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Guideline 9: Draft Request for Mutual Legal Assistance (MLA)

Share draft requests for MLA between the requesting and requested jurisdictions to confirm all requirements are met.

The execution of a request for MLA is subject to its compliance with the legislation of both the requesting and requested jurisdictions. While international conventions have mostly standardised requirements for requests for MLA, specific procedural and legal elements still vary from jurisdiction to jurisdiction. Additionally, language, content and format of a request for MLA, as well as evidentiary standards often differ from one jurisdiction to the next. Finally, an offence in one jurisdiction may not constitute an offence in another jurisdiction, which is likely to cause difficulties, as the fulfilment of the dual criminality requirement is a prerequisite before a request for MLA can be executed. Concerned jurisdictions should familiarise themselves, when necessary, with any guidelines or country specific information available when drafting a request for MLA.

Jurisdictions should establish contact with each other prior to sending a request for MLA to ensure that the request meets the applicable standards and is of appropriate quality, establish and maintain a level of mutual trust and understanding, and consequently increase the efficiency of the MLA procedure and the asset recovery process as a whole. Prior contacts often help to determine the best course of action and whether, for the particular case, draft requests for MLA should be shared before submitting them through formal channels.

Prior contacts also allows for better strategic planning. The requested jurisdiction(s) may alert the requesting jurisdiction about potential obstacles and challenges in relation to executing the request for MLA and thus be of better assistance throughout the asset recovery proceeding. Prior contact will further allow the requested jurisdiction to understand the sensitivities surrounding the criminal investigation in the requesting jurisdiction, thereby determining the priority and urgency of the request, and whether there is sufficient time to first review a draft request for MLA before its formal submission. When determining the sensitivities surrounding the criminal investigation, consideration should be given to the seriousness of the offence, the value of the assets, the stage of the investigation and the degree of public interest.

Prior revision of draft requests for MLA by the requested jurisdiction can save valuable time and other resources, allowing the concerned jurisdictions to use MLA as an effective and strategic tool to further criminal proceedings.

Where a revision of the draft requests for MLA by the requested jurisdiction is not required, the central authority of the requesting jurisdiction should review the draft request for MLA.

Requesting and requested jurisdictions should ensure follow-up to support the prompt execution of requests for MLA and periodic consultation on progress in domestic processes.

Concerned jurisdictions should ensure that they communicate with each other on a regular basis throughout the entire asset recovery process – even after a request for MLA has been formally submitted and then accepted by the requested jurisdiction. As requesting jurisdictions are often under enormous pressure to progress rapidly with cases, remaining in contact with requested jurisdictions while they analyse and eventually execute the requests will enable the requesting jurisdictions to have a realistic understanding of the timeframe within which they can expect the request to produce results. Being in contact during this phase will also enable the concerned jurisdictions to be aware early on of any hindering developments that may arise during the process. Continuous communication among concerned jurisdictions allows them to anticipate and plan for any further actions upon the completion of the initial request, such as the need for drafting of additional requests for MLA.

Step 1 Determine channel for transmission of request for MLA

Identify the counterparts. Use available tools such as guides and MLA templates when preparing the draft request. Where applicable, submit the draft request for MLA to the domestic central authority for initial review.

Explanation of step 1

Prior to submitting a request for MLA (see [Guideline 3](#) [3], [Guideline 4](#) [4] and [Guideline 5](#) [5]), requesting jurisdictions should first contact the requested jurisdiction's central authority, or a focal point or point of contact, to understand the legal and procedural requirements of the requested jurisdictions. Prior contact enables not only familiarisation with the requirements of the requested jurisdiction, but also establishes a contact person within the authority who can act as a focal point for on-going communications (see [Guideline 6](#) [6] and [Guideline 7](#) [7]).

Discuss with the requested authority (point of contact) whether it will be possible to assist with the revision of the request for MLA, where applicable or desired. Where this is not feasible, draft a request for MLA based on manuals or other available guidance prepared by the requested jurisdiction for this particular purpose.

Review MLA manuals prepared by the requested jurisdiction and information provided by a point of contact. This further enables both the requesting and requested jurisdictions to identify potential challenges, which may be met during the execution of a request for MLA, and allows mitigating them and reduce cause for delays (see [Guideline 10](#) [1]).

If however attempts at establishing a communicative relationship between the concerned jurisdictions fail, they should consider establishing such a relationship through other avenues, such as through third parties with whom they may already have an established working relationship or through other external parties such as proposed in [Guideline 6](#) [6].

Step 2 Consider consulting the requested jurisdiction on the draft request for MLA

Constraints such as urgency, translation requirements and disclosure obligations should be taken into account. Advice from the requested jurisdiction may relate to applicable legal provisions and appropriateness of submitting a request for MLA.

Explanation of step 2

Familiarise with the legislation and practice in the requested jurisdiction while preparing the draft request for MLA. Use the point of contact as a source for clarification of any questions that the requested jurisdiction has before the execution of the request for MLA.

Requesting jurisdictions should then draft their request for MLA in accordance with the information received, or which is available from the requested jurisdiction regarding, for example, content (including dual criminality matters), language, format and evidentiary standards. The draft request for MLA should in addition clarify the statutes of limitation for the criminal offence(s) under investigation and whether the suspect has been detained in the requesting jurisdiction. A revision of the draft request for MLA should precede any attempt to submit the request through formal channels.

The requested jurisdiction should swiftly analyse the draft request for MLA and provide the requesting jurisdiction with written comments or need for additional information about potential needs for amending the draft request for MLA. It is important that these comments and recommendations are not of a general or theoretical nature but are made in relation to the specific text of the draft request for MLA under analysis.

Step 3 Include all relevant information

These include: details of the requesting and requested authority, the purpose of the request and the applicable legal provisions (with the maximum sanction.) Ensure that the summary of facts details and links the criminal

behaviour and the assets related to it, with the types of assistance sought. Note any confidentiality requirements. Indicate reasons for urgent execution (such as court dates and statutes of limitation).

Explanation of step 3

The requesting jurisdiction should ensure that the facts contained in the draft request for MLA contains the following elements: (i) legal basis for the request for MLA; (ii) the name, position and full contact details for the requesting authority, as well as the languages spoken; (iii) reference to the proceeding(s) under which the request is made; (iv) the criminal offences under investigation (including a copy of the text of the criminal offence); (v) name and personal qualification of the person(s) under investigation; (vi) summary of facts of the case; (vii) description of the assistance sought; and, where applicable, (viii) procedures to be observed.

Concerning the criminal offence under investigation (item (iv) above), the requesting authority must determine with the point of contact whether the criminal offence under investigation in the requesting jurisdiction meets dual criminality requirements, so that it may be processed in the requested jurisdiction.

Concerning the summary facts of the case (item (vi) above), the draft request for MLA should generally establish a connection between the facts of the case, the persons under investigation, the alleged criminal offence committed and the evidence or assets which are expected to be found in the requested jurisdiction.

Concerning the description of the assistance sought (item (vii) above), the request for MLA must specify and detail the assistance sought. The requesting authority should contact the requested jurisdiction to learn how to best address the assistance sought in the request for MLA.

The requesting authority should swiftly amend the draft request for MLA as per the comments received from the requested jurisdictions with a view to bringing it in line with procedural and other requirements under the requested jurisdictions' legislation. Should issues remain or should the requesting jurisdiction encounter particular difficulties with responding to comments received from the requested jurisdiction, these should be discussed informally by phone or by exchanging further draft requests. Drafts should continue to be shared until the request for MLA reaches the necessary acceptable standard.

Step 4 Communicate to ensure follow-up

Requested jurisdiction acknowledges receipt of request for MLA and promptly flags any issues or needs for supplementary information. Where appropriate, put the relevant authorities in direct contact with each other. The requesting jurisdiction should periodically inform of developments relevant to the request for MLA; the requested jurisdiction should communicate progress on the execution of the request for MLA.

Explanation for step 4

Following the acceptance of a request for MLA, the requested jurisdiction should ensure that the requesting jurisdiction receives regular updates on progress relating to its request for MLA. Requesting jurisdictions should aim to speak with the person assigned to execute the request as this opens up possibilities to clarify any terminology or translation issues or to address any needs for further information. It is important that concerned jurisdictions remain up-to-date on any progress (or lack thereof) concerning the execution of the request for MLA, as this will enable them to plan for any foreseeable hurdles to the proper execution of the request.

Where appropriate requested jurisdictions should consider transmitting the requested materials as soon as possible, as partial execution of a request for MLA. Following the partial or the full execution of the request, concerned jurisdictions should continue to communicate with one another. Particularly, the requesting jurisdiction should provide feedback on the quality of the material provided. The stronger the communication between the parties, the easier it will be for the two jurisdictions to cooperate more efficiently during any subsequent or unrelated requests that may arise in the future.

Further reading

- UNCAC, Article 46
- 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.
- International Centre for Asset Recovery (ICAR). 2015. Tracing Illegal Assets - A Practitioner's Guide.
- 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]

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Links

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