



Guidelines on Mutual Legal Assistance in Criminal Matters

MINISTRY OF HOME AFFAIRS

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List of Abbreviations

AD (IPCC), CBI	Assistant Director, International Police Cooperation Cell, Central Bureau of Investigation
AD (NCB), CBI	Assistant Director, National Central Bureau, Central Bureau of Investigation
CPV Division, MEA	Consular, Passport & Visa Division, Ministry of External Affairs
CrPC	Code of Criminal Procedure, 1973
DOP	Director of Prosecution
ED	Enforcement Directorate
FEOA	Fugitive Economic Offenders Act, 2018
INTERPOL	International Criminal Police Organization
IS-II Division, MHA	Internal Security-II Division, Ministry of Home Affairs
ILO	Interpol Liaison Officer
JD (TFC), CBI	Joint Director (Technical, Forensic & Co-ordination), Central Bureau of Investigation
LR	Letters Rogatory
MLA Request	Mutual Legal Assistance Request
MLAT	Mutual Legal Assistance Treaty
NIA	National Investigation Agency
PMLA	Prevention of Money Laundering Act, 2002
UT	Union Territory

Part I: Overview

A. Mutual Legal Assistance in Criminal Matters

1.1 Mutual Legal Assistance is a mechanism whereby countries cooperate with one another in order to provide and obtain formal assistance in prevention, suppression, investigation and prosecution of crime to ensure that the criminals do not escape or sabotage the due process of law for want of evidence available in different countries.

1.2 India provides mutual legal assistance in criminal matters through Bilateral Treaties/Agreements, Multilateral Treaties/Agreements or International Conventions or on the basis of assurance of reciprocity.

1.3 The Mutual Legal Assistance Treaties (MLATs) in criminal matters are the bilateral treaties, entered between the countries for providing international cooperation and assistance. India has entered into Mutual Legal Assistance Treaties/Agreements with 42 countries (November 2019).

Figure 1.1: List of countries having MLAT/Bilateral Agreements with India

Arab Republic of Egypt (2009)	Kingdom of Morocco* (2018)	Republic of Kazakhstan (2000)	Russian Federation (2000)
Bosnia & Herzegovina (2010)	Kingdom of Spain (2007)	Republic of Korea (2005)	State of Israel (2015)
Canada (1998)	Kingdom of Thailand (2004)	Republic of Maldives* (2019)	State of Kuwait (2007)
Commonwealth of Australia (2011)	Kyrgyz Republic (2014)	Republic of Mauritius (2006)	Sultanate of Oman (2015)
Confederation of Switzerland (1989)	Malaysia (2012)	Republic of Singapore (2005)	Ukraine (2003)
Democratic Socialist Republic of Sri Lanka (2010)	Mongolia (2004)	Republic of South Africa (2005)	Union of Myanmar (2010)
French Republic (2005)	People's Republic of Bangladesh (2011)	Republic of Tajikistan (2003)	United Arab Emirates (2000)
Hong Kong Special Administrative Region of the People's Republic of China (2009)	Republic of Azerbaijan (2013)	Republic of Turkey (1993)	United Kingdom of Great Britain and Northern Ireland (1995)
Islamic Republic of Iran (2010)	Republic of Belarus (2006)	Republic of Uzbekistan (2001)	United Mexican States (2009)
Kingdom of Bahrain (2005)	Republic of Bulgaria (2008)	Republic of Vietnam (2008)	United States of America (2005)
Kingdom of Cambodia* (2018)	Republic of Indonesia (2011)		

*The MLAT has been signed but yet to come in force.

Figure 1.2: List of International Conventions signed by India having provisions related to Mutual Legal Assistance

1)	United Nations Convention Against Transnational Organized Crime, 2000 (list of member countries: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-12&chapter=18&clang=en)
2)	United Nations Convention Against Corruption, 2003 (list of member countries: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtsg_no=XVIII-14&chapter=18&lang=en)
3)	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988 (Vienna Convention) (list of member countries: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=VI-19&chapter=6&clang=en)
4)	Hague Convention (list of member countries: https://www.hcch.net/en/states/hcch-members)
5)	SAARC Convention (list of SAARC countries: http://saarc-sec.org/about-saarc)
6)	Commonwealth Scheme (Harare Scheme) (list of Commonwealth countries: http://thecommonwealth.org/member-countries)

B. Letters Rogatory (LR)

1.4 The term '*Letters Rogatory*' is derived from the Latin term *rogātōrius*. Letters Rogatory are the letters of request sent by the Court of one country to the Court of another country for obtaining assistance in investigation or prosecution of a criminal matter.

1.5 In India, Section 166A and Section 105K of Code of Criminal Procedure, 1973 (CrPC), Section 57 and Section 61 of Prevention of Money Laundering Act, 2002 (PMLA), Section 12 of Fugitive Economic Offenders Act, 2018 (FEOA), etc., lays down the procedure of sending '*letter of request*' through Competent Court on the request of Investigating Officer.

1.6 The procedure for execution of a request received from the foreign Court or Competent Authority has been enshrined in Section 166B and 105K of CrPC, Section 58 of PMLA, etc. In General, the assistance sought under Letters Rogatories is for service of documents and taking of evidence. Letters Rogatory may be made to any country on the basis of Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention or on the basis of *assurance of reciprocity*.

C. Mutual Legal Assistance (MLA) Request

1.7 Mutual Legal Assistance Request in the Indian context is a formal request made by the Central Authority of India i.e., Ministry of Home Affairs to the Central Authority of another country on the request of Investigating Officer or Agency under any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention.

D. Difference between Mutual Legal Assistance (MLA) Request and Letters Rogatory(LR)

Figure 1.3: Difference between MLA Request and Letters Rogatory		
	Mutual Legal Assistance Request (MLA) Request	Letters Rogatory (LR)
<i>Nature</i>	MLA request is made by the Central Authority of India to the Central Authority of another country on the request of the Investigating Officer or Investigating Agency.	LR is issued by the Indian Court on the request of the Investigating Officer or Investigating Agency under Section 166A and Chapter VII A of CrPC.
<i>Scope</i>	MLA Request can only be made to the countries with which India has Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention.	LRs can be issued to the countries with whom India has Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention under the same arrangements. Further, LR can also be issued to any other country (with whom India does not have any existing Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention) on the basis of assurance of Reciprocity.

E. Service of Summons, Notices and Judicial Processes

1.8 In India, Section 105 and Chapter VIIA of CrPC, Section 59 and Section 61 of PMLA, Section 10 of FEOA, etc., provides for service of summons, notices and judicial processes. The summons, notices and judicial processes are sent by the Court of competent jurisdiction to IS-II Division, MHA and are further sent by MHA to the foreign country concerned either directly or through Indian Mission/Embassy/Diplomatic Channels for service on the person through the Competent Authorities in the foreign country.

F. Central Authority of India

1.9 The **MINISTRY OF HOME AFFAIRS** is the Central Authority of India for dealing with requests of mutual legal assistance in criminal matters. The Central Authority transmits and receives all requests for assistance either directly or through diplomatic channels.

All the requests to the Central Authority of India should be addressed to:

Under Secretary (Legal) Internal Security-II Division, 2nd Floor, Ministry of Home Affairs, Major Dhyan Chand National Stadium, New Delhi-110001, India	Tele Fax: 011-23075338 Telephone: 011-23070164 Email: us-legal@mha.gov.in
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1.10 The Central Authority of India i.e., Ministry of Home Affairs performs the following functions with respect to providing and obtaining mutual legal assistance in criminal matters:

- It ensures that the widest measure of legal assistance is provided by India
- It formulates and takes the policy decision on mutual legal assistance in criminal matters.
- It reviews all requests received by it from the Investigating Agencies/State

Governments/UTs/Judicial Authorities and takes appropriate actions. If necessary, it corresponds with the agency or Court sending the request regarding the inadequacy or the need to supplement a request and provide information on how they can be improved.

- iv) For delivering the request to foreign country and follow up of the requests, the IS-II Division, MHA functions through AD (IPCC), CBI.
- v) It receives requests from foreign countries.
- vi) It promptly gets the requests executed through the appropriate Authority, in accordance with the Indian laws and in the manner specified by the foreign country, if it is not contrary to Indian law.
- vii) It answers queries related to Indian law and provides information to the countries wishing to make requests to India
- viii) It coordinates arrangements for the representation of foreign countries in India for any proceedings arising out of a request for assistance.
- ix) It periodically participates in the bilateral consultations with the Central Authority of the Contracting States to take measure for the prevention and suppression of crime and early execution of requests.
- x) It arranges training for Indian law enforcement agencies in coordination with CPV Division MEA, AD (IPCC) CBI, NIA and State Police Authorities. It takes assistance of AD (IPCC), CBI for arranging the training programmes at CBI academy or at State Police academies.
- xi) It arranges training programmes in coordination with foreign experts on the subject of mutual legal assistance in criminal matters and extradition.

1.11 IS-II Division, MHA for maintaining record and data for MLA Request/LRs and follow-up of such cases takes the assistance of AD (IPCC), CBI. The contact details of AD (IPCC), CBI are as follows:

The Assistant Director, IPCC, 06th Floor, CBI HQ, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi- 110003	Tele Fax : 011-24364070 Telephone : 011-24392170 Email : adco@cbi.gov.in
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G. Informal Requests

1.12 For getting informal information or leads, the assistance can be sought through INTERPOL Channels. The Investigating Agency is required to take up the matter with Assistant Director, NCB, Central Bureau of Investigation, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi-110003.

H. Types of Request

1.13 Common forms of assistance provided to or sought by India are as follows:

- i) identifying and locating persons and objects;
- ii) taking evidence and obtaining statements;
- iii) assisting in the availability of person in custody or others to give evidence or assist in investigations or appear as a witness;
- iv) effecting service of judicial documents;
- v) executing searches and seizures;
- vi) providing information, documents, records and other evidentiary items;
- vii) taking measures to identify, locate, attach, freeze, restrain, confiscate or forfeit the proceeds and

- instrumentalities of crime;
- viii) taking measures to restitute the embezzled public funds;
- ix) delivery of property including lending exhibits;
- x) protecting and preserving computer data;
- xi) any other form of assistance not prohibited by the law of the Contracting States.

I. Grounds for Refusal or Postponement of Request for Assistance

1.14 The request for assistance is generally refused if:

- i) the execution of the request would impair sovereignty, security, public order and essential public interest of India or foreign country.
- ii) the request for assistance has been made for the purpose of investigating and prosecuting a person on account of that person's sex, race, religion, nationality, origin or political opinions or that person's position may be prejudiced for any of those reasons.
- iii) the request is made for conduct or offence which is an offence under military law but not an offence under ordinary criminal law in India or foreign country.
- iv) the request relates to an offence in respect of which the accused person has been finally acquitted or pardoned.
- v) *de minimis* request is made i.e. the request is trivial or disproportionate in nature.
- vi) the request seeking restraint, forfeiture or confiscation of proceeds and instrumentalities of crime or seizure of property is in respect of conduct/activity which cannot be made the basis for such restraint, forfeiture, confiscation or seizure in the Contracting States.

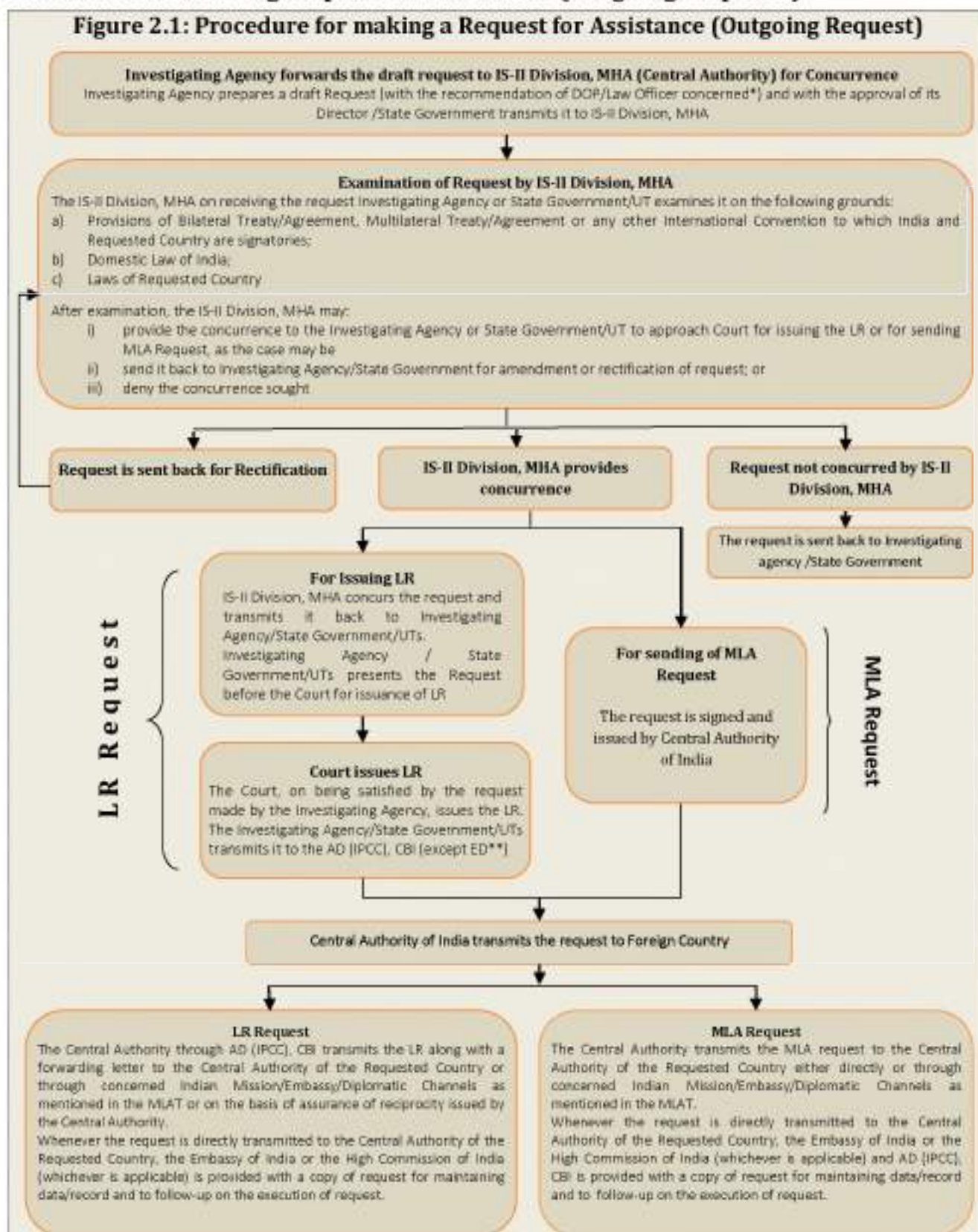
1.15 The execution of request may be postponed if it would interfere with an ongoing criminal investigation, prosecution or proceeding in the Contracting States. Such request may be executed subject to conditions determined necessary after consultations with the Central Authority of the Requesting Country.

1.16 The execution of request shall not be refused solely on the ground of bank secrecy or because the request for assistance does not include all the information if it can otherwise be executed in accordance with the laws of Contracting State.

Part II: Procedure for Sending and Executing Request for Mutual Legal Assistance

A. Procedure for Sending Request for Assistance (Outgoing Requests)

Figure 2.1: Procedure for making a Request for Assistance (Outgoing Request)



*In case of ED with the approval of Department of Revenue, Ministry of Finance

**The LR of ED after taking forwarding letter from Central Authority of India is sent either directly to the Central Authority of the Requested Country or to the concerned Indian Mission or Embassy through Diplomatic channels as mentioned in the MLAT under intimation to IS-II Division, MHA

Figure 2.2: Step-by-Step Procedure for making Letters Rogatory Request (Sec 166A CrPC¹, 105K CrPC², Chapter VII A CrPC, Sec 57³ and Sec 61⁴ PMLA, Sec 12 FEOA⁵, etc.)

Step 1	<p>Drafting of Request by Investigating Officer or Agency and transmitting it to IS-II Division, MHA</p> <p>⇒ The Investigating Officer compiles the facts related to the case and brings out assistance needed from the foreign country. The draft of the request is sent with the legal opinion/recommendation of Director of Prosecution (DOP)⁶ and approval of Director/ Director General/Head of Central Investigating Agency or the Ministry concerned or the State Government as the case may be.</p> <p>⇒ After receiving the approval from the Director / State Government, the Draft request (<u>one copy</u>) is transmitted to the Central Authority of India. Such draft request is routed through the Home Department of State in case of State Police or is sent to the Central Authority of India by the Central Agencies with the approval of their respective Ministries/ Head of Departments.</p> <p>⇒ The IS-II Division, MHA (Central Authority of India) examines the draft request and may:</p> <ol style="list-style-type: none"> provide the concurrence to the Investigating Agency or State Government/UT to approach Court for issuing the LR; or send it back to the Investigating Agency or State Government/UT for amendment or rectification of request; or deny the concurrence sought. <p>It is to be noted that all the requests for issue of LR by Investigation Officer/ Agency are to be sent to the IS-II Division, MHA (Central Authority of India) for concurrence before being presented to the Court for issuance.</p> <p>The Central Authority may consult the contact person of the Investigating Agency whenever required in relation with the request.</p>
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¹ CrPC- Section 166A. Letter of request to competent authority for investigation in a country or place outside India.— (1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

² CrPC- 105K. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

³ PMLA- Section 57. Letter of request to a contracting State in certain cases.—(1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-

(i) examine facts and circumstances of the case,

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under subsection (1) shall be deemed to be the evidence collected during the course of investigation.

⁴ PMLA-61. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

⁵ FEOA-Section 12. Declaration of fugitive economic offender.—(5) Where the Special Court has made an order for confiscation of any property under sub-section (2), and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.

(6) Every letter of request to be transmitted to a contracting State under sub-section (5) shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf..

⁶ In case of ED the approval of Department of Revenue, Ministry of Finance is also required

	<p>The following documents are required to be sent to IS-II Division, MHA:</p> <ol style="list-style-type: none"> Draft request; Copy of FIR; English translation of FIR if filed in vernacular language; Opinion/recommendation of DOP or the Law Officer commenting on the need for making such request; Application by Investigating Agency to the Court for issuing LR; Applicable Laws of Requested Country; Any other necessary document related to evidence sought from the foreign country; Contact details of the officer of the law enforcement agency concerned.
Step 2	<p>Presenting the concurred request before the Court</p> <p>After obtaining the concurrence of the IS-II Division, MHA for presenting the request before the Court, the Investigating Officer files an Application in the Court of competent jurisdiction for issuing of LR addressed to the Competent Authorities of the Requested Country.</p> <p>The following documents are required to be presented before the Court for issue of LR:</p> <ol style="list-style-type: none"> Request concurred by the IS-II Division, MHA (Central Authority) along with all the connected documents; Application by Investigating Agency to the Court for issuing of LR; Extract of the sections of Indian law mentioned in the request including the law on limitation (For example, Section 468⁷ CrPC or provisions of any special law applicable) <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>Note: Certain documents may be relevant for the investigation but are not related to the request and are <u>not required</u> to be attached for presenting the request before the Court. These documents are:</p> <ul style="list-style-type: none"> Case dairy Copy of FIR English translation of FIR Opinion of DOP/Law Officer, etc. </div>
Step 3	<p>Court to issue LR under relevant law i.e. CrPC, PMLA, FEOA, etc.</p> <p>The Competent Court may decide to issue a LR addressed to the Competent Authority in the Requested Country as prayed for or otherwise. If the Court is satisfied with the request, it will issue LR under its seal and authority.</p>
Step 4	<p>Transmission of LR</p> <p>Once the LR is issued, the Investigating Agency or State Government/UT will transmit <u>three copies</u> of the request to the AD (IPCC), CBI and one copy to IS-II Division, MHA. AD (IPCC), CBI will take the forwarding letter from IS-II Division, MHA and then send it directly to the Central Authority of the country concerned or through Indian Mission/Embassy/Diplomatic Channels as the case may be under intimation to the Central Authority of India.</p> <p>The LR of ED after taking forwarding letter from Central Authority of India is sent either directly to the Central Authority of the Requested Country or to the concerned Indian Mission or Embassy through Diplomatic channels as mentioned in the MLAT under intimation to IS-II Division, MHA.</p>

⁷ CrPC Section 468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

	<p>Where the request is directly sent by AD (IPCC), CBI to the Central Authority of the foreign country, a copy of LR along with communication in this regard is to be sent to Indian Embassy /Mission abroad.</p> <p>The following documents are required to be sent for transmission of request LR issued by the Court under Section 166A of CrPC:</p> <ol style="list-style-type: none"> Forwarding letter by Central Authority of India; LR issued by the Court; Extract of the sections of Indian law with highlighted sentence or penalty for the offence; List of witnesses to be examined (if any); List of questions to be asked from the witness (if any); List of documents to be collected (if any) (Description of documents/articles to be collected & procedure for the same to be provided; Certified copy of the order for attachment or forfeiture of property (if any).
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Figure 2.3: Step-by-step Procedure for making MLA Request

Step 1	<p>Forwarding the information to the Central Authority of India</p> <p>The Investigating Agency or State Government/UT forwards a self- contained proposal with the recommendation of DOP/Law Officer and approval by Director/State Government to IS-II Division, MHA. (The documents to be attached with the MLA Request are same as that required to be sent with the LR Request)</p>
Step 2	<p>Issue of Request by Central Authority</p> <p>The IS-II Division, MHA examines and compares the draft along with the relevant documents and prepares an MLA Request. The MLA request is signed by the officer designated at IS-II Division, MHA and is transmitted along with a forwarding letter to the Central Authority of the Requested Country.</p> <p>Whenever the request is directly transmitted to the Central Authority of the Requested Country, the Embassy of India or the High Commission of India (whichever is applicable) and AD (IPCC), CBI is to be provided with a copy of request for maintaining data/record and to follow-up on the execution of request.</p>

B. Procedure to be followed after Central Authority of India forwards the Request to Foreign Country

2.1 The procedure to be followed after IS-II Division, MHA forwards the request to a foreign country is as follows:

- After transmission of the request to the foreign country, the IS-II Division, MHA (Central Authority of India) either directly or through AD (IPCC), CBI takes the follow-up action for execution of the Request by making correspondence with the Indian Mission abroad or Central Authority of the foreign country.
- The Central Authority of the foreign country/Mission may directly communicate with the Central Authority of India or through AD (IPCC), CBI or the contact person of Investigating Agency in case it seeks clarification, additional material, etc., concerning to the request made.
- If the communication is made to IS-II Division, MHA, then on receiving such communication, the IS-II Division, MHA would obtain the required clarifications, additional materials, etc., from the

Investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels and a copy of such communication is marked to AD (IPCC), CBI for maintaining record and follow-up.

or

If the request is received by AD (IPCC), CBI, then AD (IPCC), CBI would obtain the required clarifications, additional materials, etc., from the Investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels and a copy of such communication is marked to IS-II Division, MHA for maintain record and follow-up.

or

On receiving such communication by Investigating Agency, the contact person of Investigating Agency would obtain the required clarifications, additional materials, etc., from the Investigating Officer concerned and transmit the same to the foreign country, directly, in urgent cases and in all other circumstances the communication is made through IS-II Division, MHA.

- iv) After executing the request, the foreign country may forward the Execution Report to IS-II Division, MHA or AD (IPCC), CBI or Indian Mission/Embassy along with the evidence and supporting material. The same is then forwarded to Investigating Agency or State Government/UT.
- v) On receipt of execution report, the Investigating Agency or State Government/UT promptly informs the IS-II Division, MHA (Central Authority) about the execution of request and shortcomings if any.
- vi) In case, after receiving of the Execution Report, new facts have come to light and it is felt by the Investigating Agency to seek further information from the concerned country, a supplementary request may be sent. The procedure for making a supplementary request is the same as that of sending any other request.

C. Procedure for Executing Request in India (Incoming Request)

2.2 Section 166B⁸, Section 105K⁹ and Chapter VII A of CrPC, Section 58¹⁰ and Section 61¹¹ of PMLA, etc., gives the outline of execution of an incoming request in India. All the requests to India for the mutual legal assistance in criminal matters are made to the Central Authority of India. The requests received through diplomatic channels by Ministry of External Affairs i.e. Territorial Division, CPV Division, etc., are also forwarded to IS-II Division, MHA (Central Authority). After receiving the request, the Central Authority of India examines whether the request is complete and fit to be executed in India. While deciding about the execution of request, the Central Authority of India can take the assistance of MEA and other relevant enforcement agencies in India including JD (TFC), CBI.

⁸ CrPC-Section 166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India—(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or

(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

⁹ Ibid., Page 10

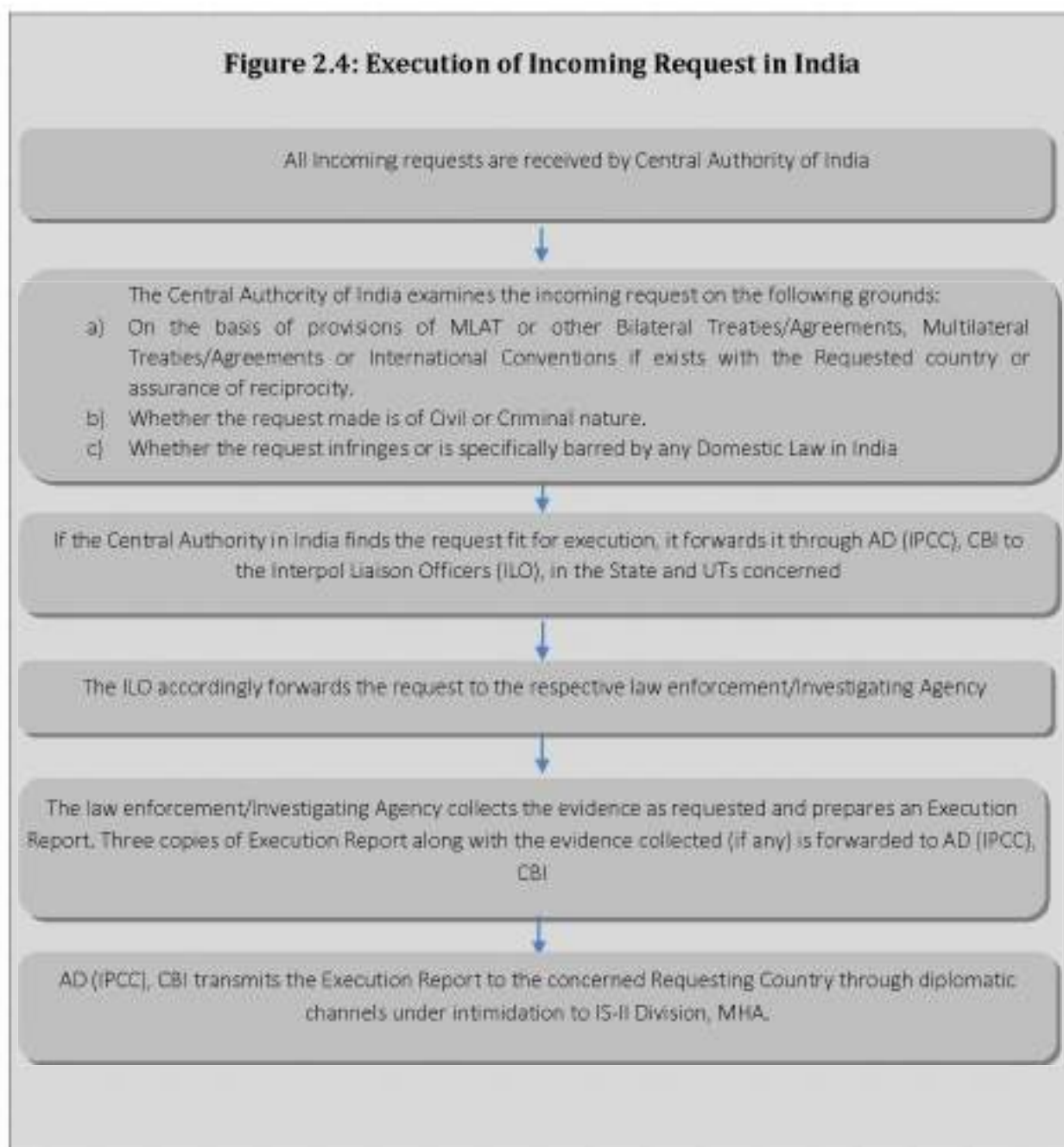
¹⁰ PMLA-Section 58. Assistance to a contracting State in certain cases.—Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force.

¹¹ Ibid., Page 10

2.3 In case the request is found to be fit for execution, the Central Authority sends it for execution through AD (IPCC), CBI to the Interpol Liaison Officers (ILO), of State/UTs or the law enforcement agency concerned. Whenever the Central Authority of India decides that the request should be refused or postponed for the execution, it promptly intimates the same to the Requesting Country.

2.4 All the incoming requests are executed in terms of the provisions of extant Bilateral Treaties/Agreements, Multilateral Treaties/Agreements or International Convention and in accordance with Indian Laws.

Figure 2.4: Execution of Incoming Request in India



D. Monitoring Process

2.5 AD (IPCC), CBI shall provide the complete details of the execution of request to IS-II Division, MHA in the format provided below in the last week of every month or earlier, as required by IS-II Division, MHA.

Figure 2.5: Format in which information has to be provided to IS-II Division, MHA

Name of Country (Give the title of case –for example M/S Green Infrastructure Ltd.)	
MHA File No.	(Please mention MHA's File No.)
Interpol/ED File Number	(Please mention File No.)
Investigating Agency	(Please mention name of Investigating Agency and Branch/State Police)
Case No	(Please mention case No.)
MLA Request/ LR Issued by	(Please give designation of Court)
MLA Request/ LR Sent on	(Please give date of sending LR to Indian Mission abroad)
Penal sections	(Give applicable sections of law under which the offence is registered)
Allegation:	
Assistance sought:	
Present Status:	

2.6 On quarterly basis, IS-II Division, MHA along with officers of AD (IPCC), CBI, ED and NIA review the compilation of data and progress of execution of requests.

2.7 Biannual meeting of ILO's concerned for analyzing the progress of execution and issues faced in making the requests.

Part III: Form, Content and Language of Request

A. Form of Request

3.1 A request for assistance shall be made in writing. However, in urgent circumstances, a request may be made orally or by email or facsimile or any other agreed forms of electronic media or through INTERPOL but shall be confirmed in writing by the Investigating Agency or State Government/UT concerned with all relevant documents within 5 days after making such request to IS-II Division, MHA.

B. Content of Request

3.2 The request for assistance **shall** include the following information:

- a) name of the requesting office and the name of the Competent Authority or Agency conducting the investigation, prosecution or proceedings to which the request relates or name of the Competent Authority seeking or providing the assistance in respect of prevention or suppression of crimes;
- b) nature of the investigation, prosecution or proceedings;
- c) summary of the facts;
- d) copy of the applicable laws;
- e) contact details of a person capable of responding to enquiries concerning request;
- f) purpose of request and the nature of assistance sought;
- g) establishing a link between criminal matter and assistance sought;
- h) information available for the person under investigation or property under investigation;
- i) criminal history of alleged accused, if any;
- j) degree of confidentiality required and the reasons thereof;
- k) any time limit within which the request should be executed;
- l) such other information as is necessary for the proper execution of the request;
- m) mandatory assurances;
- n) country-specific assurances (where required) and
- o) cost related to the execution of the request, where applicable.

3.3 If necessary, and wherever possible, requests for assistance shall include:

- a) Identity, nationality and location of a person or persons who is/are the subject of investigation, prosecution or proceedings;
- b) Details of any particular procedure or requirement that needs to be followed in Requested Country and the reasons thereof.

C. Language of Request

3.4 The request for assistance and all the supporting documents shall be provided in English and **wherever necessary**, the request and the supporting documents should be translated in the language required by the Requested Country. The translated copies (if any) should be duly certified by the translator and authenticated by the concerned Investigating Agency.

Figure 3.1: Points to be considered by Investigating Officer/Agency before drafting a Request for Assistance

<input type="checkbox"/>	Necessity and grounds of request	The Investigating Officer or Agency should ensure whether they have sufficient grounds to make a request to a foreign country.
<input type="checkbox"/>	Timeline	The Investigating Officer or Agency should bring out clearly the period/timeline during which the request needs to be executed.
<input type="checkbox"/>	Potential ground of Refusal	It should be ensured that the request does not fall under the grounds of refusal mentioned in the MLAT or Agreement or as compiled in Part I of these Guidelines.
<input type="checkbox"/>	Legal Basis of Request	The provisions of the Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention as well as requirement of the law of Requested Country such as principle of dual criminality, assurance of reciprocity, etc., may be studied with view to determine that such a request would fall within the parameters of legal requirements of the Requested Country. Where no such Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention exists, request may be made on the basis of assurance of reciprocity. The assurance of Reciprocity is to be provided by the Central Authority of India to the Requested Country.
<input type="checkbox"/>	Format of the document and any evidentiary requirement in Requested Country	Before making a request it should be checked whether there is a specific format prescribed by the Requested Country for entertaining/execution of request or if there is any mandatory requirement in the form of assurances, etc., in the Requested Country.
<input type="checkbox"/>	Language of the Request	The request and supporting documents should be made or accompanied by a certified translation with a language specified in the MLAT or the official language of the Requested Country (non-treaty countries).
<input type="checkbox"/>	Confidentiality Requirement	It should be evaluated if there is any need for confidentiality requirement for execution of request.
<input type="checkbox"/>	Limitation	The investigation/prosecution is not barred by the period of limitation.

**Figure 3.2: Check List of Documents to be attached with Draft Request (MLA Request/LR)
(to be sent to Central Authority for concurrence)**

All the documents are to be sent to "Under Secretary (Legal Cell), Internal Security-II Division, Ministry of Home Affairs, 2nd Floor, Major Dhyani Chand National Stadium, New Delhi-110001"

- ☐ 1. Draft application containing brief facts of the case (Refer to figure 3.4 and 3.5)
- ☐ 2. Original copy of the legal opinion of the Director of Prosecution or Senior Law Officer
- ☐ 3. Copy of application from Investigating Agency requesting the Court to issue LR
- ☐ 4. Copy of FIR and translated version of FIR (if filed in any vernacular language)
- ☐ 5. Extracts of relevant Sections of Indian Law
- ☐ 6. Applicable laws of Requested Country
- ☐ 7. Contact details of the officer of the law enforcement agency concerned
- ☐ 8. Any other necessary document related to evidence sought

**Figure 3.3: Check List of Documents to be sent to AD (IPCC), CBI after Letters Rogatory has
been issued by Court**

All the documents are to be sent to "The Assistant Director, IPCC, 6th Floor, CBI HQ, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi- 110003"

- ☐ Covering Letter by Investigating Agency or Court
- ☐ LR issued by Court under relevant provisions of law i.e. CrPC, PMLA, FEOA, etc.
- ☐ Extract of sections of Indian law mentioned in the request including the law on limitation
- ☐ English translation of all the documents attached and translation in the language required by the requested country (wherever required)

Case-wise list of documents to be attached with the request

- ☐ List of witnesses to be examined (if any)
- ☐ List of questions to be asked from the witness (if any)
- ☐ List of documents to be collected (if any) (Description of documents/articles to be collected & procedure for the same is to be provided)
- ☐ Certified copy of the order for attachment or forfeiture of property (if any)

Figure 3.4: Executive Summary of the information to be included in the Request

1)	Purpose for making the request		
2)	Nature of request		
3)	Name of the Requested Country		
4)	Basis of request	<input type="checkbox"/> MLAT	<input type="checkbox"/> UNTOC
		<input type="checkbox"/> SAARC Convention	<input type="checkbox"/> UNCAC
		<input type="checkbox"/> Hague Convention	<input type="checkbox"/> Harare Scheme
		<input type="checkbox"/> Vienna Convention, 1988 (NDPS)	
		<input type="checkbox"/> Any other Bilateral Treaties/Agreements, Multilateral Treaties/Agreements _____ (Specify)	
		<input type="checkbox"/> Any other International Convention/Resolution _____ (Specify)	
		<input type="checkbox"/> Assurance of Reciprocity	
5)	Issuing Authority	Name: Address: Details of the contact person at Issuing Authority:	
6)	Investigating Authority	Name: Address: Details of the contact person who can give clarification on the case:	
7)	Case details	FIR No./ Case Number: Section under which FIR / Case Number has been registered:	
8)	Brief summary of the case	Brief fact of the case:	
		Link between alleged offence[s] and assistance requested:	
		Applicable laws and maximum penalties for the offence in India:	
		Limitation Period:	
		Current Status of the case	
9)	Any other relevant information for proper execution of request		
10)	Any specific manner/ procedure to be followed for execution of request		
11)	Cost for executing the request		
12)	Timeline for executing the request		
13)	Limitation of use		
14)	Confidentiality requirement with reasons (if any)		

Date:

(to be signed and stamped by the Issuing Authority)

Figure 3.5: Format and contents of Letters Rogatory and Mutual Legal Assistance Request

For Letters Rogatory: To: The Competent Authority of the _____ (Requested Country)

(Court of Jurisdiction)

I, [name of the presiding officer of the Court], has been authorized to make this request for mutual legal assistance in criminal matters, respectfully request the assistance of the Government (name of the Requested Country) in the criminal matter.

For Mutual Legal Assistance Request: To: The Central Authority of the _____ (Requested Country)

Certificate on behalf of the _____ (Requesting party)

I, _____, Under Secretary to the Government of India, IS-II Division Ministry of Home Affairs am authorized to make this request for mutual legal assistance in criminal matters on behalf of government of India and certify that the Government of _____ (Requested Country) in relation to criminal proceeding involving _____ (describe nature of criminal proceedings)

Request: _____ *(to be filled by Investigating Agency /Court)*

[This request is made by the Government of the Republic of India for assistance in accordance with the provisions (describe the relevant provisions) of Treaty between Republic of India and (name of the Requested country) or United Nations Convention Against Corruption or United Nations Convention Against Transnational Organized Crime or SAARC Convention or Harare Scheme (or any other Treaty/Agreement which is relevant); Or

This request is made by the Government of the Republic of India for assistance in accordance with the Assurance of Reciprocity in similar matters. Original Assurance of Reciprocity issued by Ministry of Home Affairs, Govt. of the Republic of India, who is Central Authority of India, is attached herewith.]

Nature of Request: _____ *(to be filled by Investigating Agency /Court)*

[This request relates to (describe the subject of criminal matter). The Authority/agency conducting the investigation/prosecution of the criminal matter is (describe authority/agency concerned with the criminal matter).

Indicate whether judicial proceedings have been, or are to be, instituted or concluded, as the case may be, and provide details of such proceedings (example the level of the Court).]

Criminal Offences / Applicable Legislation / Penalties: _____ *(to be filled by Investigating Agency /Court)*

[Set out the offences alleged to have been contravened in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of Suspect/ accused person, if known. If the matter pertains to the enforcement of foreign confiscation order etc., then state also the legal provisions pursuant to which the foreign confiscation order was/is intended to be made, as the case may be.]

Period of Limitations: _____ *(to be filled by Investigating Agency /Court)*

[Here it may also be mentioned that the offence is not time-barred or punishment has not lapsed, citing the relevant provision of the period of limitation of Indian Law.]

Statement of Facts: _____ *(to be filled by Investigating Agency /Court)*

[This column is to be filled up on case to case basis.

- Describe the material facts of the criminal matter including, in particular, those necessary to establish circumstances in the Requesting Country i.e. India connected to the evidence or assistance sought, and the relevance of the evidence in India in the criminal matter.
- Clearly state the connection of material sought. E.g. if bank records are sought, the connection of bank accounts in requested country with the investigation being conducted in India may be specifically mentioned. If the bank accounts have been utilized in the commission of crime, that may also be invariably mentioned.

- c) Indicate whether and how any person(s) has carried on or benefited from the offence(s) committed in the Requesting State. State how the thing sought to be produced by this Request (whether by itself or with another thing) will be of substantial value to the criminal matter.
- d) State also whether a foreign confiscation order has been or may be made in such proceeding and whether any person(s) affected or will be affected by such an order has been notified of the proceedings in accordance with the Domestic Law. Provide details of seizure, confiscation, restitution of the property to the Requested Party against which restraint / enforcement is sought and how such property is bona fide linked to the offence.]

Purpose of the Request: _____ *(to be filled by Investigating Agency /Court)*

[State purpose which is intended to be achieved by the assistance sought, e.g. investigation, prosecution, prevention, suppression of crime, freezing, seizure, confiscation and return of the proceeds of crime in a criminal matter and secure admissible evidence to be used in the trial.]

Assistance Requested: The Competent Authority of Government of _____ (name of the Requested country) is requested to take such steps as are necessary for:

_____ *(to be filled by Investigating Agency /Court)*

[use only relevant portion which is related to the case.]

The Competent Authority of Government of (name of the Requested country) is requested to take such steps as are necessary for:

- a) Examination of a witness in the Requested Party;
Eg- Mr. X of ABC Co. Ltd., (address) is to be orally examined on the following matters:
 - o Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well (witness rights as per India Law).
 - o Include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
 - o State the status of the witness (suspect/accused, or simply a witness)
 - o Include a clear explanation of how the information sought from the witness is relevant to the case.
- 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 providing the material produced)
Eg. - Director of ABC Co. Ltd., (address) is required to produce (describe the form of evidence e.g. "certified copies") the following documents, records or items for the period (state relevant time frame):
 - o Specify documents, records or items or classes thereof.
 - o The above witness to be orally examined on the following matters for the purpose of identifying and proving the documents, records or items produced)
 - o 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 authorized by the relevant law of the Requested Party to make the statement ; 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.
- c) search of person or premises for documents, records or items: (read section 105 of Cr. PC)
Eg. - The premises of ABC Co. Ltd., (address) to be searched under a search warrant for the seizure of the following from the company:
 - o provide details of the documents, records or items sought to be searched for and seized,
 - o support any request for originals of documents, records or items seized with reasons,
 - o support the belief that relevant documents would be available in the premises of the ABC Co. Ltd.
 - o Search being a coercive procedure, the information/evidence supplied shall invariably show the nexus of the premises/computer/electronic device with the Crime/Criminal to establish reasonable suspicion/probable cause.
 - o State how the items seized will be relevant to the case.
- d) production of documents, records or items through production orders;
Eg. - Manager of ABC Bank Ltd., (address) to be required to produce copies of the following documents, records or items under a production order:
 - o (describe particulars of material required to be produced and where located).
 - o (state grounds for believing that the material sought is likely to be of substantial value to the criminal matter).

- (support any request for the production of originals of documents with reasons).
 - (if original cannot be produced, request for authenticated copies of the same).
 - For bank document, indication of the name and address of the bank, account number, account holder name, time period for the production of the bank statements, types of banking documents requested (account opening documents, statements, wires, loan agreements, among others), relation of the bank account with the crimes committed along with the certificate provided in the respective Statute.
- e) Arrangement of travel of person/persons in custody or an expert from {name of Requested Party} to assist in a criminal matter;
- Read Section 105B of Cr. PC.
- Eg.-Arrangements to be made for Mr. X (address) to travel to {name of Requesting Party} to give assistance in a {criminal matter} 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: (Read section 105 C of Cr.PC).
- include an official, certified copy of the relevant order(s)
 - include an official, certified copy of the conviction of the person
 - include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)
 - provide confirmation that the conviction and the order are final and are not subject to appeal
 - include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
 - include as much information as possible to link the criminal conduct of the person to the assets located in Requesting country (including evidence of transfers or other financial information)
 - include any information if there is any third party interest in any of the properties in the Requested country.
- 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;
- Eg. - 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;
- Eg. - Arrangements to be made to trace {description of property} believed to be in {name of Requested Party}.
- state particulars of property concerned.
- i) Arrangement of examination of a person as witness through commission to assist in a criminal matter;
- read Section 285 of Cr. PC
 - Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well)
 - Attach original order of the Court issuing the commission.
- j) Electronic Evidence
- If electronic evidence is being sought, the connection if relevant email/Twitter/Facebook account with crime and criminal may be mentioned. How the said account has been used in the commission of crime may also be highlighted. It may also be mentioned that preservation request has already been sent to concern ISPs;]

Mandatory Assurance And Undertakings

It is confirmed that this request:

- (a) Neither relates to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character nor it is made for the purposes of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- (b) Does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a Competent Court or other Authority of the Republic of India or has undergone the punishment provided by the laws of the Republic of India, in respect of that offence or of another offence constituted by the same act or omission as that offence.
- (c) As per Indian Law, it is not necessary to give any notice to the accused either before issuing the LR or before examining him as a witness/ accused.
- (d) Cost: Generally, the cost of execution of letter of Request shall be borne by requesting State as per the provisions of the Mutual Legal Assistance Treaty. However, if there are significant costs involved like travel of witnesses/Cost of obtaining Expert Opinion etc., mention the readiness to meet the expenditure to be incurred.
- (e) Should the Judicial Authority of the Requested Country require the return of any information / evidence / thing obtained in pursuant to this request at the conclusion of the criminal proceeding, the same shall be returned to the Judicial Authority of the Requested Country.
- (f) The person(s) whose attendance is requested shall not:
 - i. be detained, prosecuted, punished and subjected to any other restriction of personal liberty in the territory of Republic of India for any acts, omissions or convictions which preceded the person(s) departure from the Requested Country other than that to which the request relates.
 - ii. be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred before the person's departure from the Requested Country.
 - iii. be required to give evidence in any proceeding or to assist in any investigation(s) other than the proceeding or investigation(s) to which the request relates, without the person's consent.
- (g) In the matter of investigation of an offence for which the maximum punishment prescribed under the law is death, an assurance for non-execution of such penalty by commutation or remission of such penalty may be given on a case to case basis.

[Paragraph (f) shall cease to apply if a person, being free to leave the country has not left within 30 days or for any period agreed upon or after receiving official notification that the person's attendance is no longer required has remained voluntarily in the territory of the country or, having left has voluntarily returned.]

Limitation of Use: _____ *[to be filled by Investigating Agency /Court]*

[Unless otherwise agreed, the Investigation agency of India, who is conducting investigation in the present case, shall not, without the consent of the Requested Country, use or transfer information or evidence provided by the Requested Country for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.]

Execution of Request: _____ *[to be filled by Investigating Agency /Court]*

[Procedure to be followed:

- (State details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.)
- (State any special requirements as to certification / authentication of documents.)
- (State if attendance by representative of appropriate Authority of Requesting Party is required at examination of witnesses / execution of request 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 remain present during the examination of witness and to assist the authorities of Requested Country (if required) during the execution of this request.]

Period of Execution: _____ *(to be filled by Investigating Agency /Court)*

[If required, state that 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.)]

Confidentiality: _____ *(to be filled by Investigating Agency /Court)*

[Here explicitly mention the confidentiality requirement during handling of the request by Requested Country if any.

Eg: "The details of this investigation are considered sensitive. Therefore, please treat this request, its contents, the fact that this request has been made and the results of its execution as confidential and do not disclose it and share it with any subjects, except all those who are dealing with this request for the purpose of its execution, without the consent of the Requesting Authority."

Liaison: _____ *(to be filled by Investigating Agency /Court)*

[Provide the details of the officers who are handling this request for liaising with Requested Country:
State name of officer(s); Address; Telephone Number; Facsimile Number; Electronic mail address]

Please accept the assurance of our highest consideration.

(Signature along with seal)

Name of the Presiding Officer of the case:

Office:

Date: