



Tool 4.5 Mutual legal assistance checklist

Overview

This tool offers a checklist for making mutual legal assistance requests.

The Informal Expert Working Group on Mutual Legal Assistance Casework Best Practice of the UNODC Legal Advisory Programme met in Vienna in 2001. The Informal Expert Working Group comprised experts from Africa, the Americas, Asia and the Pacific, the Caribbean and Europe representing all major legal traditions. In its final meeting report, the group compiled best practice recommendations to improve mutual legal assistance in casework. Also contained in this report are various checklists, including the following general checklist for preparing mutual legal assistance requests.

Mutual legal assistance checklist

Requests for mutual legal assistance should include the following:

Identification

Identification of the office/authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office/authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer/prosecutor and/or judicial officer (form I).

Prior contact

Details of any prior contact between officers in the requesting and requested States pertaining to the subject matter of the request.

Use of other channels

Where a copy of the request has been or is being sent through other channels, this should be made clear in the request.

Acknowledgement of the request

A cover sheet incorporating the acknowledgement for completion and return to the requesting State.

Indication of urgency and/or time limit

A prominent indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit.

Confidentiality

A prominent indication of any need for confidentiality and the reason therefore and the requirement to consult with the requesting State, prior to execution, if confidentiality cannot be maintained.

Legal basis for the request

A description of the basis upon which the request is made, e.g. bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity.

Summary of the relevant facts

A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s).

Description of the offence and applicable penalty

A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State.

Description of the evidence/assistance requested

A description in specific terms of the evidence or other assistance requested.

Clear link between proceeding(s) and evidence/assistance sought

A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (i.e. a description of how the evidence or other assistance sought is relevant to the case).

Description of the procedures

A description of the procedures to be followed by the requested State's authorities in executing the request to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the requesting State, and reasons why the procedures are required.

Presence of officials from the requesting State at the execution of the request

An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested.

Language

All requests for assistance should be made in or accompanied by a certified translation into a language specified by the requested State.

Note: Where it becomes evident that a request or the aggregate of requests from a particular State involves a substantial or extraordinary cost, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne.



This resource can be downloaded at:

www.unodc.org/pdf/lap_mlaeg_report_final.pdf

Some governments have created their own checklists to facilitate the process of requesting assistance. One such example is that created by the Australian Attorney-General's Department for States wishing to request such assistance from Australia, available at:

www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance_Mutualassistance_Mutualassistanceincriminalmatters-checklistforrequestsfromothercountriestoAustralia