



Obtaining Assistance from the Democratic Socialist Republic of Sri Lanka in Criminal Matters

Guidelines for making applications under the Mutual Assistance in Criminal Matters Act. No. 25 of 2002 as amended by Act No. 24 of 2018.

Ministry of Justice, Prison Affairs and
Constitutional Reforms of
Democratic Socialist Republic
of Sri Lanka.

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Introduction

The main purpose of the guideline is to provide,

- I. Brief description about the Mutual Assistance in Criminal Matters Act No. 25 of 2002 as amended by Act No. 24 of 2018
- II. General information on how requests for legal assistance in criminal matters executed in Sri Lanka.
- III. Assisting foreign Authorities in preparing and making requests to Sri Lanka by providing information and formats

Application of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 as amended by Act No. 24 of 2018

The Act is to provide for the rendering of Assistance in Criminal matters by the democratic Socialist Republic of Sri Lanka, hereinafter referred to as Sri Lanka, and specified countries; and for matters connected.

The Minister may be by order published in the Gazette declare that the provisions of this Act shall apply to;

- 2.1 Every country that is a party to an international or a regional Convention or other agreement which is in the interest of mutual assistance in criminal matters, to which Sri Lanka has become a party, whether before or after the date of commencement of the Act mentioned above;
- 2.2 A country which has entered into an agreement with Sri Lanka for mutual assistance in criminal matters;
- 2.3 A country which has not entered into any agreement with Sri Lanka, where the Minister may determine that it is in the best interests of the sovereign nations that Sri Lanka extends and obtains assistance on the basis of reciprocity;
- 2.4 An intergovernmental organization combatting corruption, money laundering or financing of terrorism, on such terms and conditions as may be necessary and on the assurance of reciprocity.

3.0 Objectives of the Mutual Assistance in Criminal Matters Act No. 25 of 2002 as amended by Act No. 24 of 2018

The object of the Act is to facilitate the provision and obtaining by Sri Lanka of assistance in Criminal matters including -

- a. The locations and identification of witnesses or suspects;
- b. The service of documents;
- c. The examination and interviewing of witnesses or suspected persons;
- d. The provision and obtaining of evidence, documents, other articles or information;
- e. The execution of requests for search and seizure;
- f. The effecting of temporary transfer of a person in custody to appear as a witness;
- g. The facilitation of the personal appearance of witnesses;
- h. The criminal infringement of intellectual property including copyright infringement;
- i. The information relating to the location of a computer system or any other property connected with any criminal activity;
- j. The enforcement of any orders for the payment of fines;
- k. The forfeiture or freezing of property pursuant to the relevant laws on such matters;

- l. The tracing of crimes committed *via* internet, information communications technology, cloud computing, blockchain technology and other computer networks including the trading in of any digital currencies;
- m. The bribery of any foreign public official or official of a public international organization and their respective proxies and beneficiaries;
- n. The expedited preservation of stored computer data and expedited disclosure of preserved traffic data and data retention;
- o. The location of proceeds of a criminal activity;
- p. The use of documentary evidence obtained in a specified country through specific authorization to be made admissible in a judicial proceeding; and
- q. The admissibility and applicability of evidence led from a specified country through video conferencing technology.

4.0 Central Authority

The Secretary to the Ministry of the Minister shall be the Central Authority for the purposes of the Act No. 25 of 2002, as amended.

Postal Address - Secretary, Ministry of Justice and Prison Reforms,

Superior Courts Complex, Colombo 12,
Central Authority of Sri Lanka.

Fax - 011-2445447

E-mail - secretary@moj.gov.lk

Tel - 011-2449959

4.1 Role of the Central Authority upon receipt of the request in exigent situations.

Requests sent to the Ministry of Justice and Prison Reforms, will be processed expeditiously, based on the availability of the details requested.

- The Central Authority may direct a competent authority to spontaneously transmit information requested relating to a criminal matter to an appropriate authority of a specified country or specified organization in exigent situation on the assurance of reciprocity and on such conditions as may be necessary for the purposes of confidentiality.
- The “exigent situation” shall be determined by the central Authority having considered the gravity of the offence or the insidious nature of the criminal matter, setting out reasons in writing.

5.0 Requests made by a specified country/specified organization

- 5.1 An application shall be made to the Central Authority by the appropriate authority of a specified country or specified organization requesting for information or assistance in respect of such criminal and related matters be obtained to prevent, detect, investigate or institute proceedings in respect of a criminal activity within or outside that country.
- 5.2 The application shall be made substantially in the Form set out in the schedule of the Act No. 25 of 2002 and shall be accompanied by such documents as may be specified for that purpose by the Central Authority to enable prompt action.
- 5.3 A request which confirms to the provision in 5.2 above, may be forwarded through electronic means directly to the relevant Competent Authority through the appropriate authority of a specified country or specified organization.
- 5.4 Where a request is made directly to a competent authority as mentioned in 5.3 above, the said competent authority shall immediately inform the Central Authority by forwarding a copy of the relevant request.

6.0 Contents of Requests

A request to Sri Lanka for assistance should include the following:-

- (a) The particulars of the “appropriate authority” making the request.
- (b) Legal basis of the request to be specified
- (c) Statement of reciprocity
- (d) A description of the nature of the criminal matter
- (e) Details pertaining to the relevant competent Authority
- (f) Information on prior contacts concerning the request made with any person or competent Authority in Sri Lanka.
- (g) Details of list of offences, national legislations related to the offences specified relevant provisions, a statement setting out the maximum penalties for the offences specified and to which the criminal matters related to.
- (h) Full particulars of persons under investigation or prosecution including names, alias, gender, addresses, Date of Birth, place of birth, Nationality at birth, passport number, citizenship, languages etc.
- (i) Details of the company/organization associated with, including the name, place of incorporation, Date of incorporation, addresses, Director’s/ Principal’s/controller’s details including officer’s identification information, Full name, title/ position, address and history.
- (j) Provide a short summary of all relevant facts including details :
 - (i) Leading to the arrest, charging or conviction of persons involved;

- (ii) Leading to making of any restraining or forfeiture order;
 - (iii) Leading to any seizure of property for evidentiary purposes;
 - (iv) Indicating the connection of the criminal behavior in issue and the assistance requested;
 - (v) Showing clearly how execution of the request will contribute to the case outcomes;
- (k) A short summary of the current status of the case including if appropriate;
- (i) Investigations (commenced, continuing, concluded)
 - (ii) Relevant properties (restrained, freezed, seized, confiscated)
 - (iii) Arrests (date, warrants, etc.)
 - (iv) Charges laid
 - (v) Prosecution (commenced, continuing, concluded);
 - (vi) Trial (commenced, continuing, concluded);
 - (vii) Convicted/ Condemned and the date;
 - (viii) Details of appeals if any,
- (l) Details pertaining to the urgency of the request.
- (m) Any other particular information to process the request.
- (n) List of Annexures.

(o) Instructions pertaining to the submission of the documents:-

(i) Translations of documents to be sent in English translated by a Sworn or authorized translator.

(ii) A document shall be deemed to be duly authenticated if -

- Signed or certified by a Judge, Magistrate or Officer in, or of the respective country; and
- Authenticated by the oath of a witness or an officer of the government of the respective country or to be sealed with the official or public seal of the respective country or of a Minister of state or of a Department or officer of the Government of the respective country.
- All documents forwarded with the request shall be comprehensive, precise and easily understandable manner.

(p) Declaration as specified in the schedule in view of section 5(2) of Mutual Assistance in Criminal Matters (Amendment) Act No. 24 of 2018

7.0 Grounds for Refusal of assistance

7.1 A request by the appropriate authority of a specified country for assistance shall be refused, in whole or in part, if in the opinion of the Central Authority or the competent authority having consulted the Central Authority -

(a) the request relates to the prosecution or punishment of a person in respect of an act or omission which, if it had occurred in Sri Lanka would not have constituted an offence under the law of Sri Lanka;

(b) the request relates to the prosecution or punishment of a person for an offence of a political character;

(c) the request relates to the prosecution or punishment of a person in respect of an act or omission which if it has occurred in Sri Lanka, would have constituted an offence only under the military law of Sri Lanka;

(d) a request relates to the prosecution of a person in connection with a criminal matter where -

(i) Criminal investigation or proceedings has commenced in Sri Lanka; or

(ii) Such person has been acquitted or convicted in accordance with

the laws of Sri Lanka, in respect of that offence or another constituted by the same act or offence omission as that which constituted the offence.

- (e) compliance with the request would be contrary to the constitution of Sri Lanka or pre judicial to national security, international relations or public policy;
- (f) based on substantial grounds, compliance with the request would facilitate the prosecution or punishment of or cause prejudice to, any person on account of his race, religion, language, caste, sex, political opinions or place of birth.

7.2 Exceptional grounds pertaining to the refusal of assistance

- (i) If it shall be lawful for the Central Authority to entertain a request relating to an act or omission which would not have constituted an offence under the law of Sri Lanka had it occurred in Sri Lanka, if in the opinion of the Central Authority, such act or omission is of a serious nature, and is a Criminal matter.
- (ii) For the purpose mentioned above, offence shall be deemed not to be an offence of a political character, if it is an offence within the Scope of an International convention to which both Sri Lanka and the specified country making the request are parties and which imposes on the parties thereto an obligation to extradite or prosecute a person accused of the commission of that offence.

8.0 Request by a Specified country/Specified organization for tracing proceeds of crime

Where a person has been charged with or convicted of, or is suspected on reasonable grounds of having committed a serious offence in a specified country and there are reasonable grounds to believe that any property derived or obtained, directly or indirectly from the commission of that offence, is in Sri Lanka, and the appropriate authority requests assistance from the Central Authority, **the Central Authority may require the relevant law enforcement authority to provide assistance to identify, locate a person or assist in assessing the value of the property.**

9.0 Assistance in relation to findings of bribery of Foreign Public Official or Official of a Public International Organization

Where an appropriate authority of a specified country or specified organization makes a request, having reasonable grounds to believe that a foreign public official or an official of a public international organization has been involved in bribery, the provisions of the Act No. 25 of 2002 as amended by Act No.24 of 2018 shall apply in order to identify or locate the said official or to assess the value and locate the proceeds of bribery relating to the said foreign official, his proxies and beneficiaries.

10.0 Request by Sri Lanka for identifying of bribery of a foreign official

Where there are reasonable grounds to believe that an offence under the Bribery Act of Sri Lanka has been committed in which a foreign public official or an official of a public international organization is involved, the Central Authority may request the appropriate authority of a specified country of specified organization in which such foreign official is resident to identify and locate such official and assess the value and locate the proceeds of bribery, relating to the said foreign official, his proxies and beneficiaries.

Standard Mutual Assistance request form

“SCHEDULE

[Section 5(2)]

**MUTUAL ASSISTANCE REQUEST FORM
TO THE CENTRAL AUTHORITY OF SRI LANKA**

1. Name of the Country or Intergovernmental

Organization:.....

2. Details of the Appropriate Authority:

2.1 Name:.....

2.2 Title or Function:.....

2.3 Ministry, Institution or Department:.....

2.4 Address:.....

2.5 Telephone:.....

2.6 Fax:.....

2.7 Email:.....

2.8 Website:.....

3. Legal basis of the request:

3.1 Mention the legal basis of the request:*

International or Regional Convention (Please specify).....

Agreement(Please specify).....

Intergovernmental Organization (Please specify).....

Other (Please specify).....

*Please tick “P” in the relevant box

3.2 Statement of reciprocity: [If space is insufficient, please provide necessary attachments.]

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3.3 Any other additional information required under the Convention or Agreement: [If space is insufficient, please provide necessary attachments.]

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4. Assistance type:

4.1 Mention the assistance type:*

- Locating and identifying suspects/witnesses/other persons.
- Arrangement for obtaining of the evidence, documents, other articles or information.
- Service of summons.
- Arrangement for the removal of prisoner or witness for the purposes of giving evidence.
- Arrangement for the issue of a search warrant for the search and seizure.
- Joint Investigations.
- Enforcement of orders.
- Forfeiture or freezing of property.
- Locating, identifying and assessing the value of property.
- Expedited preservation of computer data or traffic data.
- Releasing of preserved data.
- Other. (Please specify).....

*Please tick “ · ” in the relevant box(es)

4.2 Full description of important information: [If space is insufficient please provide necessary attachments]

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5. Relevant Competent Authority:

5.1 Mention the category of the relevant competent authority:*

- Law Enforcement or Investigating Authority
- Prosecuting Authority
- Judicial Authority
- Other (Please specify).....

*Please tick “ · ” in the relevant box(es)

5.2 Provide the name and the other relevant details (including functions, the main responsibilities and contact details) of the relevant competent authority:

[If space is insufficient please provide necessary attachments.]

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6. Prior Contacts:

Please provide details of prior contacts concerning this request made with any person or competent authority in Sri Lanka: [If space is insufficient please provide necessary attachments.]

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7. List of Offences:

Please provide the following details of offence(s). [If space is insufficient please provide necessary attachments.]

7.1 Offence:

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7.1.1 Details of national legislation(s) related to the offence:

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7.1.2 Relevant provisions:

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7.1.3 Maximum penalties for the offence:

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8. Details of person(s):

8.1 Suspects/Offenders:

If known please provide the information on identification of the person or persons who are the subject of the request including Full Name, aliases, Gender, Address(es), Date of Birth, Place of Birth, Nationality at birth, Passport Number and location, Citizenship(s), Language(s), etc. [If space is insufficient please provide necessary attachments.]

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8.2 Company/Organization:

If known please provide the information on identification of the company or organization who are connected with the request including Name, Place of Incorporation, Date of Incorporation, Address(es), Director's/Principal's/Controller's details including Officer's identification information, Full Name, Title/ Position, Address, History. [If space is insufficient please provide necessary attachments.]

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9. Provide a short summary of all relevant facts including details:

- Leading to the arrest, charging or conviction of persons involved;
- Leading to making of any restraining or forfeiture order;
- Leading to any seizure of property for evidentiary purposes;
- Indicating the connection of the criminal behavior in issue and the assistance requested;
- Showing clearly how execution of the request will contribute to the case outcomes;
- Any other information.

[If space is insufficient please provide necessary attachments.]

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10. Provide a short summary of the current status of the case including, if appropriate:

- Investigations (Commenced, Continuing, Concluded);
- Relevant properties (restrained, freezed, seized, confiscated);
- Arrests (date, warrants, etc.);
- Charges laid;
- Prosecution (Commenced, Continuing, Concluded);
- Trial (Commenced, Continuing, Concluded);
- Convicted/ Condemned and the date;
- Appeal(s);
- Any other information.

[If space is insufficient please provide necessary attachments.]

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11. Urgency:

11.1 Is the request urgent? (Yes/ No)*

*delete whatever is inapplicable.

11.2 Please provide the reason(s) for urgency and provide relevant deadlines:

[If space is insufficient please provide necessary attachments.]

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12. Provide any other particular information to process the request:

If space is insufficient please provide necessary attachments.]

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13. List of Annexures:

[If space is insufficient please provide necessary attachments.]

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14. Instructions:

- (1) Translations of documents to be sent in English, translated by a sworn or authorized translator.
- (2) A document shall be deemed to be duly authenticated if-

- (a) signed or certified by a Judge, Magistrate or Officer in, or of, the respective country; and
 - (b) authenticated by the oath of a witness or an officer of the Government of the respective country or to be sealed with the official or public seal of the respective country or of a Minister of State or of a Department or officer of the Government of the respective country.
- (3) All documents forwarded with the request shall be comprehensive, precise and easily understandable manner.

15. Declaration:

**I, (Full Name)....., am signing
 this request at (City/Place)
 (Code)....., (Country).....on (Date)
 under the power to make such requests vested
 directly in me/ as the Appropriate Authority.***

.....
Signature
Appropriate Authority of the Specified Country/Organization*

Official Seal