

G20 STEP-BY-STEP GUIDE TO MLA REQUEST

1. INTRODUCTION

India provides mutual legal assistance in criminal matters through Bilateral Treaties/Agreements, Multilateral Treaties/Agreements or International Conventions or on the basis of assurance of reciprocity. The letter of request from any country is examined by Central Authority of India that is Ministry of Home Affairs and fit cases are forwarded to the concerned judicial/police authority for necessary action as if the offences has been committed within India.

(i) Requests Made Under a Treaty/Convention:

Request of MLA made on the basis of applicable bilateral or multilateral treaty or convention is executed promptly as per the requirement of requesting country in consonance with domestic law of India.

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

In case, there is no bilateral/multilateral agreement with the requesting country, such requests are considered on the basis of “assurance of reciprocity” in similar cases.

(iii) Dual Criminality Requirements:

Assistance shall be provided without regard to whether the conduct that is the subject of the request would be punishable under legislation of both countries or not.

However, in case of expressed provision under relevant law i.e. if the request for assistance include any coercive action such as search & seizure, confiscation of proceeds of crime, the underlying conduct of the offence should also be an offence in India.

II. CENTRAL AUTHORITY-CONTACT INFORMATION

The contact details of Central Authority of India are as follows:

The Under Secretary (Legal)
Ministry of Home Affairs
Internal Security Division-II
Hall No. 9, Open Gallery, 2nd Floor, Major Dhyan Chand National Stadium
Tele:+91-11-23070164
Fax No. +91-11-23075338
Email Id: us-legal@mha.gov.in

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

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

Step 1: CONSIDER WHETHER THE INFORMATION COULD BE OBTAINED VIA INFORMAL CHANNELS

Law enforcement authorities **may** consider seeking assistance through informal channel (agency-to-agency or INTERPOL) before making a formal mutual legal assistance request, as information can be provided more quickly.

Step 2: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

The Indian Central Authority encourages foreign Central Authorities to make contact before making a request, particularly in urgent cases, to ensure the assistance sought **can be made** available under Indian law, and the request **is meeting** India's requirements. The Indian Central Authority is happy to discuss India'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 Indian request made in comparable circumstances.

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION and/or PROSECUTION

The request should identify the relevant investigating and/or prosecuting authority, **which will help in swift execution of the request.**

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 India to undertake a dual criminality assessment, **as applicable**
- provide information about why the investigating and/or prosecuting authorities believe relevant evidence is located in India, 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

Step 7: SPECIFY THE ASSISTANCE BEING SOUGHT

The request should outline, in specific terms, exactly what assistance is sought from India, 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. **Requirements of requesting country are accommodated to the best possible extent, if not contrary to the provisions of domestic procedural laws.** The request is executed in the manner as if the offence has been committed within India.

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

a. Oral examination or testimony of persons:

- include a list of questions to be asked
- **In case of ongoing criminal proceedings**, indicate whether the prosecution **or defence** wants to examine or cross-examine (including via video link)
- indicate whether evidence provided needs to be sworn/affirmed
- include all available personal details (including name, nationality, location, passport information and gender etc)
- state the status of the person (suspect/accused or simply a witness)
- include a clear explanation of how the information sought from the person is relevant to the case.

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
- **In case of ongoing criminal proceedings**, indicate whether the prosecution **or defence** wants to examine or cross-examine the person who produced documents (including via video link).

c. Search and seizure:

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

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

- include an official, certified copy of the relevant order(s)
- include an official, certified copy of the conviction of the person
- include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)
- 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 India (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 India 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 India.

e. Transfer of 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 has given consent to give evidence in the proceeding or assistance in the investigation and
- include undertakings pertaining to the safe passage and return of the prisoner

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In India, 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.

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

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 Indian Central Authority may wish to seek clarification or obtain additional information. The Indian Central Authority prefers to communicate by email to **process the requests efficiently**.

Step 11: TRANSLATE THE REQUEST

India requires requests to be provided in writing in English.

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Any evidential material provided by India in response to a request **can** 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 Indian Central Authority.

IV. OTHER USEFUL REFERENCES

Further, Revised Guidelines for Mutual Legal Assistance in Criminal Matters which is available at following links may also be consulted:

www.mlat.mha.gov.in or https://mha.gov.in/sites/default/files/ISII_Comprehensive_Guidelines_17122019.pdf.