

GUIDE TO MUTUAL LEGAL ASSISTANCE FROM EAST ASIA AND THE PACIFIC REGION

BRUNEI DARUSSALAM

I. INTRODUCTION

The legal framework for mutual legal assistance (MLA) in Brunei Darussalam is primarily provided for in the Mutual Assistance in Criminal Matters Order 2005 (“MACMO 2005”). Brunei Darussalam is also a party to the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States as well as other international conventions providing for MLA e.g. the UNTOC and UNCAC.

In Brunei Darussalam, the Attorney General is the Central Authority of Brunei Darussalam for MLA matters. The Attorney General’s duties as the Central Authority of Brunei Darussalam is executed by officers in the MLA and Extradition Secretariat. Requests are to be made directly to the Attorney General, and only the Attorney General is authorized to make MLA requests to foreign countries on behalf of competent authorities in Brunei Darussalam.

Under the MACMO 2005, Brunei can make and comply with requests for assistance for:

- (a) Obtaining of evidence;
- (b) Making of arrangements for persons to give evidence or assist in investigations;
- (c) Confiscation of property;
- (d) Service of documents;
- (e) Identification and location of persons;
- (f) Search and seizure;
- (g) Provision of documents; and
- (h) Any other types of assistance not contrary to our domestic laws.

Under the Criminal Asset Recovery Order 2012 (CARO 2012), Brunei Darussalam may render assistance to requesting countries to obtain the issue of a restraining order against property, as well as the enforcement of foreign restraining, confiscation and benefit recovery orders against property located in Brunei Darussalam. The CARO 2012 also enables the Central Authority to assist in locating property believed to be proceeds of a serious crime.

(i) Requests Made Under a Treaty/Convention

Assistance can be rendered to any foreign country, not necessarily a treaty partner or a party to a convention that Brunei is also a party to. However, where such requests are made pursuant to a bilateral or multilateral MLA treaty, then such assistance rendered is subject to the terms of such treaty/convention.

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

Assistance requested via letters rogatory are not prohibited under our domestic laws.

(iii) Non-Treaty Letters of Request

Where Brunei does not have a treaty/convention with the requesting country, then Brunei can render assistance on the basis of reciprocity.

(iv) Dual Criminality is Generally Not Required

There is no requirement for dual criminality under MACMO 2005.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Attorney General of Brunei Darussalam
 The Law Building
 Jalan Raja Isteri Pengiran Anak Saleha
 Bandar Seri Begawan BA1910
 Brunei Darussalam
 Fax No.: +6732231221
 Email: mla@agc.gov.bn

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM BRUNEI DARUSSALAM

In general, the steps outlined below should be followed for mutual legal assistance from Brunei Darussalam:

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

It is recommended that the authority in your country contact the Central Authority of Brunei Darussalam 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 Brunei Darussalam and the request will meet the legal

requirements of Brunei Darussalam.

The MLA Secretariat encourages informal consultations prior to the making of a formal MLA request i.e. draft statement of facts of the offence alleged to be committed, so that the Secretariat can evaluate and advise whether the request can be complied with and executed or otherwise. Such informal consultations can be made via email at the Secretariat's email address – mla@agc.gov.bn.

Requesting countries are also encouraged to peruse MACMO 2005 which is available on the Attorney General's Chambers website (www.agc.gov.bn). Also available on the website are sample forms of requests for certain types of assistance which may serve as guidelines as to what information the Central Authority of Brunei Darussalam requires in considering an MLA request.

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 Brunei Darussalam, a requesting state is urged to consider the need for the evidence in question. If the offence being investigated is 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 (Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States), convention (UNCAC, UNTOC or 1988 Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances) or other avenue of cooperation being referred to in seeking the assistance from Brunei Darussalam.

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:

- If **witness statement/testimony** is being sought, the relevance of the witness in the matter investigated and/or prosecuted.
- If **documentary evidence** is needed, the connection between such documentary evidence and the criminal matter being investigated/prosecuted and how such evidence will assist in the investigations and/or prosecution.
- If the **execution of a search warrant** is sought, reasonable grounds for believing that the article or thing to which the MLA request relates is located in Brunei Darussalam.
- If **seizure/confiscation of criminal proceeds** is requested, confirmation that criminal investigations have begun in the requesting country, that the person against whom the order is sought has been convicted, or that there are reasonable grounds to believe that the property is located in Brunei Darussalam.

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. Please also attach an extract of the relevant law providing for the criminalization of the offence/s and the penalties may be attached to the MLA request.

Step 7: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from Brunei Darussalam, and any particular procedural requirements that must be met in the requesting country (example: certification/authentication needs).

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

- **Witness statements/testimony**: please include the list of names, addresses and telephone numbers of such witnesses and a list of the questions to be posed to the witness/es should also be annexed to the MLA request.
- **Documentary evidence**: please specify the document/s to be procured and the location of such document/s, if known.
- **Search and Seizure**: please specify what article/thing is to be sought and seized. The location and description of the article/thing should also be provided for, as well as the details of the person from whom such article/thing is to be searched or seized shall also be given i.e. name, address and telephone number. A statement connecting the article/thing sought with the criminal matter to which

the MLA request relates to will also be required.

- **Enforcing Order to Seize Criminal Proceeds:** A copy of the order shall be attached to the request and the request shall also contain a statement confirming that such order is currently in force in the foreign country.
- **Enforcing Order to Confiscate Criminal Proceeds:** A copy of the order shall be attached to the request and the request shall also contain a statement confirming that such order is currently in force in the foreign country and is not subject to appeal.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Brunei Darussalam, existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated in the request.

Step 9: RECIPROCITY UNDERTAKING

Where the requesting country is not a country with which Brunei Darussalam has a treaty with or is a party to the relevant international convention, such country shall make a reciprocity undertaking to this effect:

“The Government of [name of Requesting Party] undertakes that it will comply with a future request by the Government Brunei Darussalam for similar assistance in a criminal matter involving an offence that corresponds to the foreign offence for which assistance is sought.”

Step 10: MANDATORY ASSURANCES AND UNDERTAKINGS

Brunei Darussalam will also require the following assurances and undertakings from the requesting country when any MLA request is made to the Central Authority:

- (a) that the MLA request does not relate to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law in Brunei Darussalam but not also under the ordinary criminal law of Brunei Darussalam;
- (b) that the MLA request is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that

person's colour, race, ethnic origin, sex, religion, nationality or political opinions;

- (c) that unless the Attorney General of Brunei Darussalam consents otherwise, any evidence obtained pursuant to the MLA request will not be used for the purposes of a matter other than the criminal matter in respect of which the request was made; and
- (d) should the Attorney General of Brunei Darussalam require the return of any evidence obtained pursuant to the MLA request at the conclusion of the criminal proceedings and of all consequential appeals, the evidence will be returned to the Attorney General of Brunei Darussalam

Step 11: 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.). Indicate precise dates if you have specific limitation periods.

Step 12: 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 dealing 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 13: TRANSLATE THE REQUEST

Brunei Darussalam requires incoming requests for mutual legal assistance to be provided, in writing, in the English language.

Step 14: LIMITATIONS ON USE OF EVIDENCE PROVIDED

As highlighted previously, any evidence provided by Brunei Darussalam in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of the Central Authority of Brunei Darussalam first.

Step 15: ADMISSIBILITY OF FOREIGN EVIDENCE OBTAINED THROUGH MLA

Subject to the law relating to the admissibility of evidence, any document or record that is obtained, provided or produced pursuant to a request made under MACMO 2005 which is duly authenticated is admissible in evidence in any criminal proceedings.

A document or record is duly authenticated if it purports to be signed or certified by a Judge, Magistrate or other judicial officer in or of the foreign country.

IV. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON MLA

Brunei Darussalam has ratified and is a party to the Treaty on Mutual Assistance in Criminal Matters among Like-Minded ASEAN Member States, the United Nations Convention against Transnational Organised Crime, the United Nations Convention against Corruption and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

GUIDE TO MUTUAL LEGAL ASSISTANCE FROM EAST ASIA AND THE PACIFIC REGION

[The purpose of this template is to ensure your country's contribution to the MLA Guide for East Asia and the Pacific region meets the purpose of the guide, especially by providing brief and user-friendly advice on key MLA steps. Please make efforts to use the following headings and instructions. An example of a completed template of the Republic of Korea has been provided to assist you. We have made this template based on the G20 template as a reference.]

Please note that the submission of the guide is not mandatory, but recommended.

We will compile and distribute the guides submitted by each country to all of you.

KINGDOM OF CAMBODIA

I. INTRODUCTION [Maximum 1 Page]

Since Cambodia was signed the Treaty on Mutual Legal Assistance in Criminal Matters on 29 November 2004. The Royal Government of Cambodia expresses its continued support and cooperation to the undertakings of the ASEAN, especially important mechanism to suppress transnational crimes effectively. On the development of the Treaty on Mutual Legal Assistance in Criminal Matters, Cambodia has made great efforts to accelerate ratification process by National Assembly and Senate. This treaty has been ratified by National Assembly on 30 December 2009, Senate on 14 January 2010 and promulgated by King on 26 January 2010. Pursuant to Article 30, paragraph 3 of the Treaty on Mutual Legal Assistance in Criminal Matters, the signatory States shall deposit ratification instrument with the Government of Malaysia which is designated as Depositary State. For this purpose, The Royal Government of Cambodia has already submitted this ratification instrument to Malaysia on 03 March 2010. So this treaty comes into force for the Kingdom of Cambodia from 08 April 2010. In addition, the Central Authority of Cambodia was established on 11 January 2011 and processes its activities for implement the Treaty.

Central Authority of Cambodia was under Ministry of Justice and has function to facilitate in mutual legal assistance in criminal matters, civil matters, transfer of prisoners and extradition.

For implementation of MLA process, CA of Cambodia has received a request from Vietnam, and still processing the request. In addition, we also received the request from South Korea as well. We also joint actively with national level to suppress and combating transnational crimes such as human trafficking, drug, counter terrorism, corruption and money laundering.

(i) Requests Made Under a Treaty/Convention

Requests of Foreign State to Cambodia for assistance under Treaty/Convention, the request should submit directly to Cambodia's Central Authority (CA) or through diplomatic channel. Upon the received the request, the Minister of Justice forward to CA for review and CA forward the request to the Minister of Justice for approval then send it to the relevant agencies. And after receiving the result of request from the relevant agencies, the Minister of Justice forward to the Requesting State.

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

Requesting State may send requests of letter rogatory through diplomatic channel by reciprocity policy, it mean that the requests send to the Ministry of Foreign Affairs and Minister of Foreign Affairs forwards the request to Minister of Justice and Minister of Justice forwards to CA for review and CA forward the request to the Minister of Justice for approval and then send it to the relevant agencies for execution the letters rogatory requests.

(iii) Non-Treaty Letters of Request

Requesting State may send requests for assistance directly to Central Authority or through diplomatic channel.

(iv) Dual Criminality is Generally Not Required

In case dual criminality, the Requesting State also can make requests to Kingdom of Cambodia for assistance too.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Kingdom of Cambodia has designate the Central authority in the Ministry of Justice, where is the Contact Information for facilitating the request of the requesting state.

The Contact points for states seeking Mutual Legal Assistance:

- 1. MR. CHAN SATHA,** *Director of International Relation Department and Permanent Member of Cambodia Central Authority;*
- 2. MR. NGETH DAVUTH,** *Deputy Director of International Relation Department and Permanent Member of Cambodia Central Authority;*
- 3. MR. POV VIBOL,** *Bureau Chief of Foreign Affairs and Member of Cambodia Central Authority.*

Telephone: +855 23 219 570
E-mail: ird.moj@hotmail.com

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM *KINGDOM OF CAMBODIA* [Maximum 4 Pages]

In general, the steps outlined below should be followed for mutual legal assistance from **KINGDOM OF CAMBODIA**:

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

It is recommended that the requesting authority shall contact directly to the Central Authority of the *KINGDOM OF CAMBODIA* 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 *KINGDOM OF CAMBODIA*, and the request will meet the legal requirements of the *KINGDOM OF CAMBODIA*. 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 *KINGDOM OF CAMBODIA*, 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 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, ECD Anti-Bribery Convention, other) or other avenue of cooperation being referred to in seeking the assistance from *KINGDOM OF CAMBODIA*.

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

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

The Competence Authority in Cambodia for conducting the investigation and/or prosecution is the Court (Judges and Prosecutor).

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 . . . [insert instructions]

If witness statement/testimony is being sought, the Minister of Justice forwards the request to the relevant agency (Court of First Instance):

- *witness statement: upon the witness received the summon from the court, witness can make a statement by writing of the facts or what he saw concerning the case and signed or thumbprint to the court because he/she cannot attend the court hearing.*
- *the witness testimony: the witnesses who were not properly summonsed to testify. Taking the testimony of those witnesses shall be approved by the presiding judge. The court clerk shall record the identity of the witnesses.*

- b. If **documentary evidence** is needed, please . . . [insert instructions]

Research and examination records, judicial police officers shall establish a written record of their research and examination leading by the prosecutor;

Record of Interrogation – Preliminary Inquiry:

- *A written record shall be established for every interrogation.*
- *The record shall accurately reflect the responses of the relevant person. If necessary, the judicial police officer may call for an interpreter/translator who shall swear under his religion or beliefs to interpret the responses as accurately as possible.*

- c. If the **execution of a search warrant** is sought, . . . [insert instructions]

- *The judicial police officer may conduct a search. In such case, the judicial police officer shall first obtain the authorization from the Royal Prosecutor, which is valid even if the authorization is verbal.*
- *The judicial police officer shall conduct a search in the presence of the occupant of the place to be searched. In the absence of such person, the search shall be done in the presence of two witnesses. The witnesses shall be appointed by the judicial police officers. The witnesses shall not be police or military police who are participating in the search operation.*
- *Judicial police officers may not conduct a search prior to 6:00 or after 18:00, except if:*

- *A search is conducted at a place that is open to the public;*
 - *A search is conducted at a place where drugs are produced, stored, circulated, distributed or used.*
 - *Judicial police officers shall establish a written record of the search, which shall include:*
 - *The authorization by the Royal Prosecutor, which shall include the date and time of such authorization;*
 - *The identity of the occupant or of any witnesses.*
 - *Sealing of Exhibits:*
 - *Judicial police officers may confiscate any exhibits. They shall place a seal on all such pieces.*
 - *After showing the confiscated object to the occupant of the searched site or to the two witnesses, the judicial police officer shall make a written record of the confiscation in which all confiscated objects are listed. This written record shall be signed by or finger-printed by the occupant of the searched site or by the two witnesses.*
- d. If **seizure/confiscation of criminal proceeds** is requested . . . [insert instructions]

Confiscation may be ordered in relation to the following items:

- *Any instruments, materials or items which were used or intended to be used to commit the offence;*
- *The items or funds which were the subject of the offence;*
- *The proceeds or property arising out of the offence;*
- *The utensils, materials and furnishings in the premises in which*

Disposition of confiscated items:

- *When confiscation becomes final, the items confiscated shall become the property of the State, except as otherwise specified by specific provision.*
- *The State may sell or destroy the items confiscated as prescribed in the procedures for selling State property.*

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.

1. *ASEAN MLAT*
2. *Law on Counter Terrorism (Art.103 – Art. 109)*
3. *Law on Control on Drugs (Art. 114 – Art. 120)*
4. *Law on Money Laundering and Finance Counter Terrorism*

Step 7: IDENTIFY THE ASSISTANCE BEING SOUGHT

Outline, in specific terms, exactly what you are seeking to obtain from the *Kingdom of Cambodia*, and any particular requirements that must be met (example: certification/authentication needs).

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

- **Witness statements/testimony**: *outline your requirements an original and 02 copies of witness statements*
- **Documentary evidence**: *outline your requirements 03 copies in English and certification*
- **Search and Seizure**: *outline your requirements 03 copies in English and certification*
- **Enforcing Order to Seize Criminal Proceeds**: *outline your requirements 03 copies in English and certification*
- **Enforcing Order to Confiscate Criminal Proceeds**: *outline your requirements 03 copies in English and certification*

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In the *KINGDOM OF CAMBODIA*, existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated 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.). Indicate precise dates if you have specific limitation periods.

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 dealing 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.

Kingdom of Cambodia has designate the Central authority in the Ministry of Justice, where is the Contact Information for facilitating the request of the requesting state.

The Contact points for states seeking Mutual Legal Assistance:

1. MR. CHAN SATHA, *Director of International Relation Department and Permanent Member of Cambodia Central Authority;*

2. MR. NGETH DAVUTH, *Deputy Director of International Relation Department and Permanent Member of Cambodia Central Authority;*

3. MR. POV VIBOL, *Bureau Chief of Foreign Affairs and Member of Cambodia Central Authority.*

Telephone: **+855 23 219 570**

E-mail: **ird.moj@hotmail.com**

Step 11: TRANSLATE THE REQUEST

Kingdom of Cambodia requires incoming requests for mutual legal assistance to be provided, in writing, in its official language(s), namely [identify official language(s) *Khmer and English*].

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence provided by *Kingdom of Cambodia* in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of the Kingdom of Cambodia first.

Step 13: ADMISSIBILITY OF FOREIGN EVIDENCE OBTAINED THROUGH MLA

IV. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON MLA

- *ASEAN MLAT*

**FORM
MODEL REQUEST FORM¹**

To:

The Central Authority of the Republic of Indonesia
Directorate of International Law and Central Authority
Directorate General of Legal Administrative Affairs
Ministry of Law and Human Rights
Jl. H.R. Rasuna Said Kav.X - 6 Kuningan, Jakarta Selatan
REPUBLIC OF INDONESIA

From:

[name of Central Authority of Requesting Party]
[Through diplomatic channels]²

REQUEST FOR MUTUAL ASSISTANCE IN A CRIMINAL MATTER

RE: (insert particulars)

INTRODUCTION

1. I,, the (*name of agency/office designated as Central Authority*), being the designated Central Authority to make and receive requests for mutual legal assistance in criminal matters on behalf of (*name of country*), present this request to the Central Authority of (*name of Requested Party*).

AUTHORITY FOR REQUEST

2. This request is made under the (*specify relevant provisions of the relevant legal basis such as international treaty/convention*).

NATURE OF REQUEST

- 3.1 This request relates to a (*criminal matter*)³ concerning (*describe subject of criminal matter*).
- 3.2 The personal details of the subject of the request are as follows:
 - Name/Description:
 - Date of birth:
 - Age:
 - Occupation:
 - Nationality:
 - Passport No.
 - Address/Location:
- 3.3 The details of the property to be traced/restrained/forfeited are as follows⁴:
 - Description:
 - Location:
 - Other relevant details:

¹ This Model Request Form is intended as a guide and a reference only. The requirements may be modified as necessary to meet the requirements of the domestic law and practice of each states.

² This may be deleted where the request is not made through diplomatic channels.

³ State whether it is an investigation, prosecution or an ancillary criminal matter relating to the restraining of dealing with property or the enforcement or satisfaction of a forfeiture order.

⁴ Applicable where request relates to restraint of property or enforcement of a forfeiture order.

- 3.4 The reasons for suspecting that the person/property is in (*name of Requested Party*) are as follows⁵:
- 3.5 The authority having the conduct of the criminal matter is (*describe authority in Requesting Party concerned with the criminal matter*).

STATEMENT OF FACTS

4. (*Describe the material facts of the criminal matter including, in particular, those facts necessary to establish circumstances connected to evidence sought in the Requested Party and the relevance of the evidence from the Requested Party to the criminal matter in the Requesting Party.*)

CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES

EITHER:

- 5.1 (*Name of suspects/defendants*) are (*suspected of having/alleged to have*) committed/have been charged with the commission of the following offences, namely -
- (*describe offences and provisions of the legislation contravened*)
The maximum penalties for the above offences, which are the subject of this (*investigation/prosecution*) are:
 - (*specify maximum penalty for each offence and applicable law*)⁶.

OR:

- 5.1 A forfeiture order (*has been/may be*) made in proceedings in (*name of Requested Party*). (*State basis for any statement that a forfeiture order may be made.*)
The forfeiture order is connected with (*state the relevant offences*) in (*name of Requested Party*) the maximum penalties for which are (*specify maximum penalty for the offence and applicable law*)⁷.
- 5.2 A copy/extract of the relevant legislation is attached and marked as “Attachment A” to this request.

PURPOSE OF THE REQUEST

6. By this request it is intended to (*state purpose: e.g. secure admissible evidence for the purpose of the criminal proceedings against the defendants, enforce the abovementioned forfeiture order, etc.*)

MANDATORY UNDERTAKINGS

7. [*Insert relevant undertakings, if any*]⁸

DESCRIPTION OF ASSISTANCE REQUESTED

8. The (*appropriate authority of the Requested Party*) is requested to take such steps as are necessary to give effect to the following:
- (a) examination on oath or affirmation of a witness before (*relevant judicial authority of Requested Party*);
(e.g.) Mr. X
ABC Co., Ltd.
(address)

⁵ Applicable where request relates to restraint of property or enforcement of a forfeiture order.

⁶ Applicable where request relates to an investigation or prosecution.

⁷ Applicable where request relates to restraint of property or enforcement of a forfeiture order.

⁸ Requesting Party to insert such undertakings as may be relevant.

to be orally examined on oath or affirmation on the following matters:

- *(specify clearly the relevant issues/areas relating to the subjectmatter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions)*

Note: Specify form in which statement is to be obtained e.g. witness statement or affidavit. Samples forms to be attached.

(b) production of documents, records or items before a court [and obtaining of oral evidence of the witness producing such material for the purpose of identifying and proving the material produced]⁹;

(e.g.) Director
ABC Co., Ltd.
(address)

to be required to produce *(describe the form of evidence e.g. "certified copies")* of the following documents, records or items for the period *(state relevant time frame)*:

- *(specify documents, records or items or classes thereof).*

The above witness to be orally examined on oath or affirmation on the following matters for the purpose of identifying and proving the documents, records or items produced:

- *(state relevant particulars).*
(e.g.)
 - to provide confirmation as to his position in a company/office and that he is responsible for keeping/maintaining/holding the documents, records or items in relation to the subject-matter of the investigation
 - that he is authorised by the relevant law of the Requested Party to make the affidavit
 - to confirm that he has access to the documents, records or items kept in relation to the subject-matter of the investigation in the normal course of his duties
 - to confirm the authenticity of the copies of the documents, records or items supplied
 - to confirm that the documents, records or items were created in the ordinary course of business

Note:

Specify form in which statement is to be obtained e.g. witness statement or affidavit. Samples forms to be attached.

(c) search of person or premises for documents, records or items;

(e.g.) The premises of ABC Co., Ltd.
(address)

to be searched under a search warrant for the seizure of the following from the company:

- *(provide details of the documents, records or items sought to be searched for and seized).*
- *(support any request for originals of documents, records or items seized with reasons).*

(d) production of documents, records or items through production orders;

(e.g.) Manager
ABC Bank Ltd.
(address)

to be required to produce copies of the following documents, records or items under a production order:

⁹ Include this part if it is deemed necessary for the purposes of admissibility of the documents, records or items in evidence.

- (describe particulars of material required to be produced and where located).
 - (state grounds for believing that the material sought is likely to be of substantial value to the criminal matter in Malaysia).
 - (support any request for the production of originals of documents with reasons).
- (e) arrangement of travel of person/prisoner from (*name of Requested Party*) to assist in a criminal matter;
 (e.g.) Arrangements to be made for Mr. X
 (address)

to travel to (*name of Requesting Party*) to give assistance in a (*criminal matter*)¹⁰ by rendering the following assistance:

- (*specify the assistance sought*).
 - (*provide the undertakings required by the law of (name of Requested Party)*).
 - (*provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in (name of Requesting Party) pursuant to the request*).
- (f) enforcement of a forfeiture order/request to assist in the restraining of dealing in property;
 • (*state particulars of the forfeiture order to be enforced, or the property to be restrained and present state of related proceedings*).
- (g) assistance in locating/identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a serious offence;
 (e.g.) Arrangements to be made to locate/identify and locate Mr. X who is believed to be in (*name of Requested Party*) with the last known address at (*address*).
- (*state particulars of person concerned*).
- (h) assistance in tracing property suspected to be connected to a serious offence;
 (e.g.) Arrangements to be made to trace (*description of property*) believed to be in (*name of Requested Party*).
- (*state particulars of property concerned*).
- (i) service of process.
 (e.g.) Mr. X
 (address)

to be served with the following documents:

- (*describe documents to be served*).
- (*specify manner of service and period within which documents to be served*).
- (*specify required proof of service*).

EXECUTION OF REQUEST

(A) CONFIDENTIALITY

9.1. It is requested that the fact that this request has been made and the execution of the request be kept entirely confidential except to the extent necessary to execute the request as (*state reasons e.g. the likelihood of interference with witnesses and /or destruction of evidence, etc.*)¹¹

9.2. It is also requested that the evidence of the witness be taken *in camera* as there exist reasonable grounds for believing that it is in the interests of the witness to give evidence

¹⁰ State whether it is an investigation or criminal proceedings of an offence in the Requesting Party or an ancillary criminal matters.

¹¹ Necessary if confidentiality is requested.

in camera because (*state reasons*) and the criminal matter would be substantially prejudiced if the examination was conducted in open court because (*state reasons*).¹²

(B) PARTICULAR PROCEDURES TO BE FOLLOWED

10. It is requested that the following procedures be observed in the execution of the request:

- (*state details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.*)

(e.g.)

- In relation to the evidence obtained on examination on oath/affirmation of a witness, please provide the statement in admissible form. To be admissible, the statement must be made in the form of an affidavit except when recorded in writing by a judicial authority. If documents and records are referred to or are otherwise enclosed, the documents and records must be accompanied by an attestation of authenticity. Copies of the prescribed form for the affidavit and attestation of authenticity are attached to this request and marked as Attachment B and Attachment C respectively.
- In relation to the evidence of (*name of relevant witness(es)*), please arrange for the evidence to be given in a court in (*name of Requesting Party*) via live video or live television link (or other appropriate communications facilities) from (*name of Requested Party*).

- (*state any special requirements as to certification/authentication of documents.*)

(e.g.)

In relation to evidence to be provided by affidavit-

- a) the affidavit should be made before a judicial officer or other officer who is authorised to administer oaths or affirmations in (*name of Requested Party*). When the affidavit has been sworn or affirmed, the affidavit should be sealed with an official or public seal of (*name of Requested Party*) to ensure compliance with (*specify relevant provisions of the relevant legislation of Requesting Party*), a copy of which is attached to this request and marked as Attachment D;
- b) if the affidavit runs for more than one page, each page other than the last should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made; and
- c) each page of each attachment should be initialed both by the person who makes the affidavit and by the person before whom the affidavit is made.

(e.g.)

In relation to documents produced by computers, or a statement contained in such document, the document or statement, as the case may be, is admissible as evidence of any fact stated therein if the document was produced by the computer in the course of its ordinary use, whether or not the person tendering the same is the maker of such document or statement. A certificate signed by a person who either before or after the production of the document by the computer is responsible for the management of the operation of that computer or for the conduct of the activities for which that computer was used must be tendered to the court to prove that a document was produced by a computer in the course of its ordinary use.

An extract of the relevant legislation, (*specify relevant provisions of the relevant legislation of Requesting Party*) is attached and marked as “Attachment E” to this request.

- (*state if attendance by representative of appropriate authority of Requesting Party at examination of witnesses/execution of request is required and, if so, the title of the office held by the proposed representative.*)

(e.g.)

Permission is requested for an officer of (*name of appropriate authority in Requesting Party*) to travel to (*name of Requested Party*) to assist in the execution of this request.

¹² Applicable if the request relates to the taking of evidence before a court for the purposes of an investigation in Requesting Party.

(C) PERIOD OF EXECUTION

11. It is requested that the request be executed urgently/within (*state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request*).

(D) TRANSMISSION OF REQUESTED MATERIAL

12.1 Any documents, records, items, statements or information obtained in response to this request should be sent to the (*Central Authority of Requesting Party*) at the following address:

[*Provide full address and other contact details such as name of contact officer, telephone and facsimile numbers and email address*]

12.2 The (*Central Authority of Requesting Party*) will forward the material to (*name of authority in Requesting Party concerned with the criminal matter*), being the relevant requesting authority in this matter.

(E) DETAILS OF ALLOWANCES, ARRANGEMENTS FOR SECURITY AND ACCOMODATION¹³

13.1 The allowances to which (*name of person*) will be entitled are as follows:
(*State details of allowances*)

13.2 The arrangements for the security of (*name of person*) are as follows:
(*State details of security arrangements*)

13.3 The arrangements for the accommodation of (*name of person*) are as follows:
(*State details of accommodation arrangements*)

(F) UNDERTAKING ON EXPENSES FOR USE OF LIVE VIDEO LINK¹⁴

14. The Government of (*name of Requesting Party*) shall responsible for all cost takes by the Government of (*name of Requested Party*) in order to establish the live video or television link or other appropriate communications facilities, the costs related to the servicing of the live video or television link or other appropriate communications facilities, the remuneration of interpreters provided by (*name of Requested Party*) and allowances to witnesses and their traveling expenses in (*name of Requested Party*).¹⁵

LIAISON

15.1 The officers of the (*Central Authority of Requesting Party*) handling this request are:
(*state name of officer(s)*)
(*address*)

Telephone Number:
Facsimile Number:
Electronic mail address:

15.2 The case officer of (*name of authority in Requesting Party concerned with the criminal matter*) is:

¹³ If the request involves a person travelling from the Requested Party to the Requesting Party.

¹⁴ If the request involves a person travelling from the Requested Party to the Requesting Party.

¹⁵ If the request involves the giving of evidence by live video or live television link or other appropriate communications facilities, unless the Parties mutually agree otherwise.

(name of officer of authority in Requesting Party concerned with the criminal matter, telephone and facsimile numbers and e-mail address)

15.3 The following officer/*s of *(name of appropriate authority in Requested Party)* *has/*have knowledge of this matter:

*(name of officer/*s of appropriate authority in Requested Party, telephone and facsimile numbers and e-mail addresses).*

15.4 If permission is given for an officer of *(name of authority in Requesting Party concerned with the criminal matter)* to travel to *(name of Requested Party)*, the officer is likely to be *(name of officer of authority in Requesting Party concerned with the criminal matter)*.

SUPPLEMENTARY REQUEST

16. The *(Central Authority of Requesting Party)* may wish to make supplementary requests for assistance in this matter if necessary.

RECIPROCITY UNDERTAKING

17. The Government of *(name of Requesting Party)* assures the Government of *(name of Requested Party)* that the Government of *(name of Requesting Party)* would, subject to its laws, comply with a request by the Government of *(name of Requested Party)* to *(name of Requesting Party)* for assistance of this kind in respect of an equivalent offence.

Signed by

Name and Position : _____
Office : _____
Date : _____

[Japan]

I. INTRODUCTION

Japan provides mutual legal assistance under the guarantee of reciprocity, regardless of the existence of an applicable treaty/convention between Japan and the requesting state.

(i) Non-Treaty Based Requests (a) Requirements

A mutual legal assistance request is executed on the basis of the reciprocity principle and in accordance with requirements provided for in the Law for International Assistance in Investigation and Other Related Matters (LIAI). Requirements are the followings;

- ▶reciprocity – the requesting state guarantees that it will honour requests of the same sort from Japan
- ▶non political offence – 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, and
- ▶indispensability – with respect to a request for the testimony (sworn) of a witness or provision of articles of evidence, the requesting state clearly demonstrates in writing that the evidence is essential and indispensable to the investigation
- ▶the Minister of Justice deems it appropriate to honour the request

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.

(b) Special Requirements

When a request for assistance involves confiscation, value confiscation or freezing assets for confiscation or value confiscation (see below (c)), 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.

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.

(c) Assistance provided

Assistances Japan can provide to requesting state are stipulated in LIAI. These assistances are followings;

- ▶interview the person concerned
- ▶request an expert to give an opinion
- ▶conduct a non-compulsory inspection
- ▶ask the owner, possessor or custodian of a document or other material to submit it
- ▶ask a public office, or a public or private organization to make reports
- ▶undertake seizure, search and compulsory inspection (upon a warrant issued by judge)
- ▶apply to a judge for testimony (sworn) of a witness
- ▶ask to submit a document relating to litigation which is in the custody of a court, a public prosecutor or a police officer
- ▶request a person who engages in the business of providing electronic communication facility for communications of others or a person whose facility for his own electric communications is capable of transmitting electric communications among many or unspecified persons to preserve necessary part of the electromagnetic records, which are recorded in the course of business, by specifying the origin, destination, time and other traffic date of the electronic communication for a period not exceeding 30 days (if to extend, not exceeding 60 days in total)

Interception of communication is not available for the mutual legal assistance, regardless of whether it is for treaty based request or not. Moreover, transfer of a sentenced inmate for testimony is not provided for non-treaty based requests.

(ii) Requests Made Under a Treaty/Convention

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 (Japan has signed UNTOC and UNCAC, but not yet ratified).

(a) Requirements

While LIAI and AOCL form the domestic legal base for providing assistance to the treaty-based request, the requirement of dual criminality is relaxed by treaty/convention.

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.

(b) Assistance provided

All assistances available for non-treaty based requests may be provided for treaty-based requests. Moreover, transfer of a sentenced inmate for testimony may be provided exclusively for treaty-based requests.

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, and mutual legal assistance 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

Email: info@moj.go.jp

Facsimile: +81 3 3592 7063

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM

Step 1: CONSULT WITH THE CENTRAL 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 LIAI 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 or reciprocity (non-treaty based) 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. 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:

▪ **Witness statement (non-sworn)/testimony (sworn):**

There are two ways obtaining witness statement. One is executed by investigative authority without sworn. The other is “testimony” executed with sworn under a judge. Specify one of which is needed.

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.

▪ **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.

▪ **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.

▪ **Compulsory measure:**

When it is necessary to take compulsory measures, including search and seizure, 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.

▪ **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.

IV. OTHER USEFUL INFORMATION

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.

GUIDE TO MLA FROM EAST ASIA AND THE PACIFIC REGION

[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(MLA 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 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 MLA Act.

(iii) Non-Treaty Letters of Request

A non-treaty letter of request may also be executed on discretionary basis. For such 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 MLA 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 : +82-2-2110-3554
Fax : +82-2-3480-3113

III. STEPS TO FOLLOW WHEN SEEKING MLA FROM 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 which 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 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 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 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(i.e. 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(i.e. 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 document 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 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 (example: certification/authentication needs).

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

- **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 (i.e. whether the witness sworn statement before a judge, 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.

- **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.
- **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.
- **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 Republic of Korea does not recognize civil forfeiture, and within 45 days of seizure, a notice that person implicated with the assets seized has been charged must be sent to the Central Authority.
- **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 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 KMOJ 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(s), 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.

GUIDE TO MUTUAL LEGAL ASSISTANCE FROM EAST ASIA AND THE PACIFIC REGION

MALAYSIA

I. INTRODUCTION

1. The Mutual Assistance in Criminal Matters Act 2002 [Act 621] (“MACMA”) provides the legal basis for the formal process of mutual assistance in criminal matters between Malaysia and foreign States. The MACMA came into operation on 1 May 2003 and is to be read with the Mutual Assistance in Criminal Matters Regulations 2003 [P.U.(A)194/2003].

2. Thus far, Malaysia has entered into one multilateral (Treaty on Mutual Legal Assistance in Criminal Matters (among like-minded ASEAN Countries) and seven (7) bilateral treaties, specifically on mutual assistance in criminal matters, with foreign countries.

3. The Attorney General is the designated Central Authority for Malaysia for all mutual assistance in criminal matters requests. This means that all requests for mutual assistance in criminal matters made by Malaysia are made by or through the Attorney General in accordance with section 7 of the MACMA. It also means that all requests for mutual assistance in criminal matters made to Malaysia are made and sent to the Attorney General for consideration and execution in accordance with section 19 of the MACMA.

4. Section 3 of the MACMA lists the types of assistance that are available under the MACMA. Section 4(1) of the MACMA makes it clear that MACMA does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization. Further, section 4(2) of the MACMA makes it clear that the MACMA does not prevent the provision or obtaining of other forms of international assistance in criminal matters other than the assistance specified under the MACMA.

5. The other provisions of law which provide mechanisms for the gathering of evidence in furtherance of international cooperation in criminal matters are Order 66 of the Rules of the High Court 1980 [P.U.(A)50/1980], Part VII of the Dangerous Drugs (Forfeiture of Property) Act 1988 [Act 340] and sections 50 and 52 of the Extradition Act 1992 [Act 479].

(i) *Requests Made Under a Treaty*

Under section 17 of the MACMA, Malaysia may request and provide mutual assistance in criminal matters to a treaty-partner State pursuant to a treaty

on mutual assistance in criminal matters that is in force between the two States.

(ii) Letters Rogatory Requests

Order 66 of the Rules of the High Court 1980 provides for requests for judicial assistance to be made or received by Malaysia through letters rogatory/ letters of request. Letters rogatory were originally limited to civil matters. However the Supreme Court in the cases of *Dato' Mohamed Hashim Shamsuddin v Attorney General, Hong Kong [1986] 2 MLJ 112* and *Lorrain Esme Osman v Attorney General of Malaysia [1986] 2 MLJ 288* extended their use to criminal matters.

However, due to the limited type of assistance which could be provided under Order 66 of the Rules of the High Court 1980, Malaysia has made it a practice to assist requesting foreign States in its widest measure by invoking the provisions under the MACMA.

(iii) Non-Treaty Letters of Request

Under section 18 of the MACMA, in the case of a non-treaty partner State, Malaysia may provide mutual assistance in criminal matters to that State in accordance with a Special Direction of the Minister charged with the responsibility for legal affairs if the Minister, on the recommendation of the Attorney General, agrees to accede to the request.

(iv) Dual Criminality is Required

- In considering a request from a foreign State for rendering assistance under the MLA regime, the requirements of dual criminality is a mandatory requirement to be fulfilled in order for Malaysia to provide assistance to the foreign States.
- This is to ensure that the offence provided for in the request has the relevant corresponding provision under the Malaysia law and that the offence is a serious offence or a serious foreign offence i.e. offence must be punishable for not less than a year or maximum death.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Attorney General is the designated Central Authority for Malaysia for all mutual assistance in criminal matters requests.

Attorney General's Chambers of Malaysia
No. 45, Persiaran Perdana, Precinct 4
Federal Government Administrative Centre
62100, Putrajaya, Malaysia
Telephone: 603 – 8872 2000
Facsimile: 603 – 8890 5657

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

In general, the steps outlined below should be followed for mutual legal assistance request to Malaysia:

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 of Malaysia 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 Malaysia, and the request will meet the legal requirements of Malaysia. 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 Malaysia, 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 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 bilateral or multilateral treaty, convention (UNCAC, UNTOC, other) or other avenue of cooperation being referred to in seeking the assistance from Malaysia.

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, reference is made to section 22 of the MACMA.
- b. If **documentary evidence** is needed, reference is made to section 23 of the MACMA.
- c. If the **execution of a search warrant** is sought, reference is made to section 36 of the MACMA.
- d. If **seizure/confiscation of criminal proceeds** is requested, reference is made to section 35 of the MACMA.

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: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Malaysia, existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated 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 (example: pending court proceeding/time-sensitive investigation, etc.). Indicate precise dates if you have specific limitation periods.

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 dealing 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

Malaysia requires incoming requests for mutual assistance in criminal matters to be provided, in writing, in the English language.

Step 11: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence provided by Malaysia in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of Malaysia first.

Step 12: ADMISSIBILITY OF FOREIGN EVIDENCE OBTAINED THROUGH MLA

Any evidence obtained through MLA by foreign States from Malaysia would be subject to the admissibility requirements of the requesting State.

IV. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON MLA

To date Malaysia has entered into one multilateral (Treaty on Mutual Legal Assistance in Criminal Matters (among like-minded ASEAN Countries) and seven (7) bilateral treaties, specifically on mutual assistance in criminal matters, with foreign countries as follows:

- (a) Treaty on Mutual Assistance in Criminal Matters (among like-minded ASEAN Member Countries);
- (b) Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters (28 December 2006);
- (c) Treaty between the Government of Malaysia and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters (21 January 2009);
- (d) Agreement between Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People's Republic of China concerning Mutual Assistance in Criminal Matters (1 February 2008);
- (e) Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters (16 December 2011);

- (f) Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters (12 November 2012); and
- (g) Treaty between the Government of Malaysia and the Government of the Republic of Korea on Mutual Assistance in Criminal Matters (signed on 10 December 2010 and not yet come into force).

GUIDE TO MLA FROM EAST ASIA AND THE PACIFIC REGION

[The Republic of Union of Myanmar]

I. INTRODUCTION

Any foreign State requesting assistance of Myanmar in criminal matters shall be obliged in accordance with the Mutual Assistance in Criminal Matters Law 2004.

The Mutual Assistance in Criminal Matters Law 2004 shall apply to providing assistance in criminal proceedings with States parties to an international convention or regional agreement to which the Union of Myanmar is a State party or with the State that has entered into bilateral agreement or with the State that will provide reciprocal assistance though not a State party to the international convention or regional agreement or bilateral agreement with respect to investigation, prosecution and judicial proceedings in criminal matters.

i. Requests Made Under a Treaty/Convention

Any foreign State requesting assistance of Myanmar in criminal matters shall :if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is a State Party or the State which has bilateral agreement with the Union of Myanmar, request assistance directly to the Central Authority; if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is not a State Party or the State that has not entered into bilateral agreement with the Union of Myanmar, request to the Central Authority through diplomatic channel.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Ministry of Home Affairs

Building No 10

Nay Pyi Taw

The republic of the Union of Myanmar

III. STEPS TO FOLLOW WHEN SEEKING MLA FROM The Republic of the Union of Myanmar in accordance with the Mutual Assistance in Criminal Matters Law 2004

Section 11 provided that any foreign State may, in making a request under section 10, with respect to investigation, prosecution and judicial proceedings in criminal matters include and request the following matters

- (a) Taking evidence or statement from any person ;
- (b) rendering service so that judicial documents shall have effect ;
- (c) examining objects and sites ;
- (d) identifying or tracing money or property to be used for evidentiary purpose to be relevant to the offence;
- (e) executing searches, seizures, control, issuing restraining order and confiscation of exhibit;
- (f) obtaining information, documents to be used for evidentiary purpose, records and expert opinion;
- (g) providing originals or certified copies of relevant documents and records to be used for evidentiary purpose;
- (h) exposing the residential address of offender, location of the exhibit and other necessary information;
- (i) other matters in respect of which the Central Authority has agreed to give assistance.

Section 12 provided that the requesting State shall, in making a request mention the following facts in Myanmar language or English language.

- (a) name and designation of the authority making the request ;
- (b) statement setting out a summary and nature of the case relevant to the request;
- (c) necessary identity, address and nationality of the person concerned;
- (d) procedures for rendering assistance in matters for obtaining evidence;
- (e) period and limitation during which the request is to be complied with;
- (f) information to be exposed and evidence to be obtained;
- (g) statement to perform confidentially if the matter is required to be performed confidentially;
- (h) extract of relevant laws, rules and procedures exercised in one's own State in respect of the assistance of requested and reasons thereof;

- (i) name, function and responsibility of the person conducting investigation, prosecution and judicial proceedings in one's own State ;
- (j) other necessary information.

Section 13 provided that the requesting State may, in urgent circumstance make request orally by telephone, facsimile, electronic mail or other electronic means including computer network. In making such request the original letter of request shall be sent to the Central Authority without delay.

Section 14 provided that The Central Authority may –

- (a) on receiving the request of any foreign State, request after scrutiny, necessary additional information and supporting evidence for the execution in conformity with the existing laws.
- (b) meet with the person or body of persons assigned by the authority of the requesting State and make inquiry and request supporting evidences.

Section 16 provided that In respect of mutual assistance in criminal matters, if the Central Authority is desirous of granting the request to the State which is neither the State Party to the Convention or regional agreement nor has bilateral agreement, it may do so on condition that such requesting State has already agreed to grant the request of the Union of Myanmar on reciprocal basis.

Section 17 provided that In respect of a request of any foreign State, if the Central Authority is of the opinion that, it interferes with an ongoing investigation, prosecution or proceeding in the Union of Myanmar it may postpone the request in whole or in part in consultation with the requesting State.

Section 18 provided that the Central Authority shall not refuse the request of any foreign State on the ground of it being a bank and financial institutions secrecy. Provided that if it is found on scrutiny that it infringes one of the following facts the request may be refused in whole or in part :

- (a) not being in conformity with the stipulations of this Law ;
- (b) encroaching on the sovereignty of the State, its security prevalence of law and order or public interests ;
- (c) there being cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal stand of any individual is encroached;
- (d) there being a prohibition of conducting investigation, prosecution and judicial proceedings of an offence similar to the offence requested, under the existing law of the Union of Myanmar.
- (e) being an offence of military nature actionable under the Defence Services Act, 1959;

- (f) the subject matter relating to the request being contrary to the laws of Myanmar;
- (g) being a request incidental to matters reserved in the international convention to which Union of Myanmar is a State Party.

Section 19 provided that The Central Authority shall, on refusing the request of any foreign State **reply to the requesting State giving reasons for so refusing.**

Section 20. provided that

- (a) The Central Authority shall, on deciding to grant the request of any foreign State assign duty to the relevant government department and organization to execute in conformity with the stipulations.
- (b) The government department or organization assigned duty under sub-section (a) shall, for enabling the reply to the Requesting State, submit to the Central Authority urgently the condition of completion or the condition of being unable to perform, giving complete reasons.

Section 21. provided that

The Central Authority, on receiving the submission made by the relevant government department and organization under sub-section (b) of section 20 shall :

- (a) if no performance can be made with respect to the request, inform the Requesting State giving reasons therefor;
- (b) if performance can be made with respect to the request, carry out for enabling the handing over of the relevant information, testimony, documents, records and supporting evidences to the Requesting State within the stipulated time.

Section 22. provided that The Central Authority shall :

- (a) if there are matters that are to be kept confidential among the information and evidences to be sent by one's own State with respect to matters that are given assistance or matters that are sought assistance by the Union of Myanmar, inform the Requesting State to keep the same confidential ;
- (b) if there is no intention of handing over document, record and properties in their entirety to the Requesting State, mention to return the same without delay to the Union of Myanmar after completing performance of request.

Section 23. provided that The Central Authority shall, if it is required to conduct joint investigation between two or more States with respect to request or giving assistance, obtain prior agreement of the competent authority of the relevant foreign State on each issue of the matter through coordination.

Section 24. provided that The Central Authority and the relevant Government departments and organizations shall not, with respect to information, testimony, document,

records and supporting evidences handed over by the requested State to the Union of Myanmar use, handover or expose without agreement between the two States in relation to matters not mentioned in the request.

Section 25. provided that . With respect to request of any foreign State the Central Authority shall, if granted after scrutiny the request of a foreign State to search, seize, control, issue restraining order or confiscate the exhibit is granted instruct the relevant government department and organization to search, seize, control, issue restraining order and confiscate in conformity with the existing laws.

Section 26. provided that

- (a) The Central Authority shall administer the property seized as exhibits, property controlled and property confiscated under the request of a foreign State in conformity with the bilateral agreement.
- (b) If there exists no bilateral agreement between the two States, the confiscated property shall vest in the State.

Section 27. provided that If a person who is not involved in the offence can prove that he has in good faith and after giving consideration taken over and has in possession the property that has been seized as exhibit or has been confiscated, the right of such person shall not be affected.

Section 28. provided that

. The Central Authority shall :

- (a) with respect to a request made to send a person who is in Myanmar to give testimony, statement or expert opinion in a foreign State, if the said person has agreed to testify, and the Central Authority has also decided to grant permission, inform the relevant government department and organization to make arrangements for travel and right to go abroad of the said person permitted to be sent;
- (b) if the person permitted to be sent is a person in custody inform the relevant government department and organization to make arrangements to transfer and transport him safely in custody and to transport him back under the bilateral agreement.

Section 29 provided that .

- (a) The Central Authority shall, in sending the person in custody, if the Union of Myanmar has not sent a letter informing that the said person is to be released from custody, mention to keep him in custody till the time of transporting him back to the Union of Myanmar after completion of requested matter.

- (b) The duration of time in which the person sent in custody is in the Requested State including the duration of time of transporting him in custody shall be deemed as if it were the duration of time in custody in the Union of Myanmar.

Section 30 provided that . If the person who is to give testimony, statement or expert opinion is prohibited from giving testimony, statement or expert opinion under the existing law of Myanmar, he may refuse for the said matter.

Section 31 provided that . The Central Authority shall, if the person who is to give testimony, statement or expert opinion in any foreign State has committed any offence previously in the Requested State, within 15 days or if it exceeds 15 days from the date of arrival at the said State and making report thereof, raise the issue to get prior agreement with the said State so as not to prosecute, detain, punish or restrict personal liberty in the said State with respect to the previous offence, during the period agreed upon by the two States.

Section 32. provided that The Central Authority shall, if the request of a foreign State to transfer a person in custody in transit from the Union of Myanmar or passing through the Union of Myanmar to provide assistance is granted, inform the relevant government department and organization to give assistance for the security of such person in custody, within the territory of Myanmar.

- (a) may determine and assign duty to any relevant government department and organization or any expert or a body of experts to submit the same after translation;
- (b) shall, after authenticating on the translation, hand it over to the relevant foreign State.

Section 41 provided that . With respect to mutual assistance in criminal matters, the communications made by telephone, fax or e-mail, or any other electronic means including communications made through computer network shall be entitled to be submitted as evidence.

Section 42. provided that . With respect to any offence for which assistance is requested by any foreign State, if there is no explicit provision in this Law, regarding investigation, prosecution and judicial proceedings, the Central Authority and the government department and organization assigned duty by such shall, comply with the provisions of the existing Law.

Section 43. provided that . In implementing the provisions of this Law :

- (a) The Ministry of Home Affairs may, with the approval of the Government, issue such rules and procedures as may be necessary;

(b) The Central Authority, relevant Ministry, the Supreme Court and the Office of the Attorney General may with the approval of the government; issue such notifications, orders and directives as may be necessary.

GUIDE TO MUTUAL LEGAL ASSISTANCE FROM EAST ASIA AND THE PACIFIC REGION

[The purpose of this template is to ensure your country's contribution to the MLA Guide for East Asia and the Pacific region meets the purpose of the guide, especially by providing brief and user-friendly advice on key MLA steps. Please make efforts to use the following headings and instructions. An example of a completed template of the Republic of Korea has been provided to assist you. We have made this template based on the G20 template as a reference.]

Please note that the submission of the guide is not mandatory, but recommended.

We will compile and distribute the guides submitted by each country to all of you.

THE REPUBLIC OF SINGAPORE

I. INTRODUCTION [Maximum 1 Page]

[COUNTRY TO PROVIDE A BRIEF OVERVIEW OF ITS MUTUAL LEGAL ASSISTANCE PROCESS. IN DOING SO, CONSIDER INCLUDING INFORMATION UNDER THE FOLLOWING SUB-HEADINGS IF THEY APPLY TO YOUR MLA SYSTEM]

The *Mutual Assistance in Criminal Matters Act*, Chapter 190A ("MACMA"), governs the provision of mutual legal assistance in Singapore, a copy of which is annexed.

Singapore can provide assistance in criminal matters – without the need for there to be a mutual legal assistance treaty between the requesting State and Singapore – on the basis of reciprocity.

When processing MLA requests, Singapore will need to be provided with certain assurances and undertakings by the requesting State. As these are intended to be legally binding, the request will need to be made by an appropriate authority from the requesting State that can give such undertakings on behalf of the requesting State.

On the issue of dual criminality, this is required for the following types of assistance that are governed by the MACMA:

- taking of witness statements for criminal proceedings;
- issuance of production orders;
- arranging attendance of person in foreign country;
- custody of persons in transit through Singapore;
- enforcement of foreign confiscation order;

- search and seizure;
- locating or identifying persons; and
- service of process.

For the types of assistance which are not governed by the MACMA, e.g. recording of witness statements by foreign law enforcement authorities, there is no requirement for dual criminality.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

[COUNTRY TO SET OUT CONTACT INFORMATION FOR ITS CENTRAL AUTHORITY AND/OR OTHER CONTACT POINT FOR STATES SEEKING MUTUAL LEGAL ASSISTANCE.]

Completed requests may be sent by the Central Authority of the country making the request to the following address:

Director-General
International Affairs Division
The Attorney-General's Chambers
1 Upper Pickering Street
Singapore 058288
REPUBLIC OF SINGAPORE

In cases of urgent requests, a copy of the request may also be sent by fax to +65 6702 0513 or by email to AGC_CentralAuthority@agc.gov.sg. However, a hard copy of the request is still required to be sent over.

Countries with which Singapore has a MLAT should also comply with any relevant provisions of the MLAT with regard to the transmission of requests.

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM THE REPUBLIC OF SINGAPORE **[Maximum 4 Pages]**

In general, the steps outlined below should be followed for mutual legal assistance from the Republic of Singapore:

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 of [the Republic of Singapore](#) 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 Singapore](#), and the request will meet the legal requirements of [the Republic of Singapore](#). 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 Singapore](#), 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 minor, the request may be given low priority or [rejected pursuant to the MACMA](#).

Step 3: INDICATE THE MECHANISM USED TO SEEK ASSISTANCE

[In drafting your request, begin by clearly identifying the applicable treaty or convention \(e.g. UNCAC, UNTOC\) in seeking the assistance from the Republic of Singapore.](#)

Step 4: IDENTIFY THE AUTHORITY CONDUCTING THE INVESTIGATION / PROSECUTION

Clearly indicate which authority in your country is conducting the investigation and/or prosecution. [In particular, please provide the Republic of Singapore with the case officer, preferably from the appropriate Central Authority, in the event that communications with the case officer is necessary.](#)

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 sufficient information to identify the person to be interviewed, e.g. his full name, address, passport or other identification number. In addition, please state whether there is any ongoing criminal proceedings as defined under section 2\(1\) of the MACMA in the requesting State, and if so, the status of these proceedings. A list of the questions to be asked of the witness should also be provided.](#)
- b. If **bank records** are needed, please provide the bank account number and other details sufficient to identify the bank account in question, and the purpose for obtaining the bank records.
- c. If the **execution of a search warrant** is sought, please provide clear details of the premises to be search and detailed description of the items to be searched and seized. As search and seizure is a highly coercive measure, the requesting State

will need to provide full and clear reasons why this measure is necessary, and for the requested scope of the search and seizure.

- d. If **seizure/confiscation of criminal proceeds** is requested please include the following information in the request:
- a. the foreign confiscation order, made in any judicial proceedings instituted in that country, against property that is reasonably believed to be located in Singapore;
 - b. the order is in force and not subject to further appeal in the requesting State;
 - c. if the person affected by the order did not appear in the proceedings, did he receive notice of the proceedings with sufficient time to enable him to defend them; and
 - d. a certificate pertaining to evidence in relation to proceedings and orders in the requesting State.

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 Singapore](#), and any particular requirements that must be met (*e.g.* certification / authentication needs).

In addition, considering the nature of the assistance sought, please provide the relevant information in order to meet the legal requirements as set out in the parts below:

- **Witness statements/testimony**: For evidence to be recorded by a Singapore Judge, see section 21 MACMA.
- **Documentary evidence**: See section 22 MACMA.
- **Search and Seizure**: See sections 33 and 34 MACMA.
- **Enforcing Order to Seize Criminal Proceeds**: See section 29 MACMA and paragraph 6 of the Schedule to the MACMA.

- **Enforcing Order to Confiscate Criminal Proceeds**: See s. 29 and s. 30 MACMA.

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In [the Republic of Singapore](#), existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated 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 (*e.g.* pending court proceeding / time-sensitive investigation, *etc.*). Indicate precise dates if you have specific limitation periods.

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 dealing 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 11: TRANSLATE THE REQUEST

[The Republic of Singapore](#) requires incoming requests for mutual legal assistance to be provided, in writing, in its official language(s), namely [in the English language](#).

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence provided by [the Republic of Singapore](#) in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of [the Republic of Singapore](#) first.

GUIDE TO MUTUAL LEGAL ASSISTANCE FROM EAST ASIA AND THE PACIFIC REGION

Thailand

I. INTRODUCTION

The Act on Mutual Legal Assistance in Criminal Matters B.E. 2535 (1992) is the main legislation to be applied to all processes of providing and seeking assistance regarding investigation, inquiry, prosecution, and forfeiture of assets its property and other proceedings relate to criminal matters to/from a foreign state. The Attorney General or the person designated by him is the Central Authority of Thailand.

Assistance to a foreign state shall be subject to the following conditions:

(i) Assistance may be provided even if no mutual assistance treaty between Thailand and the requesting state, provided that such state commits to assist Thailand in a reciprocal manner when requested;

(ii) The Act which is the cause of a request must be an offense punishable under Thai laws except when Thailand and the requesting state have a mutual assistance treaty that specifies otherwise;

(iii) A request may be refused if it affects national sovereignty or security, or other crucial public interest of Thailand, or relates to a political offense;

(iv) Assistance shall not be related to a military offense.

States having mutual assistance with Thailand may submit their request for assistance directly to the Central Authority. States not having such treaties shall submit their request through diplomatic channels.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Attorney General of Thailand
Office of the Attorney General
Rajaburi Direkridhhi Building
Gevernemt Complex
Chaeng Watthana Road, Lak Si
Bangkok 10210, Thailand
Tel; +662 142 1632
Tel; +662 1439798
Email: inter@ago.go.th

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

In general, the steps outlined below should be followed for mutual legal assistance from Thailand:

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 of Thailand 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 Thailand, and the request will meet the legal requirements of Thailand. 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 Thailand, 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 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 Thailand.

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:

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 Thailand and any particular requirements that must be met (example: certification/authentication needs).

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

- **Witness statements/testimony**: the name and habilitation of the witness, a list of questions for interrogation sought. In case of a request for taking evidence in Thai court, a copy of the indictment shall also be attached.
- **Documentary evidence**: the name and habilitation of the person who has in possession the articles or documents required
- **Search and Seizure**: describe facts or evidence for issuing a search warrant for, the identity and location of the article or the habilitation of the person having it in possession, and the purpose for which the said article will be used.
- **Enforcing Order to Seize Criminal Proceeds**: description of the property, and its location or the habilitation of the person having it in possession, and the original or authenticated copy of the court order of the requesting state
- **Enforcing Order to Confiscate Criminal Proceeds**: description of the property, and its location or the habilitation of the person having it in possession, and the original or authenticated copy of the final judgment of the court of the requesting state

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Thailand, existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated 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.). Indicate precise dates if you have specific limitation periods.

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 dealing 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 11: TRANSLATE THE REQUEST

Thailand requires incoming requests for mutual legal assistance to be provided, in writing, in its official language(s), namely [identify official language(s)].

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence provided by Thailand in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of Thailand first.

Step 13: ADMISSIBILITY OF FOREIGN EVIDENCE OBTAINED THROUGH MLA

According to the Article 41 of the MLA Act, “all evidence and document obtained under this Act shall be admissible according to law”.

IV. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON MLA

Thailand has already concluded mutual legal assistance treaties with the ASEAN (ASEAN MLAT), the United States, Canada, the United Kingdom, the Republic of France, the Kingdom of Norway, The People’s Republic of China, the Republic of Korea, the Republic of India, Poland, Sri Lanka, Peru, Belgium, Australia and Ukraine.

**GUIDE TO MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
FROM EAST ASIA AND THE PACIFIC REGION**

VIETNAM

I. INTRODUCTION

Mutual Legal assistance in criminal matter is activities in which Vietnam and foreign countries provide each others with assistance including service of documents, appearance of witness or expert, obtaining and providing evidence, transfer of prosecution, exchanging information and other forms of mutual legal assistance

(Reference: Article 17 of the Law on mutual legal assistance 2007)

Vietnam shall refuse assistance if:

- Request is not consistent with Vietnam's obligation under any international agreements to which Vietnam is a member state or Vietnam's domestic laws; or
- The execution of request may impair the sovereignty or national security of Vietnam; or
- Request relates to the prosecution against a person for an offence for which that person has been convicted, acquitted or pardoned in Vietnam; or
- Request relates to an offence that could no longer be prosecuted due to lapse of times; or
- Request relates to a conduct that does not constitute any offence according to Vietnam's Penal Code.
- (Reference: Article 21 of the Law on mutual legal assistance 2007)

(i) Requests Made Under a Treaty/Convention:

Where a request is made under a treaty/convention, the making and sending of that request shall be in accordance with provisions of the treaty/convention. The request is directly sent to the department of

international cooperation and mutual legal assistance in criminal matters (IC and MLA DEPT.) of the Supreme People's Procuracy (SPP), which is the central authority of Vietnam.

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

Where a letters rogatory request is made not under a treaty/convention, that request is supposed to be received based on reciprocity. In this case, the request is sent to both IC & MLA Dept. of SPP and the Ministry of Foreign Affairs.

(iii) ***Non-Treaty Letters of Request:***

A request made not under a treaty/convention is sent to both IC & MLA Dept. of SPP and the Ministry of Foreign Affairs under reciprocity

(iv) ***Dual Criminality is Generally Required; however, dual criminality is flexibly determined and based on elements constituting the criminal act, the title of the offence is not necessarily the same***

II. CENTRAL AUTHORITY – CONTACT INFORMATION

Department of International Cooperation and Mutual Legal Assistance in criminal matters, Supreme People's Procuracy of Vietnam

Address: No. 44 Ly Thuong Kiet Street, Hoan Kiem District, Hanoi, Vietnam

Tel: +84 3825 5058/ext 428

Fax: +84 3936 1637

Email address: tttp_mla@vks.gov.vn

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE VIETNAM

In general, the steps outlined below should be followed for mutual legal assistance from Vietnam:

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

It is useful and recommended that the requesting authority in your country contact the Central Authority of Vietnam 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 Vietnam, and the request will meet the legal requirements of Vietnam. 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 Vietnam, 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 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 Vietnam.

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 set out identity, location and/or address of the person to whom the statement/testimony is obtained; list of questions; form and manner required to make the statement/testimony admissible in the requesting state; explanation of how information sought from the witness may assist in dealing with the criminal case concerned.
- b. If **documentary evidence** is needed, please provide a description of such documentary evidence; name and address of persons or institutions possessing such documentary document; authentication if required. Explanation of how information sought from the witness may assist in dealing with the criminal case concerned.
- c. If the **execution of a search warrant** is sought, . . . a description of objects, materials sought; location and address in which such objects or materials is located; relevancy of objects, materials with the case to which the request relates (please be advised that Vietnam's domestic laws are insufficient to deal with this kind of request, we may execute the request insofar as we can)

- d. If **seizure/confiscation of criminal proceeds** is requested, please give a description of proceeds of crime and its location; grounds for believing that the proceeds of crime are located in Vietnam and fall within the jurisdiction of the requesting state (please be advised that Vietnam's domestic laws are insufficient to deal with this kind of request, we may execute the request insofar as we can)

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 Vietnam and any particular requirements that must be met (example: certification/authentication needs; tasks, forms and manners that Vietnam should follow for results of assistance to be admissible in the requesting state).

Step 8: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

In Vietnam, existence and nature of requests for assistance are subject to confidentiality. Please be advised, however, that disclosure to a certain degree may be necessary particularly where compulsory measures are required in the course of executing the request. In this regard, if your case is especially sensitive, the need and reasons for confidentiality must be expressly stated 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.). Indicate precise dates if you have specific limitation periods.

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 dealing 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 11: TRANSLATE THE REQUEST

Where an incoming request is made under a treaty/convention, the language used in the request shall be consistent with provisions of that treaty/convention.

Where the incoming request is made not pursuant to a treaty/convention, the language used in the request shall be in the language of the requesting state and accompanied by a translation into Vietnamese or English

Step 12: LIMITATIONS ON USE OF EVIDENCE PROVIDED

Note that any evidence provided by Vietnam in response to a mutual legal assistance request may be used only for the specific purpose stated in the request. If you want to use the evidence for other purpose, you must seek consent of Vietnam first.

IV. BILATERAL TREATIES/MULTILATERAL CONVENTIONS ON MLA

1. Treaty on mutual legal assistance in criminal matters between Vietnam and Algeria (in force)
2. Treaty on mutual legal assistance in civil, family, labor and criminal matters between Vietnam and Belarus (in force)
3. Treaty on mutual legal assistance in civil and criminal matters between Vietnam and China (in force)
4. Treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and the Czech Republic (in force)
5. Treaty on mutual legal assistance in civil, family, labor and criminal matters between Vietnam and Cuba (in force)
6. Treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Hungary (in force)
7. Treaty on mutual legal assistance in criminal matters between Vietnam and India (in force)
8. Treaty on mutual legal assistance in criminal matters between Vietnam and Indonesia (not ratified)
9. Treaty on mutual legal assistance in civil and criminal matters between Vietnam and Laos (in force)
10. Treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Mongolia (in force)
11. Treaty on mutual legal assistance in civil and criminal matters between Vietnam and North Korea (in force)
12. Treaty on mutual legal assistance in civil, family and criminal matters between Vietnam and Poland (in force)
13. Treaty on mutual legal assistance in criminal matters between Vietnam and the Republic of Korea (in force)

14. Treaty on mutual legal assistance in civil and criminal matters between Vietnam and Russia (in force)
15. Treaty on mutual legal assistance in criminal matters between Vietnam and the UK (in force)
16. Treaty on mutual legal assistance in civil and criminal matters between Vietnam and Ukraine (in force)
17. Treaty on mutual legal assistance in criminal matters between ASEAN Countries (in force)
18. UNTOC (in force)
19. UNCAC (in force)
20. UN Convention against Illicit Traffic Narcotic Drugs and Psychotropic Substances 1988 (in force)