

**MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS**

A Guide for Domestic and Foreign Central and Competent Authorities



Republic of the Philippines
DEPARTMENT OF JUSTICE
Office of the Chief State Counsel
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Part I

INTRODUCTION

A. Purpose of the Guidelines

This Guidelines is intended for law enforcement officers, prosecutors, central authority lawyers, and other authorities involved in criminal investigation and prosecution in the preparation of requests for mutual legal assistance (“MLA”). This Guidelines is also intended to facilitate the prompt and effective execution of requests for assistance.

The Guidelines includes:

- i. guidance to domestic authorities who wish to make an MLA request to foreign authorities; and
- ii. guidance to foreign authorities who wish to make an MLA request to the Philippines.

B. What is Mutual Legal Assistance in Criminal Matters

1. MLA in criminal matters, sometimes referred to as mutual assistance or judicial assistance, is the formal process by which States or jurisdictions seek and provide assistance in the investigation or prosecution of criminal offenses, and in judicial proceedings related to criminal matters. MLA is generally used to obtain evidence that cannot be provided on a law enforcement-level basis (e.g., police-to-police or agency-to-agency), or evidence that would be admissible in a criminal trial. It operates on much stricter rules than those that apply to the less formal agency-to-agency or police-to-police cooperation.

2. MLA may also be utilized to obtain assistance in proceedings involving proceeds of crime, including their tracing, freezing, and confiscation. Requests relating to proceeds of crime can be on a criminal (conviction) or civil (non-conviction) basis.

3. Due to the increasingly transnational nature of crimes, MLA is critical to criminal investigations and proceedings both in the Philippines and abroad. It is also a vital tool in the pursuit of criminal finances, including the recovery of the proceeds of crime that may have been moved and hidden overseas. The Philippines is committed to assisting law enforcement, prosecution, and judicial authorities in combating transnational crimes and is able to provide a wide range of assistance.

4. The MLA mechanism is not to be used for:

- a. extradition, arrest, or detention with a view to the extradition of any person;

b. enforcement in the requested Party of criminal judgments rendered in the requesting Party except to the extent permitted under the treaty or convention used as basis for the request for assistance and/or law of the requested Party;

c. transfer of persons to serve sentence; and

d. transfer of proceedings in criminal matters.

6. The MLA mechanism is a tool for law enforcement and prosecution authorities in the investigation and prosecution of cases. It is not to be utilized by private individuals or entities.

C. Bases of Requests for Mutual Legal Assistance in Criminal Matters

1. Treaty-based cooperation

Treaties have been utilized as basis for international cooperation throughout the world for many years. They represent the most formal vehicle that can be used for international cooperation. A treaty obliges the Parties to cooperate with one another under international law, provided that the request falls within the terms of the treaty. Treaties usually contain detailed provisions, procedures, and parameters of cooperation, such as on the coverage of assistance, forms and contents of the request, and other arrangements that provide greater certainty and clarity on cooperation.

The Philippines may seek or provide assistance pursuant to its bilateral Mutual Legal Assistance Treaties (MLATs) in Criminal Matters and relevant international conventions to which it is a Party.

A list of the Philippines' bilateral MLATs and the multilateral treaties to which it is a Party may be found in Annex "A."

2. Non-treaty based cooperation

a. Law

Some States or jurisdictions are able to seek and provide assistance on the basis of their own domestic laws. In some instances, the domestic law addresses the issue of dealing with requests for assistance from foreign States or jurisdictions. Other States or jurisdictions have laws that go beyond the procedural and actually grant authority to accept such requests, while others have a combination of both approaches.

The Philippines does not have a comprehensive law on MLA and is able to seek and provide assistance on the basis of a treaty or convention, or reciprocity. The Anti-Money Laundering Act of 2001, as amended, authorizes

the Anti-Money Laundering Council (AMLC), the Philippines' financial intelligence unit (FIU), to seek and provide assistance from a foreign State.

b. Principle of Reciprocity

Reciprocity is a customary principle with a long and distinguished history in international law, diplomacy and comity -- consideration of good will and mutuality rather than strict application and enforcement of rules. It is essentially an assurance by the Party making a request for assistance that it will also extend assistance with the same type of request and provide similar cooperation to the requested Party in a similar case in the future.

The extent of assistance that the Philippines can seek or grant on the basis of reciprocity will depend on the nature of the assistance being requested. A request for assistance requiring compulsory processes for its execution may not be made on the basis of reciprocity, as requests of this nature can only be made on the basis of a treaty. An example would be a request for search and seizure, freezing, forfeiture or confiscation of assets which are generally of a more intrusive nature and, therefore, would require going to court and necessarily needs legal basis and supporting evidence.

c. Letters Rogatory

Letters rogatory may be defined as “(a)n instrument sent in the name and by the authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause pending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed.” Letters rogatory are addressed to some “appropriate judicial authority in the foreign state.”

Similar to the principle of reciprocity, this form of assistance is founded upon the customary principle of courtesy and good will -- comity -- between nations. It is the oldest means of formal international cooperation, and can be useful even if there is no treaty or other legal basis of cooperation. Letters rogatory are not, however, always an informal mechanism as they can also be used in treaty-based arrangements.

The scope of assistance for requests made through letters rogatory is generally much more restricted, often limited to service of documents or obtaining testimony and documents from a witness.

D. Dual Criminality

1. Dual criminality is generally not required in mutual legal assistance requests. The law of the requested Party and/or the treaty or convention used as legal basis for making the request may, however, require dual criminality.

2. The Philippines generally only requires dual criminality for requests which require coercive action for their execution, such as search and seizure, production orders for bank records, and restraint and confiscation. The “conduct-based approach” to determine the existence of dual criminality is applied by the Philippines. Under this approach, the dual criminality requirement is met if both the Philippines and the foreign State or jurisdiction criminalize the conduct or activity underlying the offense, regardless of whether both States or jurisdictions place the offense within the same category, or denominate the offense under the same nomenclature.

Part II

DEFINITION OF TERMS

As used in this Guidelines, unless specifically provided in the applicable law or treaty:

- a. *Appropriate Authority* refers to a person or office, other than the Central Authority of a State or jurisdiction, that has the authority under the law of that State or jurisdiction to make or receive an MLA request;
- b. *Central Authority* refers to the official or office so designated under the treaty, convention, or law for the purpose of making or receiving MLA requests;
- c. *Competent Authority* refers to the person or office having authority and function to execute the request for assistance from a foreign State or jurisdiction as identified by the Central Authority;
- d. *Criminal investigation* means any investigation --
 - i. into an offense under the laws of the Philippines or a foreign State or jurisdiction, as the case may be; or
 - ii. for the purposes of an ancillary criminal matter, which may include investigations by law enforcers and prosecutors;
- e. *Criminal matter* includes any investigation by law enforcement agencies, prosecution, or judicial proceeding in the Philippines or a foreign State or jurisdiction relating to --
 - i. any criminal offense;
 - ii. the determination of whether assets or properties are proceeds or instrumentalities of crime;

iii. a possible confiscation order whether or not based on an underlying criminal conviction; or

iv. the freezing or seizure of proceeds or instrumentalities of crime;

f. *Criminal proceedings* means a trial of a person for an offense under the laws of the Philippines or a foreign State or jurisdiction, as the case may be, and includes proceedings to determine whether a particular person should be tried for the offense;

g. *Instrumentalities of crime* means the property used in connection with the commission of an offense or the equivalent value of such property;

h. *Person Deprived of Liberty* refers to a person in custody or confined in a correctional facility, whether undergoing preventive imprisonment or serving sentence by means of a final judgment of conviction;

i. *Proceeds of crime* means any property derived from or obtained, directly or indirectly, through the commission of an offense;

j. *Requested Party* means the State or jurisdiction to which a request for assistance is submitted; and

k. *Requesting Party* means the State or jurisdiction which makes or submits a request for assistance.

Part III

CENTRAL AUTHORITY

1. A Central Authority is responsible for the transmission, receipt, handling and monitoring requests for assistance. It provides a visible point of contact for States or jurisdictions seeking assistance and advice about international cooperation matters.

2. The Central Authority for the Philippines is the Department of Justice (DOJ), through the Office of the Chief State Counsel (OCSC). It serves as the central contact point for matters of international legal cooperation.

3. As Central Authority, the DOJ-OCSC has the followings tasks:

a. to make and receive requests for assistance;

b. to execute and/or arrange for the execution of a request for assistance by transmitting or referring the request to the competent authorities;

c. to assist, where necessary, in the certification and authentication of any documents or other materials provided in response to a request for assistance;

d. to decide on conditions related to requests for assistance, and, where the conditions are accepted, ensure compliance with those conditions;

e. to monitor requests and coordinate with local authorities and foreign counterparts and/or other appropriate foreign authorities regarding the preparation and execution of requests for assistance;

f. to make any arrangements for the transmittal of the evidence to the requesting Party or to authorize a competent authority to do so;

g. to take practical measures to facilitate the effective disposition of requests for assistance; and

h. to carry out such other tasks necessary for the provision of, or obtaining, effective and prompt assistance.

4. Below are the contact details of the Philippine Central Authority:

THE SECRETARY OF JUSTICE

Attention: The Chief State Counsel

Department of Justice

Padre Faura Street

Ermita, Manila 1000

PHILIPPINES

Tel. Nos.: +632 8523-8481 to 98

Fax No: +632 8525-2218

E-mail: ocsc@doj.gov.ph

Part IV

TYPES OF ASSISTANCE

The types of assistance that may be obtained or provided include:

a. taking of evidence or obtaining statements from persons;

b. making arrangements for persons to give evidence or facilitating the personal appearance of witnesses;

c. effecting the temporary transfer of persons deprived of liberty to appear as witnesses;

d. effecting service of documents;

- e. locating and identifying witnesses and suspects/accused;
- f. examining objects and sites;
- g. providing or obtaining information, original or certified true copies of documents, or other evidentiary items;
- h. identifying or tracing proceeds of crime or property;
- i. executing searches and seizures of properties or items of evidence;
- j. freezing, forfeiture or confiscation of assets, property, or instrumentality used in the commission of a crime; and
- k. any other type of assistance that may be allowed by the requested Party.

Part V

HOW TO MAKE A REQUEST FOR ASSISTANCE

A request made pursuant to a treaty or convention should comply with the requirements thereof. The requested Party may also have additional requirements for certain types of assistance.

I. Requests for Assistance by the Philippines

A. Prior Consultation with the DOJ-OCSC

1. It is suggested that the law enforcement or prosecution authority intending to seek assistance from a foreign State or jurisdiction to undertake prior consultation with the DOJ-OCSC to ensure that the assistance to be requested, considering the basis to be used for such request, can be provided, and the request meets the requirements not only of the applicable treaty or convention, but also of the requested Party.

2. Matters to be considered in determining whether a request for assistance is to be made are:

- a. Law enforcement and prosecution authorities are encouraged to utilize the MLA mechanism if the case subject of their investigation or prosecution involves transnational element. However, not all cases involving transnational element need to be the subject of an MLA request;

b. Notwithstanding the absence of transnational element in a case being investigated or prosecuted, a request for assistance may be made if the evidence located abroad is relevant to the case and it is only through MLA that evidence can be obtained, or where MLA is required for the admissibility of the evidence in the criminal proceedings in the Philippines; and,

c. In deciding on whether to make a request for assistance, the law enforcement and/or prosecution authorities should take a risk-based approach and determine:

i. whether the case being investigated or prosecuted involves a criminal activity that is an identified high-risk crime;

ii. whether the case being investigated or prosecuted involves huge amounts of instrumentalities and/or proceeds of crime that entered the Philippines;

iii. whether the case being investigated or prosecuted involves instrumentalities and/or proceeds of crime that came from an identified high-risk foreign jurisdiction; or

iv. whether the person or entity being investigated or prosecuted is identified as a high-risk target.

3. Queries in relation to MLA may be sent to the correspondence address and fax number of DOJ-OCSC indicated above, or sent by email to ocsc@doj.gov.ph.

B. Who can make a request for assistance

1. An MLA request from the Philippines may only be made by the designated Central Authority in the treaty or convention used as basis for the request. Requests on the basis of reciprocity may only be made by the DOJ.

2. The DOJ-OCSC shall evaluate whether it would be appropriate to request for assistance taking into account the laws, facts, and circumstances of the case and proportionality of the assistance sought to the crime being investigated or prosecuted. It shall notify the requesting law enforcement or prosecution authority of its determination. Once a determination is made that a request for assistance is appropriate, the DOJ-OCSC shall prepare the request to be submitted to the foreign State or jurisdiction.

3. Requests to be given priority include the following:

a. where the case being investigated or prosecuted involves a criminal activity that is an identified high risk crime;

b. where the case being investigated or prosecuted involves huge amounts of instrumentalities and/or proceeds of crime that entered the Philippines;

c. where the case being investigated or prosecuted involves instrumentalities and/or proceeds of crime that came from an identified high risk State or jurisdiction;

d. where the person or entity being investigated or prosecuted is identified as a high risk target; and

e. requests involving transnational crimes.

C. Basis for request for assistance

The Philippines may request for assistance on the basis of a law, treaty, or convention, or the principle of reciprocity.

D. Form and Content

1. A request for assistance shall be in writing and affixed with the signature of the requesting authority.

2. All requests and any supporting documents shall be in English.

3. The request for assistance should provide the following information:

a. name of the Central Authority;

b. name of the authority conducting the investigation, prosecution, or proceeding relating to a criminal matter to which the request relates (law enforcement or prosecution authority);

c. basis of the request;

d. purpose of the request and the assistance sought;

e. a description of the nature of the criminal matter and its current status;

f. a statement setting out a summary of the relevant facts constituting the offense and law/s violated;

g. description of the offense/s under investigation or prosecution to which the request relates, including the maximum imposable penalty;

h. a description of the evidence, information or other assistance sought;

i. details of the person/s, including legal or juridical persons, named in the request;

j. statement whether the person/s named in the request are victims, witnesses, or suspects/accused;

k. connection between the evidence requested and the offense being investigated or prosecuted;

l. where necessary, any procedure that the requesting Party wishes to be followed in giving effect to the request, including details of the manner and form in which any information or evidence is to be provided;

m. specification of any time limit for the execution of the request, including the applicable dates (e.g., date of court hearing/appearance);

n. if request is marked as urgent, reason for the urgency or giving priority to the request;

o. any requirements for confidentiality of the request, and the reason/s therefor;

p. name, telephone number, and email address of the law enforcement or prosecution office or officer in the requested Party with whom prior coordination may have been made relating to the request, or who may be able to facilitate the execution of the request;

q. name, telephone number, and email address of the contact person at the Philippine Central Authority; and

r. such other information or undertaking as may be required by the requested Party for the execution of the request.

4. The request for assistance may also contain, to the extent necessary, the following information:

a. the identity, nationality, and location of the person who is the subject of the investigation or criminal proceedings or who may have information relevant to the assistance being sought;

b. the identity and location of any person from whom evidence is sought;

c. the identity and location of a person to be served with documents, that person's connection to the investigation or criminal proceedings, and the manner by which service is to be made;

- d. information on the identity and whereabouts of a person to be located;
- e. details on prior preservation request for subscriber information or electronic data;
- f. a description of the manner in which the testimony or statement is to be taken or recorded;
- g. a list of the questions to be asked;
- h. a description of the documents, records or items of evidence to be produced as well as information on the appropriate person to be asked to produce them;
- i. a statement as to whether a sworn or affirmed evidence or statement is required;
- j. a statement as to whether video or live television links or other appropriate communication facilities will be required and an undertaking to shoulder the cost;
- k. a description of the property, asset or article to which the request relates, including its location;
- l. any court order relating to the assistance requested and a statement relating to the finality of that order;
- m. information as to the expenses to which a person appearing in the requesting Party will be entitled;
- n. in the case of making available in the Philippines a person deprived of liberty in the requested Party, the name of the person or authority who will have custody during the transfer, the place of custody in the Philippines, and the date when that person may be returned to the requested Party; and
- o. any other information which can assist the authorities of the requested Party to execute the request.

5. It is the DOJ-OCSC which prepares the request to be submitted to the foreign State or jurisdiction. However, except for the name of the Central Authority, all the other information stated above, and any additional information depending on the assistance sought, should be contained in the letter-request to the DOJ-OCSC of the law enforcement or prosecution authority seeking assistance from a foreign State or jurisdiction. The letter-request to the DOJ-OCSC should also indicate the name, telephone number, and email address of the contact person in the requesting law enforcement or prosecution agency who would be capable of responding to inquiries concerning the request.

6. Queries in relation to MLA may be sent to the correspondence address and fax number above, or by email to ocsc@doj.gov.ph.

E. Urgent Requests

1. For urgent requests, the requesting law enforcement or prosecution authority may send an advance copy of the request by fax to +632 8525-2218 or e-mail at ocsc@doj.gov.ph. The original hard copy of the request must be submitted within fifteen (15) days from the date the advance copy was sent through facsimile or email.

2. The DOJ-OCSC will try to deal with the request as quickly as possible. The DOJ-OCSC may set consultation meetings with the requesting law enforcement or prosecution authority to facilitate the preparation of the request.

3. The law enforcement or prosecution authority's request should indicate the reason/s for the urgency (e.g., there is an immediate risk to individuals, risk of dissipation of assets, a person deprived of liberty from whom statement or evidence is to be obtained will soon be released from custody). Only requests which are truly urgent should be marked as urgent.

4. The requested Party must be given a reasonable time to execute the request.

F. Notification where assistance is no longer required

Should the requested assistance be no longer required, the DOJ-OCSC should be informed immediately so it can inform the requested Party and for the purpose of closing the case or request.

G. Supplemental Requests

Requests which relate, or are linked, to a previous request may be sent as a supplemental request. The supplemental request should provide all the information relevant to a standard MLA request, and any further information relating to the additional request.

II. Requests for Assistance to the Philippines

A. Prior Consultation with the DOJ-OCSC

1. It is suggested that the requesting Party consult first the Philippine Central Authority, DOJ-OCSC, before submitting the request for assistance to determine if the assistance to be requested, based on the legal basis for the request, is available under the laws of the Philippines, and the request meets the requirements not only of the applicable treaty or convention but also the relevant Philippine laws.

2. To ensure that the request meets all the requirements that will enable the Philippine authorities to effectively and promptly execute the same, the requesting Party may submit first to the DOJ-OCSC a draft of the request, especially those requiring compulsory process or court order for their execution.

B. Who can request for assistance

1. A request for assistance to the Philippines shall be made by the designated Central Authority of the requesting Party. The Philippines may receive a request for assistance from another authority of the requesting Party provided that the latter establishes that it is an appropriate authority to make the request for assistance.

2. A request for assistance made pursuant to an MLAT may be sent directly to the Philippine Central Authority, DOJ, attention to the OCSC.

3. The Department of Foreign Affairs can directly receive all types of MLA requests from foreign States or jurisdictions, whether based on a treaty or convention, or reciprocity.

C. MLA mechanism for law enforcement and prosecution authorities

1. The MLA mechanism is a tool for law enforcement and prosecution authorities in the investigation and prosecution of cases. It is not to be utilized by private individuals or entities.

2. The DOJ-OCSC will not process a request for assistance that is made upon the instance of or for the person subject of the investigation, prosecution, or proceedings related to a criminal matter. The subject of the investigation or prosecution must make his or her own arrangements for his or her own defense, or utilize other allowable mechanism (e.g., letters rogatory) that will assist him or her in his or her case.

D. Form and Content

1. If the request is to be made on the basis of a treaty or convention, the form and content of a request, as indicated in the treaty or convention, have to be complied with.

2. Requests to the Philippines shall be in writing and affixed with the signature and/or seal of the authority making the request.

3. In urgent situations, the request may be transmitted by any means of communication that affords a record in writing, including, but not limited to, by facsimile or electronic mail (e.g., in a "pdf" format via e-mail). The requesting Party shall confirm the request in writing within thirty (30) days from receipt thereof by the Philippine Central Authority.

4. All requests, any supporting documents, and communication relating to the request shall be in English or translated into the English language.

5. The request for assistance should provide the following information:

- a. name of the Central Authority;
- b. name of the authority conducting the investigation, prosecution or proceeding related to a criminal matter to which the request relates (law enforcement or prosecution);
- c. basis of the request;
- d. purpose of the request and the assistance sought;
- e. a description of the nature of the criminal matter and its current status,
- f. a statement setting out a summary of the relevant facts constituting the offenses and law/s violated;
- g. description of the offense/s under investigation or prosecution to which the request relates, including the maximum imposable penalty;
- h. a description of the evidence, information or other assistance sought;
- i. details of the person/s, including legal or juridical person/s, named in the request;
- j. a statement whether the person/s named in the request are victims, witnesses, or suspects/accused;
- k. connection between the evidence requested and the offense being investigated or prosecuted;
- l. where necessary, any procedure that the requesting Party wishes to be followed in giving effect to the request, including details of the manner and form by which any information or item is to be provided;
- m. specification of any time limit for the execution of the request, including the dates (*e.g.*, date of court hearing/appearance);
- n. if request is marked as urgent, reason for the urgency or giving priority to the request;

o. any requirements for confidentiality of the request and the reason/s for it;

p. name, telephone number, and email address of the law enforcement or prosecution office or officer in the Philippines with whom prior coordination may have been made relating to the request or who may be able to facilitate the execution of the request;

q. name, telephone number, and email address of the contact person in the requesting Party for the request; and

r. such other information or undertaking as may be required by the Philippines for the execution of the request.

6. The request for assistance may also contain, to the extent necessary, the following information:

a. the identity, nationality, and location of the person who is the subject of the investigation or criminal proceedings or who may have information relevant to the assistance being sought;

b. the identity and location of any person from whom evidence is sought;

c. the identity and location of a person to be served with documents, that person's connection to the investigation or criminal proceedings, and the manner by which service is to be made;

d. information on the identity and whereabouts of a person to be located;

e. details on prior preservation request for subscriber information or electronic data;

f. a description of the manner by which the testimony or statement is to be taken or recorded;

g. a list of the questions to be asked;

h. a description of the documents, records, or items of evidence to be produced as well as information on the appropriate person to be asked to produce them;

i. a statement as to whether a sworn or affirmed evidence or statement is required;

j. a statement as to whether video or live television links or other appropriate communication facilities will be required and an undertaking to shoulder the cost;

k. a description of the property, asset, or article to which the request relates, including its location;

l. any court order relating to the assistance requested and a statement relating to the finality of that order;

m. information as to the allowances and expenses to which a person appearing in the requesting Party will be entitled;

n. in the case of making available a person deprived of liberty, the name of the person or authority who will have custody during the transfer, the place of custody of the person deprived of liberty in the requested Party or is to be transferred, and the date of that person's return to the Philippines; and

o. any other information which can assist the Philippine authorities to execute the request.

7. Please refer to Part VI of this Guidelines for any additional information/requirements and/or undertaking that must be included in the request for certain types of assistance.

8. Queries in relation to MLA requests to the Philippines may be sent to the correspondence address and fax number above, or by email to ocsc@doj.gov.ph.

E. Transmittal of Requests

1. Requests for assistance made pursuant to a bilateral MLAT may be sent directly to the DOJ, attention to the OCSC, or through the diplomatic channels, if the latter be indicated in the MLAT.

2. Requests for assistance made pursuant to a convention, international agreements (e.g., Memorandum of Agreement or Understanding), or on the basis of reciprocity, must be sent through the diplomatic channels.

F. Urgent Requests

1. For urgent requests, an advance copy of the request may be sent to the correspondence address and fax number above, or by email at ocsc@doj.gov.ph. The original hard copy of the request must be submitted not later than thirty (30) days from the day it was sent through facsimile or email.

2. Where the convention used as basis for the request allows the direct transmittal of urgent requests to the designated Central Authority therein, the same may be transmitted directly to the Central Authority.

3. The DOJ-OCSC will try to deal with the request as quickly as possible. The DOJ-OCSC may communicate directly with the requesting authority of the requesting Party to facilitate the execution of the request.

4. The request should indicate the reason/s for the urgency. Only requests which are truly urgent should be marked as urgent.

5. The requesting Party should give the Philippine authorities a reasonable time to execute the request.

G. Notification where assistance is no longer required

Should the requested assistance be no longer required, the DOJ-OCSC should be informed immediately so it can so inform the competent authority and for the purpose of closing the case or request.

H. Supplemental Requests for Assistance

Requests which relate, or are linked, to a previous request may be submitted as a supplemental request. The supplemental request should provide all the information relevant to a standard MLA request, and any further information relating to the additional request.

I. Execution of Requests for Assistance

1. Requests for assistance shall be executed in accordance with the laws of the Philippines. A request for assistance made on the basis of a treaty or convention shall be executed subject to the provisions of the said treaty or convention.

2. The DOJ-OCSC will evaluate the request and, if necessary, refer it to the competent authority for execution. The DOJ-OCSC will take into account the reason/s for urgency as stated in the request. Failure to provide the information required for a request for assistance, including any additional information for certain forms of assistance, may affect the effective and prompt execution of the request.

3. A person required to give a sworn or affirmed testimony or produce documents, records, or other evidence may so decline where the law of either the Philippines or the requesting Party allows the person to decline to do so in similar circumstances.

4. If the person claims that there is a right to decline to give a sworn or affirmed testimony or produce documents, records, or other evidence under the law of the requesting Party, that Party shall, if so requested, provide a certification whether or not such right exists.

5. Some considerations for the execution of requests involving certain types of assistance:

a. Taking of statement or testimony

A request to take the statement or testimony of a person will be executed on a voluntary basis. A person may not be compelled to give a statement or testimony.

b. Obtaining documents/records

1. Bank records

i. Requests for bank transaction records require a bank inquiry order to be issued by a court.

ii. The retention period of records by banks is only five (5) years from the date of the last transaction or date of closure of the account. Other records/documents also have specific retention periods. Requested records which are already beyond the retention period may be provided on a “best efforts” basis.

iii. The high volume of requests to obtain bank records in the Philippines may affect the speed at which such a request is executed.

2. Computer Data

A request for preservation of a stored computer data shall specify:

i. the authority seeking the preservation;

ii. the offense that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;

iii. the stored computer data to be preserved and its relationship to the offense;

iv. the necessity of the preservation; and

v. that the requesting Party shall submit a request for assistance for the search or access, seizure or securing, or disclosure of the stored computer data.

c. Freezing of assets

Monetary instruments or properties may be the subject of a freeze order issued by the court.

The AMLC can directly issue a freeze order on funds and other assets related to terrorism and terrorism financing.

d. Asset forfeiture

The AMLC can initiate a non-conviction-based (civil) forfeiture case against any monetary instrument or property sought to be frozen that is related to an unlawful activity. Civil forfeiture is a full-blown case and may require some time before it is completed. For the security of the assets against withdrawal, dissipation, transfer or use, the AMLC may seek the provisional remedy of asset preservation order until the civil forfeiture case is terminated.

J. Preservation, Management or Disposal of Assets

1. Where the request is made on the basis of a treaty or convention, the preservation, management or disposal of forfeited or confiscated assets or properties will be made subject to relevant Philippine laws and procedure, the provisions of the subject treaty or convention and the procedure indicated in the request.

2. In the absence of a treaty or convention and/or any asset sharing agreement or arrangement, the forfeited assets will be retained by the Philippines and turned over directly to the National Treasury. The Philippines may consider the procedure indicated in the request for the disposal of forfeited or confiscated assets subject to relevant Philippine laws and procedure.

K. Presence of Foreign Officers in the Execution of Requests

1. The approval by Philippine authorities of a request for assistance, whether through formal or informal cooperation, does not entitle the authorities of the requesting Party to exercise jurisdiction and/or perform functions that are reserved exclusively for the authorities of the Philippines under its laws.

2. If officers from the requesting Party wish to be present in the execution of a request for assistance, this must be indicated in the request. The name and designation of said officers must be provided in the request. The DOJ-OCSC will determine whether to allow their presence in the execution of the request.

3. The requesting Party must give reasons why there is a necessity for its officers to be present in the execution of the request. If the DOJ-OCSC finds that the presence of the foreign officer of the requesting Party is not justified, such request will be refused.

4. The Philippine Central Authority and/or competent authority shall always take the lead in the execution of a request for assistance. The foreign officer's role is limited to giving assistance or guidance to the Philippine authorities in the execution of the request, and cannot engage directly in the gathering of evidence or taking of

testimony. In case of taking a statement, the foreign officer's questions have to be asked by the Philippine competent authority.

5. Even if the presence of foreign officers is authorized and the request is successfully executed, the evidence obtained pursuant to the request for assistance will not be given to the officers of the requesting Party who were present in the execution of said request. However, circumstances may warrant the handing over of the evidence through the said officers. In this case, the Philippine competent authority should first seek authorization from the DOJ-OCSC.

L. Cost of Executing Requests

The Philippines meets the ordinary costs of executing a request. Exceptions to this may include:

- a. the fees and reasonable expenses of expert witnesses;
- b. the cost of translation, interpretation, and transcription;
- c. the cost for the appearance of persons in the requesting Party, including cost for any security escorts for the person;
- d. the cost of establishing and operating video-conferencing or television links or other appropriate communications facilities in the Philippines;
- e. costs of obtaining transcripts of proceedings;
- f. costs of an extraordinary nature agreed with the requesting State or jurisdiction;
- g. costs of legal representation during the interview of a suspect/accused where the requesting Party states that a defense lawyer must be present.

M. Notification where assistance is no longer required

Should the requested assistance be no longer required, the DOJ-OCSC should be informed immediately, so it can inform the Philippine competent authority, and for purposes of closing the case or request.

Part VI

ADDITIONAL INFORMATION AND/OR UNDERTAKINGS FOR REQUESTS INVOLVING SPECIFIC TYPES OF ASSISTANCE SUBMITTED TO THE PHILIPPINES

I. Types of Assistance

A. Taking of Statement or Testimony

1. the identity, date of birth, nationality and location of the person whose statement or testimony is sought

2. indicate whether the statement is to be taken from that person as a suspect/accused, or merely as a witness
3. clear description of the subject matter of the statement or testimony sought
4. list of questions
5. any right or privilege which a person requested to provide a statement or testimony may be entitled to claim under the laws of the requesting Party
6. for statements, indicate if they are to be affirmed or sworn
7. indicate if investigating or prosecuting officers from the requesting Party need to be present during the interview or taking of statement, and the justification for such presence

B. Obtaining Documents

1. as specific a description as possible of the documents requested
2. period covered for the request
3. location of the documents and/or the person to be asked to produce them
4. for computer or electronic data, details of prior preservation request
5. the form in which the documents are to be provided, whether certified true copies or mere photocopies thereof would suffice
6. if the documents are to be certified or authenticated, a sample format for such certification or authentication should be attached to the request

In some cases, documents requested may no longer be available when the request is received as the period for their retention may have already expired. Requested records which are already beyond the retention period may be provided on a “best efforts” basis.

C. Service of Documents

1. name, date and place of birth, nationality and address of the person to be served with the documents
2. manner for the service of documents/processes. Unless a different procedure is indicated in the request, the documents will be served by post.
3. date and time of hearing in the requesting Party
4. the address of the court where the proceedings are to take place
5. whether the person is required to personally appear in the proceedings
6. any right or privilege which a person to be served with documents may be entitled to claim under the laws of the requesting Party
7. form, if any, for the proof of service

The request, together with the documents to be served, should be received by the Philippine Central Authority at least six (6) weeks prior to the scheduled court hearing or other deadlines involved.

D. Attendance of Persons in the Requesting Party

1. The DOJ-OCSC may assist in arranging the attendance in the requesting Party of a person in the Philippines for the purpose of giving or providing evidence or assistance if:
 - a. there is a reasonable ground to believe that the person concerned could give or provide evidence or assistance relevant to that criminal matter;
 - b. the person concerned has freely consented to attend as requested; and
 - c. the requesting Party has given the required undertaking.
2. Authorization for the attendance of any person in the requesting Party may be given if that Party provides an undertaking that the person to whom the request relates:
 - a. shall not be detained, prosecuted, or punished for any offense against the law of the requesting Party alleged to have been committed, or was committed, before that person's departure from the Philippines;
 - b. shall not be subjected to any other restrictions on his or her personal liberty in the requesting Party in respect to acts or omissions prior to his or her departure from the Philippines;
 - c. shall not be subjected to any civil proceedings in respect of any act or omission of the person, which alleged to have occurred, or that occurred, before that person's departure from the Philippines; and
 - d. shall not be required to give or provide evidence or assistance in respect of any criminal matter in the requesting Party other than the matter to which the request relates.
3. Where a requesting Party has sought the assistance in arranging the attendance of any person in that Party, the person to whom the request relates shall not be subject to any penalty or liability or otherwise prejudiced in law by reason only of his or her refusal or failure to attend as requested.
4. Any evidence given by the person in the criminal proceedings to which the request relates shall be inadmissible or otherwise disqualified from use in the prosecution of that person for an offense against the law of the requesting Party other than the offense of perjury in relation to the giving of that evidence.
5. The person shall be returned to the Philippines within the time agreed upon or as soon as practicable after giving the evidence.

E. Attendance in the Requesting Party of a Person Deprived of Liberty

1. The DOJ-OCSC may assist in arranging the attendance in the requesting Party of a person deprived of liberty in the Philippines for the purpose of giving or providing evidence or assistance in that Party if:
 - a. there is a reasonable ground to believe that the person in custody concerned could give or provide evidence or assistance relevant to that criminal matter;
 - b. the person in custody concerned has freely consented to attend as requested; and
 - c. the requesting Party has given the specific undertakings mentioned in D(2)(a to d) of this Part.
2. The DOJ-OCSC or the competent authority shall secure any required authorization or clearance for the temporary transfer of the person deprived of liberty from the detention facility of the Philippines to the requesting Party for the purpose of giving evidence thereat.
3. Where a person serving sentence in the Philippines is transferred to the requesting Party pursuant to a request for assistance, the time spent in custody in the requesting Party shall, subject to the rules of the facility where he or she is detained or confined prior to his or her transfer, count as credit for service of the sentence imposed in the Philippines.
4. The person shall be returned to the Philippines within the time agreed upon or as soon as practicable after giving the evidence.

F. Hearing by Video Conference

The DOJ-OCSC may authorize and assist in the taking of the testimony or statement of a witness, identification of a person or thing, or any other form of assistance that may be provided by the use of video or audio transmission technology.

G. Search and Seizure

1. precise location of the place to be searched
 2. precise description of the items/articles to be seized
 3. dual criminality
 4. probable cause
 5. information, if any, as to third parties who may have a claim or interest in the assets or property sought to be seized
- i. A search warrant may be issued for the search and seizure of personal property:
- (a) subject of the offense;
 - (b) stolen or embezzled and other proceeds or fruits of the offense; or

- (c) used or intended to be used as the means of committing an offense.
- ii. In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.
- iii. The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient.
- iv. The DOJ-OCSC or the competent authority shall file an application with the court to give effect to the request. If the evidence requested can be obtained without need for securing a search warrant, the DOJ-OCSC or competent authority will seek an allowable alternative method for the execution of the request.

H. Enforcement of Freezing, Seizure and Confiscation Orders

1. The DOJ-OCSC may provide assistance in obtaining an order to enforce freezing, seizure and confiscation orders, upon determination that –
 - a. the request relates to property or properties:
 - i. which are proceeds or instrumentalities of crime; or
 - ii. which belong to a person who unlawfully benefitted from a criminal activity; or
 - iii. which will satisfy some or all of a foreign pecuniary penalty order; and
 - b. in the case of -
 - i. an order for freezing or seizure - the order is in force in the requesting Party at the time of filing of the application with the court.
 - ii. an order for confiscation - the order is in force in the requesting Party, and not subject to further appeal, at the time of filing of the application with the court.
 - iii. there is a reasonable ground to believe that some or all of the properties to which the request relates are located in the Philippines.
2. The DOJ-OCSC or competent authority shall file an application with the court for the issuance of an order for the registration and enforcement of the freezing, seizure or confiscation order of the requesting Party. The authenticated copy of the order of the requesting Party shall be submitted in support of the application.

3. The provisions of pertinent laws of the Philippines relating to the rights of *bona fide* third parties shall apply.

I. Delivery, Custody and Disposal of Things Seized

- a. Upon seizure of the item subject of the request, and in addition to the return on the search warrant required under the Rules of Court, the officer seizing the property shall immediately notify the DOJ-OCSC.
- b. The manner indicated in the request for the delivery, custody and disposal of the item seized shall, to the extent not prohibited by Philippine laws, be observed.

J. Rights of Third Persons

Where a person was able to support a claim that he or she has a legitimate interest over the thing seized, the handing over of the item seized shall be subject to the condition that the requesting Party gives the guarantee to return them without costs after the conclusion of the proceedings for which the request for assistance was made.

II. Specific Requirements for Requests for Assistance to be Executed by the AMLC

1. The AMLC is the financial intelligence unit of the Philippines. Requests for bank inquiry/records, freezing, forfeiture or confiscation of proceeds of crimes, where the offense being investigated or prosecuted is money laundering/financing of terrorism (ML/TF) or any associated unlawful activity are referred to AMLC.
2. The AMLC, in the conduct of its investigation, shall apply with any competent court for the issuance of search and seizure order, *subpoena ad testificandum* and/or *subpoena duces tecum*.
3. The AMLC is mandated to implement targeted financial sanctions in relation to proliferation of weapons of mass destructions and its financing, including *ex parte* freeze, against all funds and assets of individuals or entities listed in relevant United Nations Security Council Resolutions.
4. The following are the specific requirements for requests to be executed by the AMLC:
 - a. confirmation that an investigation or prosecution is being conducted in respect of a person named in the request for ML/TF or associated unlawful activity, or that he or she has been convicted of ML/TF or any associated unlawful activity;
 - b. the ground/s on which any person is being investigated or prosecuted for ML/TF or associated unlawful activity or the details of his or her conviction;

- c. particulars sufficient to identify the person, and the specific monetary instrument or property. If it is a bank account, specify the bank account number;
- d. particulars sufficient to identify any financial institution, or non-financial business or profession, believed to have any information, document, material or object which may be of assistance to the investigation or prosecution;
- e. for requests for bank inquiry/documents, and freezing and forfeiture of assets, a clear connection between the monetary instrument or property and the unlawful activity. The allegation should support a finding of *probable cause* that the monetary instrument or property is related to the unlawful activity.

5. Freezing of Assets

- a. Monetary instruments or properties may be the subject of a freeze order issued by the court upon an *ex parte* petition filed by the AMLC. The request must provide supporting narratives or proofs to establish probable cause that the monetary instrument or property sought to be frozen is related to an unlawful activity.
- b. The AMLC can directly issue a freeze order on funds and other assets related to terrorism and terrorism financing.

6. Forfeiture of Assets

- a. The AMLC can initiate a non-conviction-based (civil) forfeiture case against any monetary instrument or property sought to be frozen that is related to an unlawful activity.
- b. Civil forfeiture is a full-blown case and may require some time before it is completed. For the security of the assets against withdrawal, dissipation, transfer or use, the AMLC may seek the provisional remedy of asset preservation order until the civil forfeiture case is terminated.
- c. The request should provide supporting narratives or proofs to establish probable cause that the monetary instrument or property sought to be forfeited is related to an unlawful activity. This will help the AMLC in building up its case to support the asset preservation order and the civil forfeiture case itself.

7. Preservation, Management or Disposal of Assets

- a. The provisions on the preservation, management or disposal of assets shall be subject to the applicable Philippine law or procedure, and/or treaty or convention used as basis for the request.
 - b. In the absence of any asset sharing agreement or arrangement, the forfeited assets will be retained by the Philippines and turned over to the National Treasury.
8. Where a requesting Party makes a claim on the assets subject of the civil forfeiture case, a Petition-in-Intervention may be filed at any time before judgment is rendered in the civil forfeiture case.
 9. Where the court has issued an order of forfeiture, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him or her and for the segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of forfeiture, within fifteen (15) days from the date of the finality of the order of forfeiture, in default of which the said order shall become executory.
 10. Queries relating to bank inquiry, obtaining bank records, freezing, forfeiture or confiscation of proceeds of crime, where the offense being investigated or prosecuted is ML/TF or any associated unlawful activity may be sent to:

The Anti-Money Laundering Council

Attention: Counselling, Adjudication and Mutual Legal Assistance Group
Room 507, 5/F EDPC Building
Bangko Sentral ng Pilipinas Complex
A. Mabini Street, Malate
Manila, Philippines
Tel.Nos.: +632 8708-7701 local 3153; +632 8708-7921
E-mail: secretariat@amlc.gov.ph

Part VII

**CONFIDENTIALITY, LIMITATIONS ON THE USE OF INFORMATION
AND EXCHANGE OF INFORMATION**

A. Confidentiality

1. The Philippines has adopted the policy of not disclosing whether it made or has received a request for assistance.
2. Request for assistance, any supporting documents, and action taken thereon are kept confidential, except to the extent necessary to execute the request.

3. If the requirement of confidentiality cannot be complied with, the requested Party, through its Central Authority, informs the requesting Party to determine if it still wants to pursue the request.

4. If the request would involve the filing of an application in court for its execution, the request and the information provided therein would be considered of public record once the application is filed. Thus, the protection of confidentiality may no longer apply unless the information or evidence is also protected under Philippine laws.

B. Limitations on the Use of Information/Evidence

1. Any information or evidence provided by the Philippines may only be used in the investigation or criminal proceeding referred to in the request for assistance. If the requesting Party wishes to use the information or evidence for a purpose, or in a proceeding, not stated in the request, it must first secure the consent of the Philippine Central Authority.

2. The same rule applies to information or evidence obtained by the Philippines. A Philippine law enforcement or prosecution authority that wishes to use information or evidence obtained from the requested Party for a purpose, or in a proceeding, not stated in the request for assistance pursuant to which the said information or evidence was obtained, should seek the authorization of the requested Party through the Philippine Central Authority.

C. Spontaneous Transmission of Information

1. The Philippines may, through its Central Authority and within the limits allowed by law, without prior request, forward to the Central Authority or appropriate authority of a foreign State or jurisdiction information obtained within the framework of its investigations when it considers that the disclosure of such information might assist the receiving foreign State or jurisdiction in initiating or carrying out investigations or proceedings concerning a criminal matter or might lead to a request for assistance by that foreign State or jurisdiction.

2. Prior to providing such information, the Philippine Central Authority shall request that the information be kept confidential or be used subject to conditions.

Part VIII

GROUND FOR REFUSAL OR POSTPONEMENT OF ASSISTANCE

1. The Philippines accedes to most requests received and, in general, there is a presumption that a request for assistance will be provided where all the requirements of the treaty or convention used as basis for the request and Philippine law have been met. The Central and executing authorities may, in the evaluation of the request, consider whether to accede to, or deny such request.

2. The grounds for refusal may be mandatory or discretionary. Where a request is made on the basis of a treaty or convention, the provisions of the said treaty or convention relating to the grounds for refusal or postponement of assistance shall be observed. For requests from the Philippines, the requested Party may have its own grounds for refusing or postponing a request for assistance.

A. Mandatory Grounds

A request for assistance shall be refused if the Central Authority has determined that –

1. the request relates to the investigation, prosecution or punishment of a person for an offense of a political nature or only under military law;
2. there is a substantial ground to believe that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, nationality, ethnic origin, political opinions, sex (gender), or status, or (when/where) his or her position may be prejudiced for any of those reasons;
3. the request relates to the investigation, prosecution, or punishment of a person for an offense in a case where the person –
 - i. has been convicted, acquitted or pardoned by a competent court or other authority in the Philippines or any foreign State or jurisdiction; or
 - ii. has undergone the punishment provided by the law of the Philippines or any foreign State or jurisdiction, in respect of that offense or of another offense constituted by the same act or omission as the first-mentioned offense;
4. the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Philippines; or
5. the provision of the assistance would require steps to be taken that would be contrary to the laws of the Philippines.

B. Discretionary Grounds

A request for assistance may be refused by the Central Authority if:

1. the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Philippines, would not have constituted an offense against the laws of the Philippines;
2. the provision of assistance could prejudice a criminal matter in the Philippines;

3. the requesting Party has, in respect of that request, failed to comply with any requirements of the treaty, or other relevant agreements between the Philippines and that Party;
4. the requesting Party fails to undertake that:
 - i. it will be able to comply with a future request of a similar nature by the Philippines for assistance in a criminal matter;
 - ii. the item requested for will not be used for a criminal matter and the Philippines has not consented to waive such undertaking; or
 - iii. it will return to the Philippines, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
5. the provision of assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Philippines;
6. the request is *de minimis*, or the assistance requested is not proportionate to the crime being investigated or prosecuted. A request shall be considered as *de minimis*, if, among others:
 - i. the offense subject of the investigation or prosecution is punishable by a prison term of less than one (1) year;
 - ii. the impossible penalty for the offense under investigation or prosecution is a fine of less than US\$10,000.00 or its equivalent in Philippine peso;
 - iii. the loss or damage is less than US\$10,000.00 or its equivalent in Philippine peso; or
 - iv. the alleged crime was committed more than ten (10) years ago and the explanation provided for the delay in the investigation or prosecution of the offense, or the submission of the request for assistance, is determined by the Philippine Central Authority to be insufficient.
7. the assistance requested could reasonably be obtained by other means, such as through informal cooperation;
8. the provision of assistance would impose an excessive burden on the resources of the Philippines; or
9. the request is for a coercive or intrusive measure for which the Philippines requires dual criminality and in respect of which there is no equivalent offense in the Philippines.

C. De Minimis Requests

1. The Philippine Central Authority and competent authorities have limited resources, thus, in considering the requests for assistance, they implement prioritization and practice efficient allocation of resources to ensure that the execution of the requests is commensurate with the risks involved.

2. When considering the *de minimis* criteria for refusing a request for assistance, the following factors shall also be taken into account:

- i. whether the criminal activity being investigated or prosecuted is an identified high-risk crime;
- ii. whether the request involves huge amounts of instrumentalities and/or proceeds of crime;
- iii. whether the request came from an identified high-risk foreign State or jurisdiction;
- iv. whether a Philippine investigating or prosecuting authority would send a request in similar circumstances;
- v. whether the request is for a “coercive” action;
- vi. whether there are resource implications for a number of competent authorities;
or
- vii. whether the request is made on the basis of a treaty or convention.

D. Postponement of Assistance

Assistance may be postponed if the immediate execution of the request would interfere with, or prejudice, any ongoing proceeding relating to a criminal matter in the Philippines.

E. Information to, or Consultation with, the Requesting Party Before Refusing or Postponing Assistance

1. Before refusing or postponing assistance, the Philippine Central Authority shall:
 - i. inform the requesting Party of the reason for considering refusal or postponement;
and
 - ii. consult with the requesting Party to determine whether assistance may be given subject to such terms and conditions as the Philippine Central Authority deems necessary.
2. If the Philippine Central Authority refuses or postpones assistance, it shall inform the requesting Party of the grounds for refusal or postponement.

Part IX

INFORMAL COOPERATION

1. Informal cooperation entails police and other law enforcement agencies in a requesting Party asking for the assistance of law enforcement agencies in the Philippines to gather information for an investigation. This can be an easier and quicker way to obtain intelligence information and evidence, as it does not require an MLA request. In many countries’ legal systems, information collected by Philippine law enforcement agencies is directly admissible as evidence in criminal trials abroad (with the permission of the Philippine law enforcement agency that provided the information and evidence). For instance, countries which do not require evidence to

be sworn by witnesses in a court under their domestic law can consider using law enforcement cooperation to request information to be used as evidence.

2. Some records that may be obtained through informal cooperation include criminal and company records. Although requests for criminal records may form part of a wider formal MLA request, a foreign State or jurisdiction may informally obtain criminal record information from relevant Philippine law enforcement agencies.

3. Information about corporations and other legal/juridical persons in the Philippines that is not required as evidence may be acquired through the online facility of the Security and Exchange Commission's i-View.

4. The following is a non-exhaustive list of Philippine government agencies that can directly receive informal inquiries from, and provide intelligence information to, foreign law enforcement agencies (in some cases this will be subject to a data sharing agreement or memorandum of understanding) in accordance with their respective rules and regulations:

- a. INTERPOL NCB Manila, through the Philippine Center on Transnational Crime
 - b. AMLC (for financial intelligence, anti-money laundering and counter-terrorism financing matters)
 - c. National Intelligence Coordinating Agency (for counter-terrorism matters)
 - d. Department of Foreign Affairs (for visa and passport matters)
 - e. National Bureau of Investigation (for transnational crimes)
 - f. Philippine National Police (for all types of crimes)
 - g. Office of Cybercrime of the Department of Justice (for cybercrime and cyber-related offenses)
 - h. Philippine Drug Enforcement Agency (for anti-illegal drug matters)
 - i. Bureau of Immigration (for immigration and cross-border matters)
 - j. Bureau of Internal Revenue (for tax matters)
 - k. Bureau of Customs (for customs and anti-smuggling matters)
 - l. *Bangko Sentral ng Pilipinas* (for banking and non-banking matters)
 - m. Insurance Commission (for insurance and pre-need matters)
 - n. Securities and Exchange Commission (for securities matters, and information on corporate and other legal/juridical entities)
-

ANNEXES

ANNEX “A”

List of the Philippines’ Bilateral Mutual Legal Assistance Treaties in Criminal Matters and Multilateral Treaties in which the Philippines is a Party¹

The Philippines has MLATs with the following countries:

1. Commonwealth of Australia (Australia);
2. People’s Republic of China (China);
3. Hong Kong Special Administrative Region (Hong Kong);
4. Republic of Korea (South Korea);
5. Russian Federation (Russia);
6. Kingdom of Spain (Spain);
7. Swiss Confederation (Switzerland);
8. United Kingdom of Great Britain and the Northern Ireland (UK); and
9. United States of America (US).

The Philippines is a Party to the Association of Southeast Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLAT).

The Philippines is also a Party to several multilateral treaties that contain provisions on MLA, including the:

1. United Nations (UN) Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (Vienna Convention);
2. UN Convention against Transnational Organized Crime and its Protocols (UNTOC/Palermo Convention);
3. UN Convention Against Corruption (UNCAC/Merida Convention);
4. International Convention for the Suppression of the Financing of Terrorism (TF Convention/New York Convention);
5. Convention on Cybercrime (Budapest Convention);
6. ASEAN Convention on Counter Terrorism; and
7. ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

¹ List as of December 2020

ANNEX “B”
Form of Request for Assistance by the Philippines

To: [name of the Central Authority of the Requested Party]
Subject: [Request for Assistance in the (Indicate the Criminal Matter)]
Ref. No.:

[The Department of Justice, as the Central Authority of the Republic of the Philippines, requests the assistance of the appropriate authorities of (indicate name of the requested Party) pursuant to (indicate basis of the request)].

[Indicate the name of the Philippine authority conducting the investigation or prosecution of (indicate the criminal matter to which the request relates and its current status)]

The Facts

[statement setting out a summary of the relevant facts constituting the offense and law/s violated; description of the offense/s under investigation or prosecution to which the request relates, and the maximum imposable penalty; statement whether the person/s named in the request are witnesses, victims, or suspects/accused; connection between the evidence requested and the offense being investigated or prosecuted; etc.]

Subject/s of Investigation/Prosecution

[Indicate name/s and other available personal information on the subject/s of investigation/prosecution [e.g., DOB/POB, nationality, address/es, etc.]

The Offense/s

[Indicate offense subject of investigation/prosecution, including text of the specific provision of law]

Need for Assistance

[Indicate specific assistance sought [e.g., obtaining information/documents; etc.; assistance sought should be relevant/have link to the offense/s being investigated/prosecuted; reason for urgency, if urgent; etc.; undertaking, if any]

Confidentiality

[Indicate confidentiality requirement, if necessary; stating the reason/s for such confidentiality]

Contact Person

[Indicate contact person in the Central Authority and requesting law enforcement/prosecution authority]

[Date]

Secretary
Department of Justice
Philippines

[DOJ Seal]

ANNEX “C”
Form of Request for Assistance to the Philippines

To: The Central Authority of the Philippines

Subject: [Request for Assistance in the (Indicate the Criminal Matter)]

[Indicate the name of the Central Authority (or requesting authority) of (indicate name of the requesting State or jurisdiction), requests the assistance of the appropriate authorities of the Philippines pursuant to (indicate basis of the request)].

[Indicate the name of the authority conducting the investigation or prosecution of (indicate the criminal matter to which the request relates and its current status)]

The Facts

[statement setting out a summary of the relevant facts constituting the offense and law/s violated; description of the offense/s under investigation or prosecution to which the request relates, and the maximum imposable penalty; statement whether the person/s named in the request are witnesses, victims, or suspects/accused; connection between the evidence requested and the offense being investigated or prosecuted; etc.]

Subject/s of Investigation/Prosecution

[Indicate name/s and other available personal information on the subject/s of investigation/prosecution [e.g., DOB/POB, nationality, address/es, etc.]

The Offense/s

[Indicate offense subject of investigation/prosecution, including text of the specific provision of law]

Need for Assistance

[Indicate specific assistance sought [e.g., obtaining information/documents; etc.; assistance sought should be relevant/have link to the offense/s being investigated/prosecuted; reason for urgency, if urgent; etc.; undertaking, if any]

Confidentiality

[Indicate confidentiality requirement, if necessary; stating the reason/s for such confidentiality)

Contact Person

[Indicate contact person in the Central Authority (requesting authority) and requesting law enforcement/prosecution authority]

(Date)

[Signatory]

[Seal]

ANNEX “D”

Form of Letter Request to the Department of Justice - Office of the Chief State Counsel of Philippine Law Enforcement and Prosecution Authorities Seeking Assistance from Foreign States or Jurisdictions

*[Mark as urgent and confidential
(only if truly urgent; if confidential)]*

[Date]

Secretary (Name) _____
Department of Justice
Padre Faura Street, Ermita
Manila 1000

Attention: **Chief State Counsel** _____ **[Name]** _____
Office of the Chief State Counsel

Dear **Secretary** _____:

[Indicate name of the authority conducting the investigation/prosecution; nature of the criminal matter and its current status].

The Facts

[statement setting out a summary of the relevant facts constituting the offense and law/s violated; description of the offense/s under investigation or prosecution to which the request relates, and the maximum imposable penalty; statement whether the person/s named in the request are witnesses, victims, or suspects/accused; connection between the evidence requested and the offense being investigated or prosecuted; etc.]

Subject/s of Investigation/Prosecution

[Indicate name/s and other available personal information on the subject/s of investigation/prosecution [e.g., DOB/POB, nationality, address/es, etc.]

The Offense/s

[Indicate offense subject of investigation/prosecution, including text of the specific provision of law]

Need for Assistance

[Indicate specific assistance sought [e.g., obtaining information/documents; etc.; assistance sought should be relevant/have link to the offense/s being investigated/prosecuted; reason for urgency, if urgent; etc.; undertaking, if any]

Confidentiality

[Indicate confidentiality requirement, if necessary; stating the reason/s for such confidentiality]

Contact Person

[Indicate name and contact details of the law enforcement or prosecution officer who can respond to inquiries concerning the request]

Signatory

[Indicate any enclosures]

ANNEX "E"

Acknowledgement Letter by the Department of Justice - Office of the Chief
State Counsel of Receipt of Request for Assistance

[Confidential]

[Date]

[Name of the officer/official making the request]

[Name of the requesting authority]

[Address]

Subject: [Indicate the matter subject of the request and reference no.]

Dear _____:

This is to acknowledge receipt of your letter dated _____ on the above-captioned subject.

Our Office will evaluate the request and communicate with you on the action taken on the request.

For any inquiries relating to the request, please send email to ocsc@doj.gov.ph.

Thank you.

Chief State Counsel

REFERENCES

Philippine Bilateral Treaties

ASEAN Treaty on Mutual Legal Assistance in Criminal Matters

ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases 2010 Edition

United Nations (UN) Office on Drugs and Crime Manual on Mutual Legal Assistance in Criminal Matters

UN Convention against Transnational Organized Crime

UN Convention against Corruption

Apostille Convention

Rules of Court

Rule on Cybercrime Warrants (A.M. No. 17-11-03-SC dated 03 July 2018)

Republic Act No. 9160 (Anti-Money Laundering Act of 2001), as amended

2019 Revised Implementing Rules and Regulations of Republic Act No. 10592 (An Act Amending Articles 29, 94, 97, 98, and 99 of the “Revised Penal Code”)

Implementing Rules and Regulations (IRR) of Republic Act No. 10175 (Cybercrime Prevention Act of 2012)

Dasmariñas Garments, Inc. vs. Reyes, G.R. No. 108229, 225 SCRA 622 (1993)

People vs. Pastrana and Abad, G.R. No. 196045, 826 Phil. 427 (2018)

Vallejo vs. Court of Appeals, G.R. No. 156413, 427 SCRA 658 (2004)
