166-B of the Code of Criminal Procedure, 1973.

All the letters of request so received are entrusted to an investigation agency in consultation with the Joint Director (TFC) in CBI. The letters rogatory would be executed in terms of the provisions of the mutual legal assistance treaty, Memorandum of Understanding, Arrangement etc, if it exists with the requesting country. Otherwise the evidence shall be gathered under the provision of the Indian laws, as applicable. After execution, three copies of the execution report, including the original, is sent to the International Police Cooperation Cell, CBI, New Delhi while a copy is retained by the executing agency for future reference.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

All incoming letters rogatory are received by:

Under Secretary (Legal)
Internal Security Division
Ministry of Home Affairs
Lok Nayak Bhawan, New Delhi – 11003

The Government of India has also evolved a standard form known as ‘Indian Standard Draft’ (ISD) for entering into a treaty on mutual legal assistance, which essentially contains the process and procedure for handling incoming requests for mutual legal assistance. This can be referred to for familiarisation of the process and procedure involved in handling incoming requests by India.

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

When seeking mutual legal assistance from India, following steps need to be followed:

Step 1: CONSULT THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the Indian 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 India and the request will meet the legal requirements of India.

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. A requesting state is urged to consider the need for the evidence in question from the point of view of the commensurate cost involved in getting the evidence and the criticality of it for the case. 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 assistance from India.

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

Clearly indicate the authority in your country that is conducting the investigation and 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 mention full address/identity particulars and annex a questionnaire with the request.
- b. If documentary evidence is needed, please mention the authority from whom the documents are to be collected.
- c. If the execution of a search warrant is sought, please mention exact address/owner of the premises where the search is required to be conducted.
- d. If seizure/confiscation of criminal proceeds is requested please mention the full details of criminal proceeds and also the evidence to prove that such proceeds are actually criminal proceeds.

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 India and any particular requirements that must be met (for example, certification/authentication). One can refer to Article 1 of the ISD for guidance on the scope of assistance that can be provided against the incoming requests.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In India, 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 for compliance with the request desired and the reason for the time constraints (for 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 India's Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: TRANSLATE THE REQUEST

India requires incoming requests for mutual legal assistance to be provided in writing and in English. Supporting documents, if not in English shall be accompanied by an English translation. In urgent circumstances oral requests can be accepted. However, in such cases the oral request should be promptly confirmed in writing.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which India 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 India.

IV. OTHER USEFUL REFERENCES

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

REPUBLIC OF 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.

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 document does not give sufficient information to approve under requirement. 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 offense 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 Investigator and Prosecutor who deal with the criminal investigation or prosecution in Indonesia are:

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

Step 5: SUMMARIZE 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

Scope of assistance:

- a. identifying and locating persons
- b. obtaining statements or other forms thereof
- c. providing documents or other forms thereof
- d. making arrangements for persons to provide statement or to assist in the investigation
- e. delivering letters
- f. executing the inquiry of search warrant and seizure
- g. the forfeiture of proceeds of crime
- h. the recovery of pecuniary penalties in respect of the crime
- i. 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
- j. locating property that may be recovered, or may be needed to satisfy pecuniary penalties imposed, in respect to the crime, and/or
- k. other assistance in accordance with Procedural Law in Indonesia.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

General requirements:

- **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.
- **Assistance for conducting search and seizure of goods, articles or assets**
- (1) 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.
- (2) 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.
- **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.

- **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:

- a. description of said assets

- b. location of assets, and
- c. 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.

ITALY

I. INTRODUCTION

Italian Authorities may provide judicial assistance (including mutual legal assistance and extradition) both on the basis of bilateral or multilateral conventions, and in the absence of conventions. In such a case, judicial assistance can be provided on the basis of international courtesy and reciprocity. In Italy's legal system, as a rule, international assistance is mainly governed by International Conventions in force in Italy as well as international law provisions. In case of absence of said provisions or if they provide otherwise, a specific rule provided for in the Italian Code of Criminal Procedure shall apply. Only cases of judicial assistance in the strict sense shall be examined in the present Guide.

(i) Requests Made Under a Treaty/Convention

Italy has ratified several multilateral conventions adopted by the Council of Europe, United Nations and European Union.

In particular, in the framework of the Council of Europe, the main multilateral Convention in the matter of judicial assistance in force in Italy is the European Convention on Judicial Assistance in Criminal Matters signed in Strasbourg on 20 April 1959, and the relevant Additional Protocol adopted in Strasbourg on 17 March 1978. At the EU level, the main international law source ratified by Italy is the Convention Applying the Schengen Agreement.

Italy has also ratified multilateral conventions regarding specific offenses adopted at the Council of Europe and the United Nations.

Finally, in the matter of judicial assistance, Italy signed and ratified several bilateral conventions with single states.

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

See (iii)

(iii) Non-Treaty Letters of Requests

As stated above, the general rule in our legal system is that international assistance is mainly governed by international Conventions in force in Italy as well as by general International law provisions. In case of absence of the said provisions or if they provide otherwise, a specific law provision provided for in the Code of Criminal Procedure shall apply. Such a rule is provided for in articles 696, 723 et seq. of the Code of Criminal Procedure.

In general, the Code of Criminal Procedure provides that the Minister of Justice, once the letter of request is received, will order that it be executed, unless he believes that:

- a. the documents requested may prejudice the sovereignty, safety or other essential interests of the state
- b. the acts requested are expressly forbidden by the law or are contrary to the fundamental principles of the Italian legal system, and
- c. the criminal proceedings may be prejudiced by discriminatory reasons.

The Minister of Justice, if he believes that the letter of request is enforceable, shall forward it to the Court of Appeal which has jurisdiction over the acts requested. The Court of Appeal, unless it believes that the reasons set out in b. or c. recur, or if the fact is not regarded as an offense under Italian law, shall execute it.

(iv) Dual Criminality is Generally Not Required

Dual criminality only applies if the multilateral or bilateral convention so specifies.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Central Authority for international judicial assistance in criminal matters is at the Italian Ministry of Justice. The contact information is provided below:

Ufficio II - Directorate General of Criminal Justice

Department of Justice Affairs

via Arenula 70-00186 ROMA

Telephone: +390668852180

Facsimile: +390668897528

The Italian Ministry of Justice seconded liaison magistrates in the United Kingdom, Spain, France and Romania, and hosts their relevant counterparts.

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

In general, when seeking mutual legal assistance from Italy, 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 Italian 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 Italian law and the request will meet the legal requirements of the Italian legislation. 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 or other avenue of cooperation being referred to in seeking the assistance from Italy.

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: SUMMARIZE 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 necessary link between the requested activity and the investigation under way.

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 are you seeking to obtain from Italy, 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. If **witness statement/testimony** is being sought, include:
 - details and location (if known) of the person
 - procedural rules provided for the in legal system of the requesting state, which can be taken into account by the Italian authorities in carrying out the requested activities, and
 - the specific information sought from the witness, including, if possible, a list of questions.
- b. If **documentary evidence** is needed:
 - a clear indication of the documents to acquire, and
 - a clear indication as to the place where the assets can be found or the person or the entity which detains them.
- c. If the **execution of a search warrant** is sought:
 - enclose, if possible, an order (search warrant) issued by Italian judicial authority
 - give precise indications of the places to be searched
 - specify detailed rules to follow in executing the search (notices to be served, time schedules to observe and so on)
 - provide accurate indications on the assets or documents to be searched, and
 - specify the guarantees that can be offered to the bona-fide third party.
- d. If **seizure/confiscation of criminal proceeds** is requested:
 - provide a copy of the order issued by the domestic judicial authority (seizure or confiscation order)
 - provide precise indications of the assets to be seized/confiscated
 - indicate any specific rules to be followed in executing the search (notices to be served, time schedule to be observed etc), and
 - provide any information available on the possible rights of bona-fide third parties with regard to the assets.

**Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY
 REQUIREMENTS**

In Italy, 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 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 investigation). 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 Italy's Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

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

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which Italy 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 Italy's 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)* for more detailed information on Italy'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 Italy.

JAPAN

I. INTRODUCTION

Japan provides mutual legal assistance under the guarantee of reciprocity, regardless of whether a treaty/convention exists or not between Japan and the requesting state.

(i) Non-Treaty Based Requests

(a) General procedure

Where there is no treaty/convention in place between Japan and the requesting state, requests are executed on the basis of the reciprocity principle 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 offense for which assistance is sought is not a political offense, and the request for assistance is not made with a view to investigating a political offense
- dual criminality – the act constituting the offense 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 offense 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 offense 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 offense 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 offense 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 offense is categorized 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-defense,’ ‘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 offense for which assistance is requested is not a political offense, and the request for assistance is not made with a view to investigating a political offense
- dual criminality – the act constituting the offense 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 the 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 Anti-Bribery 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: SUMMARIZE 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 non-politicality. Also, 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 as much as possible. Describe the relevance and necessity of the evidence specifying the linkage between the witness and the case. Provide detailed questions to 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 as much 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 to suspect the offence is committed and the reason why it is necessary and justifiable to take 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 as much as possible. When the request is based on the final judgment or order of the court, provide a certified copy of it.

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

Request for mutual legal assistance in 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 one of following basis: (1) bilateral treaty or multilateral convention; (2) non-treaty letters of requests with an assurance of reciprocity; (3) letters rogatory. The 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 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). A request and supporting materials must be accompanied by a copy of Korean translation. The International Criminal Affairs Division of the MOJ reviews a request, and upon finding that all formalities and substantive requirements are met, sends 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 discretionary basis. The scope of assistance and procedures would generally be governed by the MLAT Act.

(iii) Non-Treaty Letters of Request

A non-treaty letter of request 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 is Generally Not Required

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 #5, Postal Code 427-720

Telephone: +82 2 2110 3555

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 offense 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: SUMMARIZE 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 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 search and seizure warrant will be required to execute the request.
- c. If the execution of a search warrant is sought, please include 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 swear a statement before a judge, the rights or privileges to be advised of the witness, and whether presence of a defense 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 requirement also needs to be clearly stated in the request.
- c. **Search and seizure:** Search and seizure requires a warrant from the court and must be supported by facts establishing that it is necessary and a 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 explanation of how specific assets are traced back to the conduct of the crime. Note that the Republic of Korea does not recognize 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 its official language, namely Korean.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which 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 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.

MEXICO

I. INTRODUCTION

The aim of international legal assistance is to deal with the requests for support, formulated by ministerial and judicial, national or foreign authorities to obtain evidential elements that will contribute to inquests or penal reasons initiated by subjects of the international law.

Requests for legal assistance must be in writing and executed in accordance with the law 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 celebrated between the United Mexican States and other countries. When the request for legal assistance derives from a country 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 international reciprocity applies in the absence of a treaty.

Requests for international criminal legal assistance must include the following:

- a. competent authority that formulates the request
- b. purpose and reason for the request, including a brief statement of the facts
- c. full transcript of the laws of the offense and the penalty
- d. to the extent possible, the identity and nationality of the person concerned
- e. name and address of the addressee, if applicable
- f. proceedings to be requested, and
- g. in case of emergency, 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:

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

(iii) Letters Rogatory that Require Homologation of Judgments

Letters of request will only need homologation when it implies coercive execution on persons, goods or rights. Likewise, requests for warrants or letters rogatory 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 is Generally Not Required

- a. International criminal legal assistance may be provided even when the act for which the request is filed does not constitute an offense in Mexico.
- b. 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 N° 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

The informal consultation before formal presentation of the request for legal assistance can be realized 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

To enable the Central Authority of Mexico to fulfill a request for legal assistance, the purpose for the request must be specified, as well as the 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 of the assistance 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 applicable to the sufficiency of a request for international legal assistance are:

- bilateral treaty or agreement
- multilateral agreements, and
- the principle of international 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: SUMMARIZE 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 offense and, when necessary, the amount of damage. The Central Authority of Mexico also requires the necessary information for the relief in the case of:

- 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 citation research.
- 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 relief 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 authorizing judgment. In addition, it is necessary to provide the location and description of where to register and insure 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 cite 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. **Return of assets through non-criminal**

- International legal assistance must be requested via the asset recovery derived from crime to comply with the requirements of Article 66 of the Federal Forfeiture Law. However, this law is only applicable to certain offenses specified in article 22 of the Constitution of the United Mexican States, such as organized 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 a full transcript of the laws of the offense 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 case of emergencies, Mexico can start to initiate the 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 (10) days of its formulation.

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 by the competent authorities, or be exempt from legalization 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 characterized 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.

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, bilateral international treaties or on the basis of the principle of reciprocity.

In the Russian criminal procedural 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 its Additional Protocol of 1978, as well as the Convention on legal assistance and legal relations in civil, family and criminal matters of 1993 and its 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, Vietnam, 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 recognized 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 ones, 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 restituting 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

Telephone/

Facsimile: +7 495 692 16 66

E-mail: [a.yusufov\(@\)genproc.gov.ru](mailto: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 penal 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 requesting 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 organization, 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 offense 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 ones), the organization or the bank where the documents are supposedly kept, number of account related to these documents, list of the documents to be seized and period of time for the seizure should be specified, and
- 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 – 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.

KINGDOM OF SAUDI ARABIA

I. INTRODUCTION

- (i) Requests made under a treaty/convention submitted by G20 countries are acceptable where there is a bilateral mutual legal assistance treaty (MLAT) in place and/or a UN convention to which both Saudi Arabia and the requesting state are members.*
- (ii) Letters rogatory requests (court-issued non-treaty requests) submitted by G20 countries are generally unacceptable unless they have been submitted and granted via Saudi Arabia's diplomatic channels.*
- (iii) Non-treaty letters of requests must similarly be submitted and granted via diplomatic channels.*
- (iv) Dual criminality is generally required.*

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Ministry of Interior has been designated as the Central Authority for Saudi Arabia for all MLATs signed between Saudi Arabia and its treaty partners. In addition, Saudi Arabia's Ministry of Interior has been designated as the Central Authority for Saudi Arabia for the Convention on Transnational Organized Crime (UNTOC) and the Protocols Thereto, and the Convention on Narcotic Drugs and Psychotropic Substances (SAARC), whereas the Ministry of Interior and the National Anti-Corruption Commission are the Central Authorities for the United Nations Convention against Corruption (UNCAC).

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

Director General: Dr. Abdullah F. Al-Ansary
Department of Legal Affairs and International Cooperation
Ministry of Interior
Zip Code 11134
Kingdom of Saudi Arabia
Telephone: +966 1 4615996
Facsimile: +966 1 4044626
Email: aalansary@hq.moi.gov.sa

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM SAUDI ARABIA

In general, all MLAs are afforded under relevant laws, treaties, agreements and arrangements of Saudi Arabia. When seeking mutual legal assistance from Saudi Arabia, 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 contacts 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 the Central Authority by email. The Central Authority may pre-review it and provide you with feedback, correction and comments. After receiving the Central Authority's feedback, you may finalize your request letter and arrange for translation and finally submit the request for mutual legal assistance to the Central Authority for reviewing, granting and implementing, particularly in the most serious cases, to ensure the assistance sought is available under the laws of Saudi Arabia and meets the legal requirements of Saudi Arabia. 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 Saudi Arabia and the limited resources available for law enforcement and judicial authorities in Saudi Arabia, the requesting state is urged to consider the need for the assistance in question. Please pursue through Saudi National Central Bureau of Interpol 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 offense 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 MLAT, conventions (UNCAC, UNTOC, others) or other avenue of cooperation being referred to in seeking the assistance from Saudi Arabia, or directly contact with the Central Authority for that.

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION/PROSECUTION

All general crimes are investigated by the Saudi police force at the General Directorate of Public Security across Saudi Arabia, led by the Ministry of Interior. Illicit trafficking in narcotic drugs and psychotropic substances are investigated by the General Directorate of Narcotics Control at the Ministry of Interior. Corruption-related crimes are investigated by the ‘Administrative Department’ in the General Investigation Directorate, the Control & Investigation Board, and the ‘Criminal Investigation Department’ in the General Directorate of Public Security at the Ministry of Interior. The Financial Investigation Unit at the Ministry of Interior handles suspicious financial transactions, analyzes them and prepares reports thereon to submit them to the competent authorities. It exchanges information with the relevant agencies in Saudi Arabia and abroad, aiming at combating money laundering and the financing of terrorism. Crimes related to customs are overseen by the competent department in the Saudi Customs at the Ministry of Finance. All public prosecutions against crimes are under the jurisdiction of the Bureau of Investigation and Public Prosecution authorities across Saudi Arabia.

Step 5: SUMMARIZE 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 the witness; photo (passport or ID), telephone number and address, 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 be specifically referring to items, assets and proceeds of crime. An official statement may be needed which is written by the prosecutor or judge in charge describing 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. However, public confiscation of money is prohibited and the penalty of private confiscation is to be imposed only by a legal order, and the competent authority for all requests for the enforcement of foreign judgments and foreign arbitrators' judgments is the Saudi Board of Grievances.

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. MLA may be declined on the ground of absence of dual criminality. However, Saudi Arabia may, when it deems appropriate provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the Kingdom.

Step 7: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from Saudi Arabia, 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 the 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 detailed information of the property.
- e. **Enforcing order to confiscate criminal proceeds:** The requesting state should provide the confiscation order and detailed information of the property.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Saudi Arabia, 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 Saudi Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: TRANSLATE THE REQUEST

Saudi Arabia requires incoming requests for mutual legal assistance to be provided, in writing, in its official language, namely Arabic. A request can be submitted in English in urgent circumstances, subject to translation into Arabic.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which Saudi Arabia provides in response to a MLAT 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 Saudi Arabia's consent to the further use.

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 Saudi Arabia.

SPAIN

V. INTRODUCTION

Spain provides a wide range of judicial assistance in the gathering of evidence for criminal investigations and proceedings related to criminal matters either under provisions of an international Convention (multilateral or bilateral) or on a non treaty basis.

(v) Requests Made Under a Treaty/Convention

Requests made under a mutual legal assistance treaty are executed by the Spanish judicial authorities according the terms of the treaty and Spanish domestic law.

Spain has ratified many multilateral conventions in mutual legal assistance under the scope of the Council of Europe, United Nations and the European Union. Spain has also signed many bilateral agreements with different countries all over the world.

In all conventions signed by Spain, the Ministry of Justice is the Central Authority designed, and therefore is the competent authority to receive and transmit the requests. However, under provisions of the European Convention on Mutual Legal Assistance in Criminal Matters of 2000, requests may also be forwarded directly between judicial authorities.

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

See (iii)

(vii) Non-Treaty Letters of Request

In absence of a mutual legal assistance treaty, Spain can execute letters of requests under the reciprocity principle. These requests have to be forwarded by diplomatic channels and are executed according to Spanish law, and can be denied under provisions of article 278 of the Organic Law of the Judiciary.

(viii) Dual Criminality is Generally Not Required

In general terms dual criminality is not required when seeking legal assistance from Spain, however, dual criminality should be required for mutual legal assistance requests seeking search or seizure of property or any coercive measure.

VI. CENTRAL AUTHORITY – CONTACT INFORMATION

Ministerio de Justicia

Subdirección General de Cooperación Jurídica Internacional

c/San Bernardo, 62

28071 Madrid

Spain

Telephone: +34 91 390 22 98/44 33

Facsimile: +34 91 390 44 57

VII. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM SPAIN

In general, when seeking mutual legal assistance from Spain, 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 Spanish 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 Spanish law, and the request will meet the legal requirements of Spanish law. 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 Spain.

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: SUMMARIZE 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 address of the witness and describe his relevance on the facts described.
- b. If documentary evidence is needed, please indicate the type of document that is requested with full details about location or any identifying information. The description of facts provided should also contain an explanation on how the requested document should be relevant for the investigation.
- c. If the execution of a search warrant is sought, please provide full information of the location to be searched and describe the reasons why such measure should be needed.
- d. If seizure/confiscation of criminal proceeds is requested please provide a wide description of the reasons why such measure should be needed with a complete identification of the assets to be seized.

When these coercive measures are requested, dual criminality is required so the crime should be fully described.

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 Spain, 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:

- f. **Witness statements/testimony:** Please include:
 - name and details on the address of the witness
 - legal requirements from the requesting country that should be taken into account by the executing authority if not prohibited by Spanish law, and
 - if possible a list of questions to be asked to the witness.
- g. **Documentary evidence:** Please describe:
 - the kind of document requested, and

- if documents should be certified in any specific way.

h. Search and seizure: Please include:

- a copy of the order issued by the judicial authority
- identification of the location to be searched, and
- any specific procedural indication that should be taken into account by the executing authority when not prohibited by Spanish domestic law.

Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Spain, 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 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 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 Spanish Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

Spain requires incoming requests for mutual legal assistance to be provided, in writing, and duly signed by the judicial authority in the requesting country's official language, and accompanied by a Spanish translation of the request and all documents.

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which Spain 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 Spanish consent to the further use.

VIII. 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 Spain.

SOUTH AFRICA

I. INTRODUCTION

As crime knows no boundaries, closer international co-operation is critical for success in the fight against trans-national crime. Therefore a foreign state may request mutual legal assistance from South Africa in gathering evidence or enforcing foreign criminal orders. In doing so, instruments such as conventions, treaties and domestic legislation are utilized.

(i) Requests Made Under a Treaty/Convention

Requests for mutual legal assistance are made under a treaty or convention or other instruments. In cases where a requesting state does not have a treaty with South Africa and is not covered by a convention, domestic legislation will be used as an instrument in requesting legal assistance.

Requests are considered in terms of the International Co-Operation in Criminal Matters Act (ICCMA) Nr. 75 of 1996.

Before the issuing of a court order, giving effect to a request for assistance, the South African court must be satisfied on reasonable grounds that an offence has been committed and that evidence sought from South Africa will be found within the Republic of South Africa.

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

South Africa will also execute non-treaty requests for assistance.

(iii) Non-Treaty Letters of Request

To the extent possible, South Africa will execute non-treaty requests for assistance. In this instance, the assistance sought will be executed in terms of South African law.

(iv) Dual Criminality is Generally Not Required

Generally dual criminality is not required when seeking mutual legal assistance from South Africa, unless the treaty with the requesting state requires it.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Director General of the Department of Justice & Constitutional Development is the Central Authority for the Republic of South Africa. The addresses are:

**Postal : Private Bag x81
PRETORIA
0001**

**Physical : Momentum Centre
329 Pretorius Street
PRETORIA
0001**

Telephone : +27 315 1111

The Chief Directorate: International Legal Relations within the Department of Justice & Constitutional Development is tasked with the processing of mutual legal assistance to and from South Africa.

The contact details for the relevant officials are as follows:

Chief Director : Mr John Makubela : to be contacted at abovementioned address.

Director : Mr Herman van Heerden : to be contacted at abovementioned address.

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM SOUTH AFRICA

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

Step 1: CONSULT WITH THE SOUTH AFRICAN CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended that the requesting authority in your country contact the South African 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 South Africa and the request will meet the legal requirements of the Republic of South Africa. 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 South Africa, 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 South Africa.

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: SUMMARIZE 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, nationality and location of the witness(es)
 - their status in the case (indicate whether suspect, or a witness)
 - a clear explanation of how the information sought from the witness is relevant to the case in question, and
 - if possible, indicate whether a particular witness is likely to cooperate in providing the statement.
- b. If **documentary evidence** is needed, please set out the nature of the documentary evidence, the location of that evidence and the reasons why you are of the view that the evidence is relevant to your 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 a particular case.
- d. If **seizure/confiscation of criminal proceeds** is requested indicate your basis for believing that the property constitutes the proceeds of crime.

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 South Africa, 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:**
 - Give a clear description of the subject matter of the evidence or statements 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 be present in South Africa in order to participate in interviews and why this is necessary.
- b. **Documentary evidence:** Identify the specific documents required.
- c. **Search and seizure:** Identify the exact location in South Africa to be searched and the exact items to be seized.
- d. **Enforcing order to seize criminal proceeds:** Enforcing a foreign order to seize criminal proceeds will first require the registration of such an order by a South African court.
- e. **Enforcing order to confiscate criminal proceeds:** Enforcing a foreign order to confiscate criminal proceeds will require the requesting Central Authority to ensure that the order is properly validated in terms of South African law.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In South Africa 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 proceedings/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 South African Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 11: TRANSLATE THE REQUEST

South Africa requires incoming requests for mutual legal assistance to be provided, in writing, in its official language, namely English.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which South Africa 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 South Africa'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 South Africa.

TURKEY

I. INTRODUCTION

The main sources of international judicial cooperation in criminal matters in Turkey are the bilateral agreements between Turkey and other countries and the multilateral agreements to which Turkey is a party. Turkey can also provide mutual legal assistance on a non-treaty basis.

(i) Requests Made Under a Treaty/Convention

There is no specific law on judicial cooperation in criminal matters in Turkish legislation. Article 90 of the Turkish Constitution provides that international agreements duly put into effect carry the force of law. In the case of a conflict between international agreements on fundamental rights and freedoms duly put into effect and domestic law due to the differences in provisions on the same matter, the provisions of international agreement shall prevail. According to this Article, when an international agreement has been ratified, it becomes an internal part of the national legal system and it can be directly enforced.

Turkey is party to the basic important multilateral conventions of the Council of Europe and United Nations on judicial cooperation in criminal matters. ‘The European Convention on Mutual Assistance in Criminal Matters’ and the ‘Additional Protocol’ are the most important conventions in practice. If there is a bilateral agreement between Turkey and another state, the provisions of this agreement is also applied.

(ii) Non-Treaty Letters of Request

If there is no multilateral convention or bilateral agreement applicable, Turkey could execute the requests of mutual legal assistance on the basis of the reciprocity principle and international customs.

MLA requests of the foreign judicial authorities could be sent either via diplomatic channels or central authorities. In urgent cases, requests may be sent via Interpol channels.

MLA requests are executed according to Turkish Law. If the execution of the specific requests of the foreign country does not violate the Turkish legislation, it could be executed.

According to multilateral conventions and bilateral agreements to which Turkey is a party, the MLA requests cannot be executed, if the execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Turkey.

(iii) Dual Criminality is Generally Not Required

In MLA requests, Turkey generally does not require dual criminality. But, according to the Turkey’s reservation on article 5 of the European Convention on Mutual Assistance in Criminal Matters, the execution of letters rogatory for search or seizure of property shall be dependent on the conditions stipulated in paragraph 1 a, b and c of the aforementioned article.

Besides, dual criminality may be required according to the multilateral conventions or bilateral agreements.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Ministry of Justice of Turkey plays a central role in judicial co-operation at large. Article 13/A of ‘the Law numbered 2992 on the Organization and Functions of the Ministry of Justice’ states that General Directorate of International Law and Foreign Relations is the Central Authority for execution of all kinds of mutual assistance requests in criminal matters. As a Central Authority the Ministry receives the request for mutual assistance and then sends the request to the competent authority for execution.

Contact information:

Ministry of Justice**General Directorate of International Law and Foreign Relations****Mustafa Kemal Mahallesi 2151. Cadde No:34/A 06520 Söğütözü****Ankara, Turkey****Telephone: +90 312 2187821****Facsimile: +90 312 2194523****E-mail: uhdigm@adalet.gov.tr****III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM TURKEY**

In general, when seeking mutual legal assistance from Turkey, 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 Turkish 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 Turkey, and the request will meet the legal requirements of Turkey.

If additional information is necessary for the execution of the MLA request, Turkey would like the requesting country to complete the missing information, instead of returning the request.

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 Turkey.

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: SUMMARIZE THE CASE

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

A request for assistance in criminal matters shall indicate as follows:

- the subject of the investigation or the case
- the names of the suspected, accused or sentenced persons, as well as that of any person from whom evidence is sought, their domicile or residence and, where possible, nationality and profession, places and dates of birth and names of fathers and mothers
- names and addresses of the legal representatives of the abovementioned persons, and
- the purpose of the request and the necessary information for execution of the request with the description of the facts to constitute offense and the nature of the offense, including the provisions of laws applicable to the case to which the request relates.

To the extent necessary and possible, a request shall also include:

- the identity, date of birth and location of a person to be served, that person's relationship to the proceedings, and the manner in which the service is to be made
- available information on the identity and whereabouts of a person to be located, and
- requirements for confidentiality.

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 Turkey, 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:**

- a list of questions to be asked to a suspect, accused or sentenced person, complainant, witness or expert
- a description of the manner in which any testimony or statement is to be taken and recorded, and
- a description of any particular procedures to be followed in executing the request.

b. **Search and seizure:**

- a precise description of the place to be searched and of the articles to be seized, and
- original or certificated copy of a court order.

c. **Enforcing order to seize criminal assets:**

- a precise description and place of the assets to be seized
- original or certificated copy of court order
- the name, address, nationality of the suspect, accused or sentenced persons
- explanation of the relationship between the crime, the suspect, accused or sentenced persons and the assets to be seized, and
- whether there are rights of third parties in relation to the assets.

d. **Enforcing an order to confiscate criminal proceeds:**

- a precise description and place of the criminal proceeds to be confiscated,
- original or certificated copy of court order,
- the name, address, nationality of the suspect, accused or sentenced persons,
- explanation of the relationship between the crime, the suspect, accused or sentenced persons and the criminal proceeds to be confiscated, and
- whether there are rights of third parties in relation to the criminal proceeds.

Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Turkey, 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 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 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 Turkish Central Authority wishes to contact you for the purpose of clarification or obtaining additional information.

Step 10: TRANSLATE THE REQUEST

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

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence that Turkey 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 Turkey'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 Turkey.

UNITED KINGDOM

I. INTRODUCTION

The following gives a brief overview of the way in which Mutual Legal Assistance (MLA) can be requested from the UK. For further guidance please visit:

<http://police.homeoffice.gov.uk/operational-policing/mutual-legal-assistance/>

A foreign state may request MLA from the UK via a letter of request to one of the central authorities in the UK. Requests are not required by the UK to come via diplomatic channels.

(i) Countries the UK can Assist

The UK can assist any country or territory in the world, whether or not that country is able to assist the UK. The UK can provide most forms of legal assistance without bilateral or international agreements. Where a treaty or Convention imposes specific conditions or procedures on the provision or requesting of MLA the UK expects such conditions or procedures to be adhered to.

(ii) Dual Criminality is Generally Not Required

As a general rule, dual criminality is not required when seeking MLA from the UK except for certain types of assistance. Requests which the UK require dual criminality for are:

- search and seizure, and
- restraint and confiscation of assets.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The UK has three central authorities:

- UK Central Authority (UKCA)
- Crown Office, Scotland, and
- Her Majesty's Revenue and Customs (HMRC).

The Crown Office deals with all MLA requests for Scotland. HMRC deals with requests for some customs matters including indirect tax matters, alcohol and tobacco smuggling and excise fraud for England, Wales and Northern Ireland. The UKCA deals with all other requests for England, Wales and Northern Ireland, including MLA requests relating to the smuggling of prohibited and restricted items.

Contact details for central authorities are as follows:

Formal requests for assistance for England, Wales and Northern Ireland should be directed to:

**UK Central Authority
5th Floor Fry Building
2 Marsham Street
London
SW1P 4DF**

Telephone: +44 20 7035 4040

Facsimile: +44 20 7035 6985

Letters of requests to the UKCA should be received via the post.

Formal requests for assistance in Scotland should be directed to:

**International Co-operation Unit
Crown Office
25 Chambers Street**

Edinburgh**EH1 1LA****Telephone: +44 131 243 8152****Facsimile: +44 131 243 8153**

Letters of request to the Crown Office can be received via post or email.

Requests for assistance in customs matters (including indirect tax matters such as Value Added Tax fraud) should be sent direct to HM Revenue and Customs²:

HM Revenue and Customs**Law Enforcement & International Advisory Division****HM Revenue and Customs - Solicitor's Office****Room 2/74****100 Parliament Street****London****SW1A 2BQ****Facsimile: +44 (0)20 7147 0433****Email: mla@hmrc.gsi.gov.uk**

Letters of request to HMRC can be received via post or email.

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

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

Step 1: CONSIDER POLICE INTELLIGENCE PRIOR TO SUBMITTING A REQUEST

It is possible, and very often desirable, for overseas authorities to use police to police enquiries (intelligence) or other intelligence sharing networks prior to making an MLA request. This can help improve the quality of the MLA request and the subsequent service received.

Step 2: ENSURE THE REQUEST IS PROPORTIONATE

Please ensure that the request for assistance is proportionate to the level of crime being investigated. Police forces in the UK are operationally independent and prioritise the execution of MLA requests alongside domestic work. Thus, in two different cases requesting statements from witnesses, but where one relates to a murder and the other relates to small-scale shoplifting, the murder case will be prioritised. Consequently, and given the limited resources available to UK law enforcement, requesting countries are urged to consider the need for the evidence in question.

Step 3: ENSURE IT IS CLEAR WHO THE ISSUING AUTHORITY IS

Headed notepaper of the issuing authority in the requesting state must be used for the letter of request. Include details of the authority making the request, including the name, telephone number and email address (where available) of a person who the UK may contact for the purpose of clarification or obtaining additional information. The request must be signed by the issuing authority.

² However, requests relating to the smuggling of prohibited and restricted items and matters related to direct tax (income tax, corporation tax and capital gains tax) should be sent to the UKCA.

Step 4: INDICATE THE MECHANISM USED TO SEEK ASSISTANCE

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

Step 5: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

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

If possible contact details should also be included of any British law enforcement agency or officers who are familiar with the investigation (including, if relevant, the names of any UK based operations the requesting state is aware of).

Step 6: SUMMARISE THE CASE

Provide a summary of the facts giving rise to the request and a description of the offences charged or under investigation. This should make clear the connection between evidence requested and the facts of the case as detailed in the request and connection to the UK. It is not sufficient to simply state that the material is relevant to the case – requesting authorities must specify how the assistance is relevant and will advance the case.

Details should also be given of:

- the person or persons (including legal) named in the request including, where available, address, date of birth and nationality
- the location of a company / person evidence is needed from
- the name of the suspect and what they are being charged with, and
- in requests where a person needs to be visited, state whether they are a witness or a suspect.

Step 7: SET OUT THE APPLICABLE LEGAL PROVISIONS

Give a description of the offences charged or under investigation and the relevant sentence or penalty. Include a copy of the legislation that criminalises that conduct in the requesting country and gives information on the offence, penalty and rights a person may be afforded there.

Step 8: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from the UK and any particular requirements that must be met (for example certification/authentication needs). If evidence (for example banking evidence) is required, it is not sufficient just to ask for 'banking evidence' – details must be given on the type of banking evidence, the dates required, etc.

Details of what should be included in a letter of request for different types of assistance can be found at the UK Central Authority's website:

<http://police.homeoffice.gov.uk/operational-policing/mutual-legal-assistance/>

This gives guidance on what should be included in letters requesting the following types of assistance from the UK:

- service of process documents

- witness and suspect evidence not required to be given on oath
- witness evidence (testimony) to be taken on oath
- third party material held in confidence – telecommunications
- third party material held in confidence – banking evidence
- evidence via video link and telephone
- restraint and confiscation of assets
- search and seizure, and
- temporary transfer of a prisoner for purposes of investigation, and passport information and immigration status.

Step 9: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In the UK, 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 10: IDENTIFY ANY URGENCY IN THE EXECUTION OF THE REQUEST

If a request is urgent please adhere to the following:

- do not mark a request as urgent unless it is urgent
- detail why a request is urgent. Examples of why a request may be urgent include: somebody is being detained in custody; somebody is due to be released from custody; there is an immediate risk to individuals, and
- clearly state the dates that need to be met.

Step 11: GIVE DETAILS OF ANY MEDIA ATTENTION

Provide details of any media attention the case has been given or reasons for high profile interest in the case in the requesting state.

Step 12: TRANSLATE THE REQUEST

- If the request is not in English a translated version into English must be provided or the request will be returned.
- For requests made in the English language: one signed hard copy **and** one copy of this must be provided.
- For requests not made in the English language: one signed hard version of the non-English request **and** one translation of the request into English.

Step 13: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence which the UK 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 UK's 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)* for more detailed information on the UK'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 UK.

Further guidance for foreign authorities can also be found on the UK Home Office website: <http://police.homeoffice.gov.uk/operational-policing/mutual-legal-assistance/>.

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: SUMMARIZE 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 offense 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.

PART II

SAMPLE MUTUAL LEGAL ASSISTANCE REQUEST

SAMPLE MLA REQUEST TO G20 COUNTRIES

Note: This Sample Request is included for illustration purposes only. When drafting a request for assistance to a G20 country, 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.

**** On letterhead and translated into the language of requested state**

URGENT*/CONFIDENTIAL
 (*delete the above if not urgent)

REQUEST FOR MUTUAL LEGAL ASSISTANCE BY THE REQUESTING STATE TO THE REQUESTED G20 STATE 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 G20 state located at 222 Lane Road in the City of Pine in the requested G20 state.
- 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 G20 state. At a future date, the

requesting state intends to submit a supplemental request to the requested G20 state 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 G20 state is summarized 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 G20 countries 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 G20 countries 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 G20 state, 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 G20 state.

(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 G20 state, 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 summarized 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 G20 state.

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 G20 state:

- 1 To obtain certified bank records for account no. 2222 2222 2222 held by Ms. S at the Foreign Bank of the requested G20 state, 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 G20 state 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*.

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 G20 state. 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 G20 state. 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)

