

Example Mutual Legal Assistance (MLA) Request

Notes in red italics

Date: [XXXX]

From: The Government of [Requesting State]
[Name of Competent Authority e.g. Anti-Corruption Agency]
[Name of Central Authority for MLA e.g. Prosecutor General's Office]

To: The Government of [Requested State]
[Name of Competent Authority]
[Name of Central Authority for MLA]

REQUEST FOR INTERNATIONAL ASSISTANCE IN A CRIMINAL MATTER RE: INVESTIGATION INTO THE AFFAIRS OF [COMPANY X] WITH SPECIFIC REFERENCE TO THE ACTIVITIES OF [INDIVIDUALS A AND B]

A INTRODUCTION

The [Competent Authority in Requesting State] requests the assistance of the Central Authority in the Requested State in obtaining certain documentation and information and/or evidence for the purposes of the completion of a criminal investigation, and imminent criminal proceedings in [Requesting State].

Note: Provide details which indicate the role and functions of the Competent Authority so that the Requested State is satisfied it has the competence to deal with MLA requests. It must be established that the Competent Authority in the Requesting State has the authority to investigate and/or prosecute in terms of its domestic legislation.

On [date], the [details of the authority which instituted the criminal investigation] instituted an investigation into the affairs of [Company X] with specific reference to the activities of, *inter alia*, [Individuals A and B]. It is apparent that a *prima facie* case involving the following offences, namely:

1. [XXXX]
2. [XXXX]

has been established against officials and/or shareholders of this company, to wit:

1. [XXXX]
2. [XXXX]

Note: Provide details of the individuals under investigation such as date of birth, place of birth, citizenship, identification number, passport number, official position, employment etc. This serves merely an introduction and summary of relevant information at the beginning of the request as more detail regarding the suspects and offences will be provided later.

Current Status of Case

The investigation is currently being conducted under the control and/or supervision of the [Competent Authority] of the [XXXX].

Note: Provide details with regard to the stage of investigation which has been reached, e.g. the investigation has not yet been completed but in view of the fact that the suspect proved to be a flight risk, he has already been arrested and brought before court. He was released on bail and obliged to surrender his passport to the authorities.

B. AUTHORITY IN TERMS OF WHICH THE REQUEST IS MADE

[Requesting State], as a State Party to the United Nations Convention against Corruption (UNCAC) makes this request for mutual legal assistance pursuant to Article 46 of the UNCAC which states in paragraph 1 “States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.”

Note: Provide details of the legal basis for the MLA request which could be a bilateral treaty with the Requested State, membership of the UNCAC or, in the absence of a bilateral or multi-lateral treaty, on the basis of reciprocity.

C. OFFENCES ALLEGEDLY COMMITTED

1. [Requesting State] Criminal Law

Note: Provide a brief summary of the criminal legal system of the Requesting State, e.g. whether the criminal law has been codified or relies on common law, issues of prescription and Statue of Limitation, gravity with which the offences under investigation are viewed, etc.

2. [Offences involved]

Note: Provide details of the offence(s) under investigation, e.g. Article 106 of the Penal Code (Bribery), and a brief description of the elements of the crime to enable the Requested State to determine whether the offence(s) is recognised as an offence in its domestic legislation even where it may not be named in the same manner. It is advisable to attach a copy of the relevant legislative provisions to the MLA request. It is also important to mention whether there are any assets involved, and if so, that a request may be made, or is also being made, to have the assets restrained or seized pending conviction and a confiscation order in due course. Provide details regarding the asset recovery mechanisms available in the Requesting State to enable the Requested State to determine if it can assist with restraint/seizure and forfeiture/confiscation. It is again advisable to attach a copy of the relevant criminal procedure provisions.

It is believed that these offences are also recognised and penalised as criminal offences in terms of your (Requested State) legislation.

Note: Principle of Dual Criminality requires the criminal conduct of the subject/target of an MLA request to be considered as a criminal offence in both jurisdictions. It is the conduct underlying the alleged offence(s) that is taken into consideration, rather than seeking to match to an exact term or category of offence in both jurisdictions.

D. SUMMARY OF RELEVANT FACTS REGARDING THE INVESTIGATION

Note: Provide a summary of all relevant facts which serve to prove that a criminal investigation has commenced in the Requesting State, and that there are sufficient grounds for believing that the above-mentioned offences have been committed by the above-mentioned suspects. If there are assets involved, provide details which show the link between the assets and the criminal conduct being investigated, as well as the link between the assets and the suspect concerned.

E. OBJECT OF THE REQUEST

The object of this request is to obtain the assistance of the [Requested State Central Authority] in collating information and/or evidence regarding the matters set out in [Annexures A – E]. It is respectfully submitted that the information/documentation referred to in the annexures is required for the purpose of completing the criminal investigation.

Note: Provide details of the type of assistance and information/documentation which is required, and as much detail regarding the person or entity from whom the information can be obtained. If, for example, it has been established that funds were transferred from the bank account of the suspect in the Requesting State to a bank account in the Requested State, it is necessary to provide details of the bank account number, name of the account holder etc. The questions to be asked if the testimony of a witness is required, including the bank manager, must be set out and it is suggested that annexures be used for this purpose. If the information or evidence is required in a specific format in order to ensure it meets domestic requirements, this must be stated in the request. If assets are involved, details enabling their identification and location must be provided.

F. ADDITIONAL CONSIDERATIONS

Reciprocity

The Government of the [Requesting State] confirms that if the Government of the [Requested State] complies with this request, it undertakes to comply with future requests from the Government of the [Requested State] for similar assistance in a criminal matter involving an offence that corresponds to the offences for which assistance is now being sought.

Speciality

The Government of the [Requesting State] provides the formal undertaking that any documentation, information and/or evidence obtained pursuant to this MLA request will only be used for the specific purposes of this criminal investigation and/or any prosecution arising therefrom unless the prior permission of the [Requested State] is obtained.

Confidentiality

Note: If the details of the request are to be kept confidential, this must be stated in the request, e.g. if it is feared that the suspect will interfere with witnesses, destroy evidence or dissipate assets, then this must be brought to the attention of the Requested State.

Urgency

Note: If urgency is a consideration, this must be stipulated in the request, e.g. the investigation must be completed within a specific timeframe in terms of domestic legislation, or the suspect is in custody thus requiring the authorities in the Requesting State to complete the investigation within a certain time period.

Your kind assistance in this matter will be appreciated and, no doubt, contribute to the finalisation of the criminal investigation against [Individuals A and B]. It is not envisaged that members of the investigation team will be present in the [Requested State] during the proceedings. However, should you have any enquires or require additional information, please do not hesitate to contact [relevant contact person at the Competent Authority in the Requesting State].

Telephone Number:

Mobile Number:

Yours faithfully,

[Central Authority]

[Requesting State]