

[Guideline 9: Draft Request for MLA](#) [1]

Guideline 10: Execution of Request for Mutual Legal Assistance (MLA)

The requested authority promptly proceeds to the execution of the request.

After the draft request for MLA has been revised and agreed on by the requested jurisdiction, the requesting jurisdiction should promptly proceed with the submission of the request for MLA. The requested jurisdiction should, in turn, proceed with the execution of the request for MLA as soon as possible upon its receipt. Furthermore, the requested jurisdiction should keep the requesting jurisdiction informed of the status of the request for MLA during its execution.

When considering concluding domestic proceedings that may affect related proceedings in another jurisdiction, including settlements, engage in consultation, where appropriate, to minimize obstacles to foreign proceedings or international cooperation.

As noted in [Guideline 8](#) [2], both requesting and requested jurisdictions may be conducting domestic procedures in the same case. The outcome of such procedures may affect the involved jurisdictions in a range of manners. For this reason, concerned jurisdictions should keep each other continuously informed when proceedings are nearing conclusion, and should keep in mind the effect that the conclusion of their own procedure may have on other concerned jurisdictions' procedures with a view to preventing any adverse impacts.

This is of particular importance in instances where procedures may be concluded through alternative avenues for recovering assets, which may not require a criminal conviction – a solution to which jurisdictions have increasingly turned in recent years. Such alternative avenues may for instance include negotiated agreements such as settlements, plea-bargains or deferred prosecution agreements ([DPAs](#) [3]), and non-conviction based forfeiture ([NCBF](#) [4]) proceedings. The use of such alternative avenues often involve the negotiation of confidential arrangements with suspects that involve the confiscation of assets in return for an asset sharing agreement or for interrupting criminal proceedings and the (non-)admission of guilt. Interrupting these criminal proceedings in one jurisdiction however can make it very challenging for another concerned jurisdiction to pursue related asset recovery efforts of their own. A negotiated settlement in one jurisdiction may affect the ability of that jurisdiction to provide mutual legal assistance on the matter, or to provide information or evidence, to another jurisdiction.

Similarly, increasing amounts of jurisdictions are abandoning some criminal proceedings in favour of pursuing [NCBF](#) [4] proceedings. The legislative framework providing for [NCBF](#) [4] can differ greatly from one jurisdiction to the next and consequently, the decision of one jurisdiction to conclude criminal proceedings in favour of [NCBF](#) [4] proceedings can have repercussions on the ability of another jurisdiction to pursue criminal proceedings on related matters. Furthermore, even if both jurisdictions have [NCBF](#) [4] legislation, the standard of proof required by this legislation can vary from jurisdiction to jurisdiction, and may impact on the ability of these jurisdictions to enforce each other's judicial orders. Lastly, even if a jurisdiction proceeds with [NCBF](#) [4], it may be met with challenges during its enforcement in other jurisdictions.

Step 1 Adopt measures for expedited execution

Requests can be partially executed to allow for the preliminary transmission of information to the requesting jurisdiction as well as to further refine the execution of the request. In cases where legal challenges are likely to be invoked by affected parties, all possible action to expedite their use in the requested jurisdiction should be undertaken.

Explanation of step 1

Requests for MLA should only be issued to the requested jurisdiction after it has had the opportunity to review and, where applicable, comment on the draft (see [Guideline 6](#) [5] and [Guideline 9](#) [1]). Doing so saves time on the acceptance of the request and is likely to contribute to a prompt execution of the request upon its formal arrival in the requested jurisdiction.

Before issuing a request for MLA, the requesting jurisdiction should establish whether the nature of the assistance requested cannot be obtained through other, more expeditious means, such as law enforcement cooperation, asset recovery offices and Financial Intelligence Units (see [Guideline 1](#) [6] and [Guideline 3](#) [7]).

Where the nature of the assistance sought requires the issuance of a request for MLA, the requesting jurisdiction should engage as early as possible with the requested jurisdiction in the preparation and submission of the request for MLA (see [Guideline 9](#) [1]).

Where a request for MLA does not meet the necessary requirements for execution, the requested jurisdiction should promptly indicate the obstacles for execution (e.g. the lack of dual criminality) to the requesting jurisdiction (see [Guideline 6](#) [5] and [Guideline 9](#) [1]). A request for further clarification to the request for MLA should not be interpreted as an unwillingness to cooperate with the requesting jurisdiction, and should be used as an opportunity to enhance and further cooperation and coordination between the involved jurisdictions.

Where any foreseeable delays to the execution of the request exist (or where the execution of the request for MLA cannot be carried out), the requesting jurisdiction should promptly be informed, and these should be taken into consideration by both the requesting and requested jurisdictions regarding the prioritisation of cases.

Requests for MLA should be phrased as precise as possible and indicate the priority of execution of the various MLA measures sought with the request (e.g. first gather monthly bank account statements before obtaining SWIFT details of individual transactions).

Where the requested jurisdiction has obtained material that partially responds to the request for MLA, it should promptly forward that material to the requesting jurisdiction to allow it to further its case domestically.

Where the execution of a request for MLA is of particular urgency, the requested jurisdiction should be alerted to the reasons for that urgency through any means of communication between the concerned jurisdictions, and these reasons should also be mentioned in the request for MLA itself.

Time constraints (e.g., requests where urgency has been raised, or where prompt action is needed vis-à-vis a provisional order) should be examined when prioritising the execution of requests for MLA. Further aspects that can be considered include financial and contextual implications and the legal basis upon which the request was made.

Step 2 Mitigation strategies in case of delays

Any foreseeable delays in executing the request should promptly be communicated to the requesting jurisdiction. Continued communication is crucial to reflect any changes in priorities. In cases where there are multiple requests made related to the same group of cases, the jurisdictions involved should engage in in-depth consultation with one another to devise an overall strategic approach (e.g. in the case of regime changes).

Explanation of step 2

Any delays in the execution of the request for MLA in the requested jurisdiction should be promptly informed to the requesting jurisdiction, and elements relating to such a delay should be discussed by the concerned jurisdictions to finding a way forward.

The requesting and requested jurisdictions should establish criteria for the prioritisation of cases based on, e.g. suspect under arrest, existing time constraints (e.g. the statute of limitations has lapsed), risk of dissipation of assets, plurality of requests for MLA.

Step 3 Consider items for consultation

Involved jurisdictions will promptly inform each other about any potential or concluded settlements of ongoing cases and admissions of guilt which may impact the investigations in another jurisdiction.

Explanation of step 3

Throughout the lifecycle of the criminal investigation, as well as during the cycle of the requests for MLA, the involved jurisdictions should engage in period case coordination meetings (see [Guideline 3](#) [7]) which allow for continuous assessment of the situation and eventual re-strategizing, where appropriate and following the evolution of the case.

Jurisdictions should use proper channels of communications (as mentioned in [Guideline 6](#) [5]) to consult foreign jurisdictions before deciding conclusively to interrupt domestic criminal proceedings. Concerned jurisdictions should be aware of the consequences of the decision, and should take into consideration that the decision does not severely hinder another jurisdiction in their asset recovery efforts. When a decision would prove to be an obstacle in one of the concerned jurisdictions, discussions should focus on establishing an agreed strategy suitable for the concerned jurisdictions. If possible, negotiated agreements with the investigated persons should have input from all the jurisdictions that have a vested stake in the issue at hand.

Where the interruption of the domestic criminal proceedings stem from the fact that there are numerous investigations into the same fact by different jurisdictions, communication among the involved jurisdictions should establish which jurisdiction(s) is best placed to reach an outcome into the investigation and prosecution of the case. Wherever possible, this decision should be taken as early as possible in the criminal investigation.

Before concluding criminal proceedings through negotiated agreements, [NCBF](#) [4] or other alternative routes to the asset recovery process, concerned jurisdictions should consult the affected jurisdictions, to ensure that these decisions do not hinder the other jurisdictions from pursuing asset recovery efforts of their own.

Concerning [NCBF](#) [4], some countries have successfully incorporated terms of co-operation on [NCBF](#) [4] issues into bilateral treaties and agreements that allow for cooperation and enforcement of foreign orders despite systemic differences.

Further reading

- UNCAC, Articles 46; 54-56
- Schnebli, M. 2013. Lessons learned from the past: today's response from requested countries. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. Emerging Trends in Asset Recovery. Peter Lang.
- Vlassis, D. et al. 2013. Chapter V of UNCAC: Five years of experiences, obstacles and reforms on asset recovery. In: Fenner Zinkernagel, Gretta et al. (eds.). 2013. Emerging Trends in Asset Recovery. Peter Lang.
- International Cooperation in Asset Recovery. In: Brun, J.-P. et al. 2011. Asset Recovery Handbook: a Guide for Practitioners. The World Bank. Available at: <http://star.worldbank.org/star/publication/asset-recovery-handbook> [8]
- Oduor, J. A. et al. (2013). Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery. The World Bank. Available at: <http://star.worldbank.org/star/publication/left-out-bargain-settlements-foreign-bribery-cases-and-implications-asset-recovery> [9]

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Links

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- [2] <https://guidelines.assetrecovery.org/guidelines/guideline-8-parallel-investigation>
- [3] <https://guidelines.assetrecovery.org/lexicon/15#DPAs>
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