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Guideline 5: Legal requirements

Requesting and requested jurisdictions need to understand the legal requirements of one another, as these will become relevant for both domestic proceedings and international co-operation.

Differences in legal theory, case law, legal traditions, confiscation systems, and procedural requirements can present challenges to international cooperation in asset recovery. Overcoming these challenges may be necessary for success in domestic proceedings as well.

Involved jurisdictions may also consider the exchange of personnel and other experts, including the posting of liaison officers to support international cooperation and the MLA process, especially in complex or high value cases. Involved jurisdictions may choose to seek assistance from international experts (e.g., ICAR, StAR and UNODC) to facilitate communication or support the process through training, assistance in translation or other advice (see [Guideline 6](#) [1]).

Steps 1 Use available resources to gather information on MLA requirements

Use available resources to gather information on legal requirements (e.g., guides, databases, websites, practitioner networks) in involved jurisdictions.

Explanation of step 1

Jurisdictions should publish and maintain guides to asset recovery in their jurisdiction, including points of contact, investigative assistance, provisional measures, information regarding the MLA process (see [Guideline 9](#) [3]) and enforcement orders. Requesting jurisdictions should obtain and review these guides to resolve minor issues before contacting requested jurisdictions.

Step 2 National central authorities should be proactive

National central authorities should be proactive when advising domestic authorities on international co-operation (e.g. reviewing requests for MLA, identifying key requirements of the requested jurisdiction).

Explanation of step 2

The minimum requirements for MLA (see [Guideline 9](#) [3]) are often discussed on a case-by-case basis. In addition to the consultation of guides for MLA, the requesting authority should contact the requested jurisdiction proactively in order to explain the specific case and seek advice on submitting a draft request for MLA. During the preliminary discussions, the minimum strategic and technical requirements (see [Guideline 9](#) [3]) should be addressed.

Step 3 Establish contact with competent foreign authorities

Establish contact with competent foreign authorities to understand specific legal, tactical and practical requirements of the requested jurisdiction(s).

Explanation of step 3

Involved jurisdictions should not assume that they are knowledgeable of each other's legal requirements and

procedures. Therefore those requirements should be discussed prior to the submission of requests for MLA, e.g. by exchanging and consulting each other's guides for MLA (see [Guideline 6](#) [1]). Doing so may assist in overcoming unnecessary challenges and delays in international cooperation.

Step 4 Solicit feedback on potential (draft) requests in international co-operation, ensuring that sufficient information is provided.

Explanation for step 4

Most central authorities have established guides for MLA. The requesting authority should where applicable first approach the central authority of its own jurisdiction to obtain available information about the applicable requirements in the requested jurisdiction.

Requested jurisdictions should consider providing assistance to requesting jurisdictions to the widest extent possible, especially in support of complex or high value cases. Such assistance may include working with requesting jurisdictions to understand legal requirements, and reviewing initial draft requests for MLA (see [Guideline 9 Step 2 Consider consulting the requested jurisdiction on the draft request for MLA](#) [3]).

Step 5 Actively follow-up with requested authorities

Actively follow-up (e.g. regular calls, videoconferences or in-person visits) with requested authorities in relation to requests for international co-operation.

Explanation of step 5

The requesting authority should be persistent, and call periodically, given their interest in obtaining information and evidence from the requested jurisdiction. Additionally, as MLA is reciprocal, the requested authority should be ready to assist the requesting jurisdiction (see [Guideline 9 Step 4 Communicate to ensure follow-up](#) [3]).

Further reading

- UNCAC, Articles 46(1), 46(13), 46(24), 46(26), 48(1)(e) and 55.
- Country Guides on Asset Recovery prepared under the auspices of the G-20 Anti-Corruption Working Group available on The Stolen Asset Recovery Initiative (StAR) website at: <https://star.worldbank.org/star/about-us/g20-anti-corruption-working-group> [4].
- Country Guides on Asset Recovery prepared under the auspices of the Arab Forum on Asset Recovery available at: www.star.worldbank.org/star/ArabForum/country-guides-asset-recovery [5].
- Resources on Mutual Legal Assistance and the asset recovery laws of over 175 countries available from on UN Office on Drugs and Crime (UNODC) at <http://www.unodc.org/unodc/en/corruption/publications.html> [6].
- 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> [7].
- Lack of Information on MLA Requirements. In: Stephenson, K. et al. 2011. Barriers to Asset Recovery. An Analysis of the Key Barriers and Recommendations for Action. The World Bank. https://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Barriers_to_Asset_Recovery.pdf [8].

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requirements

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