

November, 2021

Requesting Mutual Legal Assistance in Criminal Matters from the Republic of China (Taiwan)



A Guide to MLA

Department of International and Cross-Strait Legal Affairs
Ministry of Justice
Republic of China (Taiwan)

TABLE OF CONTENTS

I. INTRODUCTION	4
(i) Requests Made Under a Treaty	4
(ii) Requests Made in the Absence of a Treaty	5
II. CENTRAL/COMPETENT AUTHORITY OF TAIWAN	6
III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM TAIWAN	7
Step 1: IDENTIFY THE MECHANISM USED TO SEEK ASSISTANCE	8
Step 2: INDICATE THE AUTHORITY CONDUCTING THE INVESTIGATION/ PROSECUTION/ADJUDICATION	8
Step 3: STATE THE PURPOSE OF THE REQUEST	8
Step 4: SUMMARIZE THE PERTINENT FACTS	8
Step 5: SET OUT THE APPLICABLE LEGAL PROVISIONS	8
Step 6: IDENTIFY THE ASSISTANCE BEING SOUGHT	9
Requests for Service of Document	9
Requests for Obtaining Statement or Testimony	10
Requests for Arrangement of Persons to Appear in a Designated Place out of Taiwan’s Territory	11
Requests for Search and Seizure.....	11
Requests for Enforcement of a Final and Irrevocable Confiscation or Proceeds Value Collection Judgment or Order Rendered by the Court of the Requesting Party..	12
Requests for Obtaining Documentary Evidence or Exhibits	13
Step 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS	13
Step 8: TRANSLATE THE REQUEST	13
Step 9: MAKE SURE TO RULE OUT THE FOLLOWING CIRCUMSTANCES AND PROVIDE REQUIRED ASSURANCES OR UNDERTAKING	14
The MOJ will deny assistance in one of the following circumstances	14
The MOJ may deny assistance in one of the following circumstances	14
Step 10: TIME FRAME FOR EXECUTION IF URGENT OR NECESSARY	16
IV. OTHER USEFUL REFERENCES	17

I. INTRODUCTION

The Central or Competent Authority of a foreign government, foreign institution, or international organization (hereinafter referred to as “the Requesting Party”) may request legal assistance from Taiwan regarding criminal procedures in connection with investigation, prosecution, adjudication, enforcement, or juvenile protection proceedings. Taiwan provides mutual legal assistance (hereinafter referred to as “MLA”) in criminal matters based on MLA treaty¹ or convention. In the absence of MLA treaty, Taiwan may provide MLA on the basis of the principle of reciprocity².

All requests, whether they are (1) bilateral treaty requests or (2) non-treaty requests, shall be filed with the Ministry of Justice (hereinafter referred to as “MOJ”), the Central/Competent Authority of Taiwan³. A request made on the basis of the principle of reciprocity without MLA treaty shall be filed via the Ministry of Foreign Affairs (hereinafter referred to as “MOFA”) with the MOJ in the form of a written Letter of Request⁴ (hereinafter referred to as “LOR”) in a formal diplomatic manner.

In case of emergency, a request may be filed directly with the MOJ in other forms with necessary documentation or material attached. The MOJ may have it commissioned to an Assisting Body for imposing necessary interim measure in connection with the assistance requested. The Requesting Party is required to file a written LOR with the MOFA within 30 days. Otherwise, the imposed interim measure will be subject to revocation⁵.

(i) Requests Made Under a Treaty

MLA Requests made under a treaty are executed under the domestic laws of Taiwan in accordance with the provisions in the treaty. Taiwan provides extensive and more tailored assistance that is agreed by parties in a treaty, in comparison to which can be sought via a request based on reciprocity.

¹ The term “treaty” herein refers to in the form of treaty, agreement, arrangement, etc.

² MLA Act § 5.

³ MLA Act § 3.

⁴ MLA Act § 7, 8.

⁵ MLA Act § 8, paragraph 2.

(ii) Requests Made in the Absence of a Treaty

Requests for assistance from any foreign state in the absence of a treaty are executed under [the Mutual Legal Assistance in Criminal Matters Act](#) (hereinafter referred to as “the MLA Act”) in Taiwan.

Under the principle of reciprocity, Taiwan authorities are able to assist in obtaining evidence, service of document, search, seizure, immobilization of assets, implementation of final and irrevocable judgment or order for confiscation of assets or collection of proceeds value relating to a criminal offense, restitution of proceeds of crime, and other types of assistance not contradictory to the domestic laws of Taiwan⁶.

The MOJ may deny assistance when the acts or missions described in request do not constitute an offense in Taiwan⁷.

However, the requirement of dual criminality is mandatory for the following types of assistance that are governed by the MLA Act⁸:

- (1) Search.
- (2) Seizure.
- (3) Immobilization of assets.
- (4) Implementation of final and irrevocable judgment or order for confiscation of assets or collection of proceeds value relating to a criminal offense.
- (5) Restitution of proceeds of crime.
- (6) Any other compulsory measure is to be imposed.

⁶ MLA Act § 6.

⁷ MLA Act § 10.

⁸ MLA Act § 22.

II. CENTRAL/COMPETENT AUTHORITY OF TAIWAN

The Central/Competent Authority of Taiwan is the **Ministry of Justice**.

It can be contacted as follows:

**Department of International and Cross-Strait Legal Affairs
Ministry of Justice
Republic of China (Taiwan)**

6F., 235 , Sec. 1, Guiyang St., Taipei 100006

Taiwan R.O.C.

Telephone: +886 2 21910189 #7206

Email: mla-taiwan@mail.moj.gov.tw

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

When seeking MLA from Taiwan, the MOJ encourages the Requesting Party to make contact before filing a request, particularly in urgent cases, to ensure the assistance sought is available under the domestic laws of Taiwan, and the request will meet requirements pursuant to Taiwan's domestic laws.

Any MLA request shall be filed in the form of a written LOR, which shall include all of the following information, supported with documentation or materials relevant to the implementation of the request⁹:

- (1) Name of the entity filing the request and the entity in charge of the ongoing investigation, prosecution, adjudication or enforcement.
- (2) Purpose of the request.
- (3) Criminal fact, offense and evidence relating to the request. A request for the service of document is free from this requirement.
- (4) Assistance requested and its reasons.
- (5) Specific method or the duration of time needed, and its rationale for implementing of the request.
- (6) Any other details required to be explained or specified under the MLA Act.

In the case a request cannot be implemented due to insufficient information given, the MOFA or the MOJ may ask for further explanation or supplement from the Requesting Party¹⁰.

To file your LOR, the following steps should be followed:

⁹ MLA Act § 8, paragraph 3.

¹⁰ MLA Act § 8, paragraph 4.

STEP 1: IDENTIFY THE MECHANISM USED TO SEEK ASSISTANCE

The LOR should identify the basis on which it is made, including any treaty. If there is no relevant treaty, the request should state whether reciprocity would be afforded to a Taiwan's request made in comparable circumstances.

STEP 2: INDICATE THE AUTHORITY CONDUCTING THE INVESTIGATION/ PROSECUTION/ADJUDICATION

Clearly indicate the name of the authority in charge of the ongoing investigation, prosecution, adjudication, or enforcement.

STEP 3: STATE THE PURPOSE OF THE REQUEST

Clearly state the purpose of the request, e.g., seeking to secure admissible evidence to be used in the prosecution or adjudication.

STEP 4: SUMMARIZE THE PERTINENT FACTS

Except for requests for service of document, a detailed outline of the case under investigation, prosecution or adjudication, including a summary of criminal fact, offense and evidence relating to and supporting the investigation, prosecution, adjudication or enforcement is required in the LOR¹¹.

STEP 5: SET OUT THE APPLICABLE LEGAL PROVISIONS

Except for requests for service of document, the request should include the full text of all relevant offences and penalty provisions related to the investigation, prosecution, or adjudication¹².

¹¹ MLA Act § 8, paragraph 3, (3).

¹² MLA Act § 8, paragraph 3, (3).

STEP 6: IDENTIFY THE ASSISTANCE BEING SOUGHT¹³

Outline, in specific terms, exactly what you are seeking to obtain from Taiwan 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.

Requests for Service of Document¹⁴
■ Details of the name, nationality, personal particulars, or any other identification information of the person to be served and the statutory agent, representative or administrator of the natural or legal person to be served.
■ Provide the address of the domicile, residency, office, workplace, or any other place suitable for the service of documents of the natural or legal person to be served.
■ If the Requesting Party is unable to locate the person to be served, it may ask for specifying the location of the person in the LOR.

¹³ MLA Act § 8, paragraph 3, (4).

¹⁴ MLA Act § 21.

Requests for Obtaining Statement or Testimony¹⁵

- Whether the individual to be taken statement or testimony is an accused, witness, expert witness or any other related persons.
- Details of name, location and contact information of the accused/witness in Taiwan.
- Explanation as to how the information sought from the witness relates to the case and assists the investigators or prosecutors in advancing their case.
- Description of the subject matter of the testimony or statement sought and a list of questions to be asked for the witness/accused.
- Instructions as to what procedures should be followed, such as whether the statements should be taken with an affidavit or affirmed in other forms.
- Indicate whether any prosecutors, investigators or persons from the Requesting Party wish to travel to Taiwan to participate in the interview or hearing, or virtually present in the interview or hearing through a simultaneous audio-video link.
- If the witness is a suspect or accused, include any rights or privileges (for example, the right to remain silent or the right to counsel) that the witness might have under the laws of the Requesting Party and which should be conveyed to the witness before taking the statement.

¹⁵ MLA Act § 17, 18.

Requests for Arrangement of Persons to Appear in a Designated Place out of Taiwan's Territory¹⁶

- Whether the individual is requested to give testimony, statement, expert opinion or other forms.
- Indicate in the LOR the willingness of paying the expenses incurred for the arrangement and the time duration needed for the assistance.
- A voluntary consent of the person being arranged to appear out of Taiwan's territory shall be obtained in advance, and no compulsory force shall be imposed in implementing such request.

Requests for Search and Seizure

- The dual criminality requirement is met.
- A detailed description of the items to be seized, with sufficient specificity so as to identify them (for example, asking for specific records between certain limited dates or for specific personal property associated with the underlying crime).
- Reasonable grounds to believe that the evidence sought can be found at the specified location.
- Explanation as to why the requested search is necessary. As search and seizure is a highly coercive measure, the Requesting Party will need to provide full and clear reasons why this measure is necessary.

¹⁶ MLA Act § 19.

Requests for Enforcement of a Final and Irrevocable Confiscation or Proceeds Value Collection Judgment or Order Rendered by the Court of the Requesting Party¹⁷

■ The dual criminality requirement is met.

■ The statute of limitations for the prosecution of the offenses and that for the enforcement of confiscation or proceeds value collection has not expired under the laws of both the Requesting Party and Taiwan.

■ The said judgment or order and its procedures do not prejudice public order or morals in Taiwan.

■ Copies of the judgment or order and relevant documents with the following information shall be attached to the LOR.

- ✓ The said judgment or order is final and irrevocable.
- ✓ The conducts involved constitute a criminal offense under the laws of the Requesting Party.
- ✓ The statute of limitations for the enforcement of confiscation or proceeds value collection has not expired under the laws of the Requesting Party.
- ✓ The court of the Requesting Party has jurisdiction over the matter.
- ✓ The said judgment or order is duly rendered by an independent and impartial court of the Requesting Party in compliance with lawful procedures.
- ✓ The scope and location of the assets or the value of proceeds subject to enforcement.
- ✓ Where an interested third party's rights are involved in the said judgment or order, the said party has been given sufficient opportunity to claim such rights.
- ✓ The name, date of birth, domicile, or residency of the interested third party who claimed rights over the assets subject to enforcement.

¹⁷ MLA Act § 23.

Requests for Obtaining Documentary Evidence or Exhibits¹⁸

- Identify the specific documentary evidence or exhibits that are being sought.
- Set out the nature of the documentary evidence or exhibits and the location of the evidence.
- Explain as to how the documentary evidence or exhibits sought relate to the case and assist the investigators or prosecutors in advancing their case.

STEP 7: HIGHLIGHT ANY SPECIFIC CONFIDENTIALITY REQUIREMENTS

Any information relating to the request and its implementation shall be held confidential unless it is necessary for implementing the request, upon prior consent between the parties, or otherwise provided by laws¹⁹.

Therefore, if the Requesting Party deemed that the matter is particularly sensitive and requires extraordinary protection of confidentiality, it should expressly set out the need and reasons for confidentiality (for example, the suspect has no knowledge of the investigation relating to the request) in the LOR.

STEP 8: TRANSLATE THE REQUEST²⁰

The LOR and its attachment shall be written in Traditional Chinese. If the LOR is not prepared in Traditional Chinese, it shall be accompanied with a Chinese translation that carries identical contents with the original.

The MOJ may at its discretion consent to accept attachments without Chinese translation or translated in other languages.

¹⁸ MLA Act § 20.

¹⁹ MLA Act § 14.

²⁰ MLA Act § 8, paragraph 5.

**STEP 9: MAKE SURE TO RULE OUT THE FOLLOWING CIRCUMSTANCES
AND PROVIDE REQUIRED ASSURANCES OR UNDERTAKING²¹**

The MOJ will deny assistance in one of the following circumstances:

- a. The provision of assistance will be detrimental to Taiwan's sovereignty, national security, public order, international reputation or any other significant public interest of Taiwan.
- b. The provision of assistance will prejudice the individuals involved and may result in the person's punishment or any other detrimental infliction because of the person's race or ethnic origin, nationality, gender, religion, social class, or political opinion.
- c. The dual criminality requirement is not met in cases where the requested assistance involves search, seizure, immobilization of assets, implementation of final and irrevocable judgment, order for confiscation of assets or collection of proceeds value relating to a criminal offense and restitution of proceeds of crime, or any other compulsory measures.
- d. The request involves arrangements of persons who are the accused or suspect of the requested case or subjected to travel ban or other personal liberty restriction under the domestic laws of Taiwan²².

The MOJ may deny assistance in one of the following circumstances:

- a. The request is not made in conformity with the MLA Act.
- b. The provision of assistance violates the principle of reciprocity, or the requesting party fails to provide an undertaking of reciprocity.
- c. The requesting party fails to **provide assurances** on the following matters:
 - Upon request, the requesting party shall not use any evidence or information provided by Taiwan for any purpose other than that has been articulated in the LOR, unless there had been a prior consent from the MOJ²³.
 - Concerning the person who has been requested to appear in a designated place

²¹ MLA Act § 10.

²² MLA Act § 19, paragraph 2.

²³ MLA Act § 16.

out of Taiwan's territory²⁴:

- Such person shall not be prosecuted, detained, punished, forced to appear, or subjected to travel ban or any other personal liberty restriction in that territory for any criminal offenses which preceded such person's requested appearance in the designated territory of the Requested Party.
 - Such person shall not be forced to give any testimony, statement, expert opinion, or other form of assistance that is beyond the scope of the original request.
 - In the case of refusing or failing to appear or testify after entering the designated place, the person concerned shall not by reason thereof be prosecuted, detained, punished or subjected to travel ban or other unfavorable measure.
- The transferred evidentiary objects, such as exhibits or documentary evidence, will be returned as soon as possible the designated period of time²⁵.

- d. The acts or omissions described in the LOR do not constitute an offense in Taiwan.
- e. The wrongdoings specified in the request are violations of martial law, instead of violation of criminal law applicable to civilians.
- f. The provision of assistance could interfere with other ongoing investigation, prosecution, trial, enforcement or any other criminal proceedings in Taiwan.
- g. The wrongdoings upon which the request is based have been determined and bound by a final and irrevocable decision of not-to-prosecute, deferred prosecution, or withdrawal of prosecution, or a judgment, a ruling of not-to-hear-the-case, of not-to-apply-protective-measures, or of protective-measures pursuant to the domestic laws of Taiwan.

However, the MOJ may approve the request after the Requesting Party gives necessary supplemental material or documentation or otherwise revises the request in compliance with the MLA Act²⁶.

²⁴ MLA Act § 19.

²⁵ MLA Act § 20.

²⁶ MLA Act § 10, paragraph 3.

Step 10: TIME FRAME FOR EXECUTION IF URGENT OR NECESSARY

If applicable, expressly identify urgency or any time period within which compliance with the request is sought and the reason for the time constraints. If any limitation periods exist, set out the precise dates. However, a reasonable time frame is strongly suggested to facilitate the execution of the request.

IV. OTHER USEFUL REFERENCES

The MOJ encourages the Requesting Party to refer to its website (<https://www.moj.gov.tw/2832/2833/2916/2928/2930/2931/2932/>).

Please forward any MLA enquiries to the MOJ at

Americas, Africa, and Oceania: ic7202@mail.moj.gov.tw

Asia: ic7207@mail.moj.gov.tw

Europe: ic7203@mail.moj.gov.tw