



Mutual Legal Assistance in Criminal Matters

MAURITIUS

Part I: Legal and Procedural Framework

- The Mutual Assistance in Criminal and Related Matters Act 2003 ("The Act")
- The Letters of Request Rules 1985

Part II: Conditions and requirements for an incoming request

- A. Legal Basis
- B. Contents and legislative requirements
- C. Central Authority
- D. Transmission modes
- E. Who can make a request?
- F. Types of assistance covered under the Act
- G. Grounds for refusal

A. Legal Basis

- Bilateral treaty
- Regional treaty
- Multilateral treaty
- Reciprocity

B. Contents and Legislative Requirements - section 4(3) of the Act

Request must be in writing and must-

- ✓ give the names of the requesting authority and the authority conducting the proceedings;
- ✓ provide a description of the nature of the proceedings;
- ✓ give summary of relevant facts and laws;
- ✓ explain the purpose of the request and the nature of the assistance being sought;
- ✓ give details of any procedure which is required to be followed to comply with the laws of the foreign State;
- ✓ include confidentiality clause and time limit within which compliance with the request is desired, stating reasons;
- ✓ indicate the name and address of the person to be served, where necessary;
- ✓ be supplemented with such other procedures, formalities, and information as may be required by the foreign State to give effect to the request;
- ✓ be translated in the official language of the Requested State; and
- ✓ give details of a contact person.

C. Central Authority

- The Central Authority of Mauritius under the Act is the Attorney-General who may make and receive requests for mutual assistance.

D. Transmission modes

- Official Request should be addressed to the Central Authority and may be sent either directly to the Central Authority or via diplomatic channels.
- In appropriate cases, a request may be sent by email or fax, although an official request is to follow.

E. Who can make a request to the Central Authority of Mauritius?

- A **foreign State** may, in relation to a serious offence, and an international criminal tribunal may, in relation to an international criminal offence, make a request for assistance to the Central Authority in any **proceedings** commenced in the foreign State or before the international criminal tribunal.
- Serious offence is defined under the Act as being –
 - (i) an offence against a law of Mauritius, for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months;
 - (ii) an offence against a law of a foreign State for which the maximum penalty is imprisonment or other deprivation of liberty for a period of not less than 12 months;
 - (iii) an international criminal tribunal offence.

F. Types of assistance covered under the Act-s4(2)

- Taking of evidence or statement or production of documents or other articles;
- Taking of evidence by means of technology ;
- Executing searches and seizures;
- Locating or restraining any property reasonably believed to be the proceeds of a serious offence and located in Mauritius;
- Confiscating any property reasonably believed to be located in Mauritius, which is the subject of a confiscation order made by a Court in the foreign State;
- Taking measures for the freezing or confiscation of proceeds of a serious offence;
- Permitting the presence of an authorised person during the execution of any request made;
- Effecting service of documents;
- Examining any person with his consent, any object or any site;
- Locating and identifying persons;

Types of mutual assistance covered under the Act – Cont'd

- Facilitating the appearance of witnesses or the attendance of persons in proceedings subject to practical and financial arrangements as may be agreed upon; and
- Transfer in custody to the foreign State a person detained in Mauritius, who consents to give evidence or to assist the foreign State in the proceedings.

G. Grounds for refusal

The Central Authority may refuse the request, in whole or in part, on the ground

- that compliance with the request would be contrary to the Constitution of Mauritius;
- of prejudice to the sovereignty, international relations, security, public order, or other public interest of Mauritius;
- of reasonable belief that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions, or that a person's position may be prejudiced for any of those reasons;
- of absence of dual criminality;
- that the request relates to an offence under military law, or a law relating to military obligations, which would not be an offence under ordinary criminal law;
- that the request relates to a political offence or an offence of a political character;
- that the request relates to an offence, the prosecution of which, in the foreign State, would be incompatible with laws of Mauritius on double jeopardy; and
- that the request requires Mauritius to carry out measures that are inconsistent with its laws and practice, or that cannot be taken in respect of criminal matters arising in Mauritius.

Part III: Process of executing an incoming request

Step 1: Receipt of Official request by the Central Authority

- Request is assigned by the Solicitor General to designated officers, normally a State Attorney and State Counsel

Part III: Process of executing an incoming request

Step 2: Verifying compliance

- The request is considered to determine whether it fulfils the conditions and legislative requirements
- If the Requesting State has not complied with the conditions and requirements or if additional information is required, the Requesting State is so informed indicating the deficiencies or the information required so that it may complete it or send a fresh request.
- If request is complete, it is referred to the Central Authority for approval.

Part III: Process of executing an incoming request

Step 3: Granting of Request

- The Central Authority considers that statutory criteria for providing assistance and the relevant grounds for refusal.
- **The Central Authority** may **promptly grant** a request, in whole (if complete) or in part, on such terms and conditions as it thinks fit or refer the matter to the **appropriate authority** for prompt execution of the request, in which case the Central Authority may represent the foreign State in proceedings entered to give effect to the request.

Part III: Process of executing an incoming request

Step 4: Court Process

- When the **Central Authority** grants a Request, an ex parte application may be made to the Judge in Chambers or the Supreme Court, where appropriate, for-
 - an evidence-gathering order (for the examination of persons in Mauritius or the production of documents);
 - a restraining order in relation to proceeds of crime located in Mauritius;
 - the registration of foreign restraining or confiscation orders;
 - the issue of a search warrant.
 - a virtual evidence-gathering order (to permit, by technological means, the examination and virtual presence of a person in proceedings in a foreign State);

Part III: Process of executing an incoming request

Step 5: Execution and transmission of evidential material

Following execution of the Request, evidence produced to the Court is handed over to the Central Authority for transmission to the Requesting State either via diplomatic channels or by courier (in case of urgent matters)

PART V – INFORMAL ASSISTANCE

- Section 3(4) of the Act permits informal assistance between Mauritius and a foreign State