



# **Implementation Guidelines on Mutual Legal Assistance in Criminal Matters**

**Public Security Division  
Ministry of Home Affairs  
Government of the People's Republic of Bangladesh**

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## **List of Abbreviations**

CrPC	The Code of Criminal Procedure, 1898
INTERPOL	International Criminal Police Organization
ILO	Interpol Liaison Officer
LR	Letters Rogatory
MLA Request	Mutual Legal Assistance Request in Criminal Matters
MLAT	Mutual Legal Assistance Treaty
CID	Criminal Investigation Department, Bangladesh Police
MLPA	Money Laundering Prevention Act, 2012

## **CHAPTER I: OVERVIEW**

### **A. Mutual Legal Assistance in Criminal Matters**

- 1.1 Mutual Legal Assistance in Criminal Matters is a mechanism whereby countries cooperate with one another in order to provide and obtain formal assistance in prevention, suppression, investigation and prosecution of crime to ensure that the criminals do not escape or sabotage the due process of law for lack of evidence that is available in different countries.
- 1.2 Bangladesh provides mutual legal assistance in criminal matters in light of the applicable laws and rules of the country, notably the Mutual Legal Assistance in Criminal Matters Act -2012 (hereinafter referred to as 'Act') and the Mutual Legal Assistance in Criminal Matters Rules, 2013 ((hereinafter referred to as 'Rules'), subject to the assurance of reciprocity, irrespective of having Bilateral Treaties/Agreements with the requesting states.
- 1.3 The Mutual Legal Assistance Treaties (MLATs) in criminal matters are the bilateral treaties, concluded between the countries for providing international cooperation and assistance. List of Mutual Legal Assistance Treaties/Agreements concluded between Bangladesh and other foreign countries has been described in Figure 1.1 of Page 5.
- 1.4 This guideline on mutual legal assistance in criminal matters sets out an implementation pathway for mutual legal assistance with different foreign States.
- 1.5 In Bangladesh, Section 8, Section 9, Section 14 of the Act lay down the procedure of sending 'letter of request' through the Central Authority.
- 1.6 The procedure for execution of a request received from the foreign Court or Competent Authority has been enshrined in Section 11 of the Act.
- 1.7 Section 9, Section 10, Section 11, Section 14, Section 15, Section 20, Section 23 of the Act, provides for service of summons, notices, and judicial processes. The summons, notices and judicial processes are sent by the Court of competent authority to the Central Authority and are further sent by the Central Authority to the foreign State concerned either directly or through Bangladesh Mission/Embassy/Diplomatic Channels for service on the person through the Competent Authorities in the foreign State.

<b>Figure 1.1: List of countries having MLAT/Bilateral Agreements with Bangladesh</b>	
<b>The Republic of India</b>	<b>The Republic of South Africa</b>
The India-Bangladesh Agreement on Mutual Legal Assistance on Criminal Matters, signed on 11 January 2010, Effective from 13 January 2011.	Treaty between the Government of the Republic of South Africa and the Government of the People's Republic of Bangladesh on Mutual Legal Assistance in Criminal Matters (signed on 01 October 2019 in Dhaka)

<b>Figure 1.2: List of International Conventions signed by Bangladesh having provisions related to Mutual Legal Assistance</b>	
1	United Nations Convention Against Corruption (UNCAC)
2	United Nations Convention Against Transnational Organized Crime (UNTOC)
3	The Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth (Harare Scheme)
4	International Convention for the Suppression of the Financing of Terrorism (TF Convention)
5	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Viena Convention)
6	SAARC Convention
7	Hague Convention
8	BIMSTEC Convention on Mutual Legal Assistance in Criminal Matters

## **B. The Central Authority of Bangladesh**

1.8 As per SRO No. 32-Law/2018 dated 18 January 2018 and SRO No. 141-Law/2020 dated 11 June 2020 of the Legislative and Parliamentary Affairs Division, Ministry of Law, Justice & Parliamentary Affairs, the Ministry of Home affairs is assigned as the Central Authority and the Ministry of Law, Justice and Parliamentary Affairs as well as Bangladesh Attorney General's office have been attached to the said Central Authority, for dealing with requests of mutual legal assistance in criminal matters. The Central Authority transmits and receives all requests for assistance either directly or through diplomatic channels.

All the requests to the Central Authority of Bangladesh should be addressed to:

<p>Secretary, Public Security Division, Ministry of Home Affairs Bangladesh Secretariat, Dhaka-1000</p> <p>Attention: Joint Secretary (Pol-1), Public Security Division, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka-1000</p>	<p>Telephone: 02223354510 Email: polbr2@mhapsd.gov.bd</p>
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1.9 The Central Authority of Bangladesh performs the following functions with respect to providing and obtaining mutual legal assistance in criminal matters:

- i) It ensures that the widest measure of legal assistance is provided by Bangladesh.
- ii) It formulates and takes the policy decision on mutual legal assistance in criminal matters.
- iii) It reviews all requests received by it from the Investigating Agencies and takes appropriate actions. If necessary, it corresponds with the agency or Court sending the request regarding the inadequacy or the need to supplement a request and provide information on how they can be improved.
- iv) For delivering the request to the foreign States and follow up of the requests, the Central Authority functions through their concerned Division. It receives requests from foreign States. It promptly gets the requests executed through the appropriate Authority, in accordance with the applicable laws of Bangladesh and in the manner specified by the foreign State, if it is not contrary to applicable laws of Bangladesh.
- v) It answers queries related to Bangladesh law and provides information to the foreign States wishing to make requests to Bangladesh. It coordinates arrangements for the representation of foreign States in Bangladesh for any proceedings arising out of a request for assistance.
- vi) It periodically participates in bilateral consultations with the Central Authorities of the Contracting States to take effective measures for the prevention and suppression of crime and early execution of requests.
- vii) It organizes training programmes for the competent authorities of Bangladesh, e.g., the law enforcement agencies and investigating agencies of Bangladesh.
- viii) It arranges training programmes in coordination with foreign experts about mutual legal assistance in criminal matters and extradition.

1.10 Political Wing, Public Security Division, Ministry of Home Affairs is responsible for maintaining record and data for MLA Requests/LRs and follow-up of such cases takes the assistance of the Investigating Agency.

## **C. Common forms of assistance provided or sought by Bangladesh**

1.11 The following forms of requests can be made or received by Bangladesh –

- a) identifying and locating persons and objects;
- b) taking evidence and obtaining statements;
- c) assisting in the availability of person in custody or others to give evidence or assist in investigations or appear as a witness;
- d) effecting service of judicial documents;
- e) executing searches and seizures;
- f) providing information, documents, records and other evidentiary items;
- g) taking measures to identify, locate, attach, freeze, restrain, confiscate or forfeit the proceeds and instrumentalities of crime;
- h) taking measures to reconstitute the embezzled public funds;
- i) delivery of property including lending exhibits;
- j) protecting and preserving computer data;
- k) examining objects and sites;
- l) providing information, evidentiary items and expert evaluation;
- m) any other forms of assistance not prohibited by the law of Bangladesh or the requesting/requested state.

## **D. Types of Requests**

1.12 Requests to a foreign State can be made or received in the following ways -

### **1. Letters Rogatory (LR)**

The term 'Letters Rogatory' is derived from the Latin term '*Rogatorius*'. Letters Rogatory are the letters of request sent by the Court of one country to the Court of another country for obtaining assistance in investigation or prosecution of a criminal matter. In Bangladesh, Section 8, Section 9, Section 14 of the Mutual Legal Assistance in Criminal Matters Act, 2012 lay down the procedure of sending 'letter of request' through Competent Authority.

The procedure for execution of a request received from the foreign Court or Competent Authority has been enshrined in Section 11 of the Act. In general, the assistance sought under Letters Rogatories is for service of documents and taking of evidence. Letters Rogatory may be made to any country on the basis of Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention or on the basis of assurance of reciprocity. The step-by-step instructions on how to make these requests are described in Part II of Chapter II of this guideline.

### **2. Request of Mutual Legal Assistance (MLA) in Criminal Matters**

Mutual Legal Assistance Request in the Bangladesh context is a formal request made by the Central Authority of Bangladesh i.e., Ministry of Home Affairs to the

Central Authority of another country under any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention or under assurance of reciprocity. The step-by-step instructions on how to make these requests are described in Part I of Chapter II of this guideline.

**Figure 1.3: Difference between Mutual Legal Assistance Request (MLA) and Letters Rogatory (LR)**

	<b>Mutual Legal Assistance (MLA) Request</b>	<b>Letters Rogatory (LR)</b>
Nature	MLA request is made by the Central Authority of Bangladesh to the Central/Competent Authority of another State on the request of the Investigating Officer or Investigating Agency. MLA requests can also be sent in accordance with Court Orders. The procedures relating to MLA requests in Bangladesh are governed by the Mutual Legal Assistance in Criminal Matters Act, 2012 and the Mutual Legal Assistance in Criminal Matters Rules, 2013.	LR is issued by the Bangladesh Courts on the request of the Investigating Officer or Investigating Agency. The procedures relating to the issuance of LR in Bangladesh are governed by the Act and Rules.
Scope	MLA Request can be made to foreign States irrespective of having any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or UN/International Convention, subject to assurance of reciprocity.	LRs can be issued to the countries irrespective of having any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or UN/International Convention, subject to assurance of reciprocity.

### **3. Service of Summons, Notices and Judicial Processes**

In Bangladesh, Section 9, Section 10, Section 11, Section 14, Section 15, Section 20, Section 23 of the Act, provides for service of summons, notices and judicial processes. The summons, notices and judicial processes are sent by the Court of competent authority to the Central Authority of Bangladesh and are further sent by the Central Authority to the foreign State concerned either directly or through Bangladesh Mission/Embassy/Diplomatic Channels for service on the person through the Competent Authorities in the foreign country.



## **E. Grounds for Refusal or Postponement of Request for Assistance**

1.1 The request for assistance is generally refused under section 10 of the Act, if:

- i) The execution of the request would impair sovereignty, security, public order and essential public interest of Bangladesh or foreign State.
- ii) The request for assistance has been made for the purpose of investigating and prosecuting a person on account of that person's sex, race, religion, nationality, origin or political opinions or that person's position may be prejudiced for any of those reasons.
- iii) The request is made for conduct or offence which is an offence under military law but not an offence under ordinary criminal law in Bangladesh or foreign State.
- iv) The request seeking restraint, forfeiture, attachment or confiscation of proceeds and instrumentalities of crime or seizure of property is in respect of conduct/activity which cannot be made the basis for such restraint, forfeiture, attachment, confiscation or seizure in the Contracting States.
- v) The request relates to an offence in respect of which the accused person has been finally acquitted or pardoned.
- vi) De minimis request is made, i.e., the request is trivial or disproportionate in nature.
- vii) The subject matter of the execution of the request for assistance is repugnant to the existing laws of Bangladesh.

1.2 The execution of the request may be postponed if it would interfere with an ongoing criminal investigation, prosecution or proceeding in the Contracting States. Such a request may be executed subject to conditions determined necessary after consultations with the Central Authority of the Requesting State.

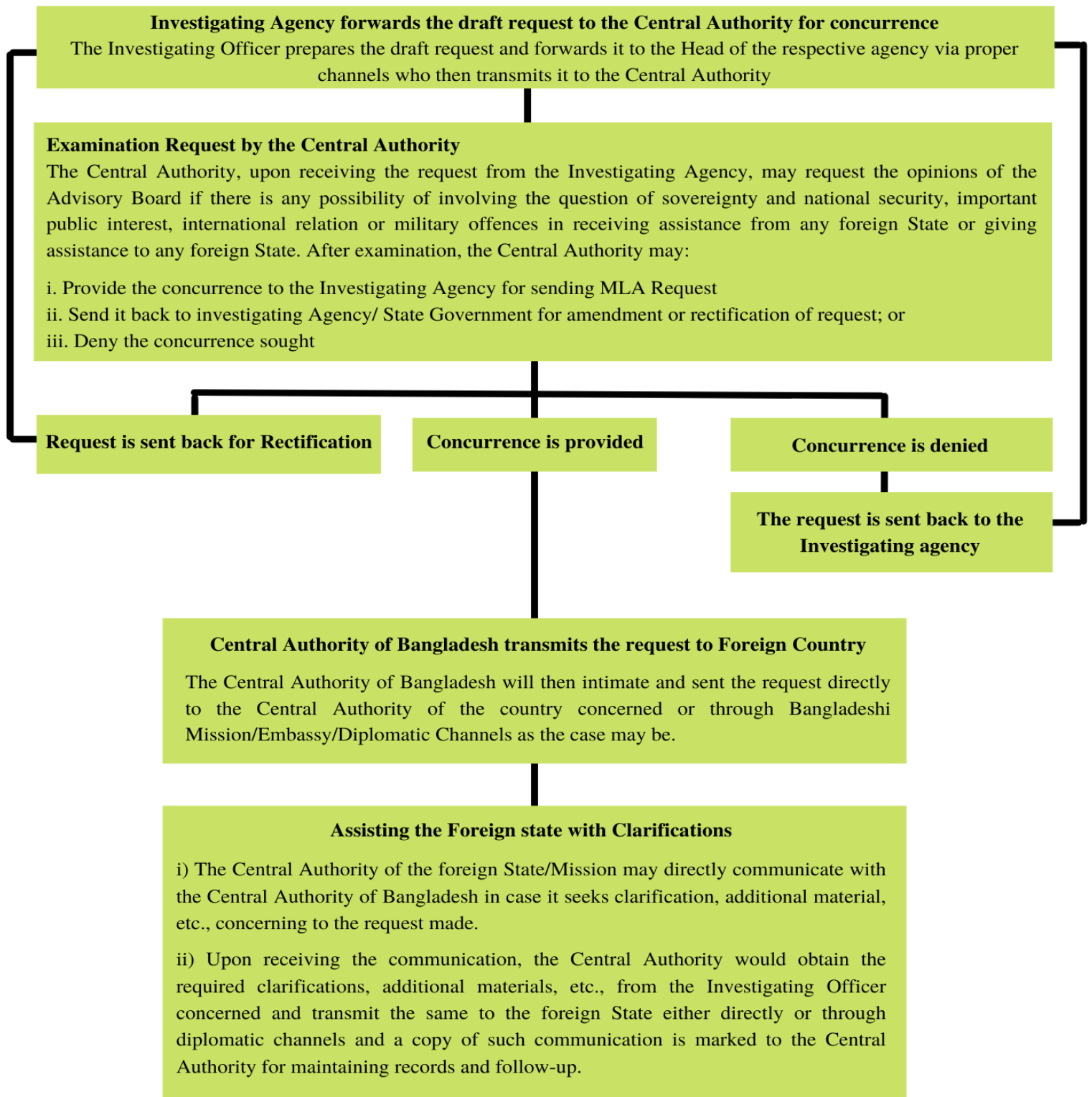
1.3 As per section 10 sub-section 2 of the Act, if the request may, subject to meeting up any specific condition, be executed, a request may be made to the requesting State to meet up such condition and the execution may be suspended until such condition is met up.

1.4 Subject to section 10 sub-section 3 of the Act, the request for assistance may be suspended or stipulated, if it appears to the Central Authority that, the execution of any specific request may affect any inquiry, investigation, prosecution, or criminal proceedings which are under consideration in Bangladesh and the Central Authority will communicate the same with the requesting State.

## **CHAPTER II: PROCEDURE FOR SENDING & EXECUTING REQUESTS**

### **PART I: PROCEDURE FOR SENDING AND EXECUTING MUTUAL LEGAL ASSISTANCE (MLA) REQUESTS**

**Figure 2.1: Procedure for making a Mutual Legal Assistance (MLA) Request**



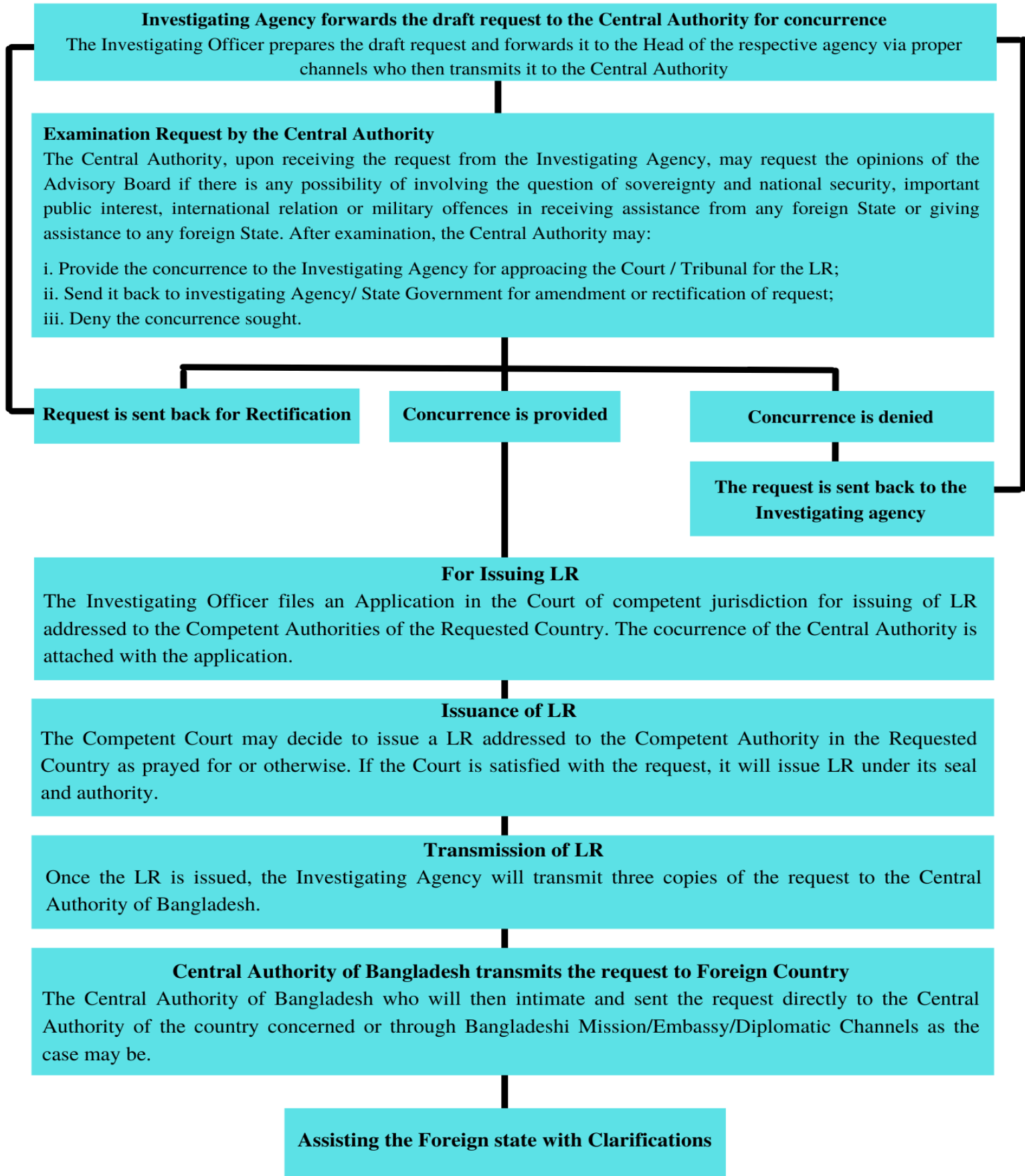
<b>Figure 2.2: Step-by-step Procedure for making MLA Request</b>	
<b>Step 1</b>	<p style="text-align: center;"><b>Drafting of Request by Investigating Officer or Agency<sup>1</sup></b></p> <p>The Investigating Officer compiles the facts related to the case and brings out which assistance is required from the foreign State. Afterwards they shall prepare a Draft Request in accordance with the instructions provided in Part IV of this chapter.</p>
<b>Step 2</b>	<p style="text-align: center;"><b>Forwarding the Request to the Central Authority of Bangladesh.</b></p> <p>The Investigating Officer submits the request to the relevant local Head of the Agency/Commission/Authority, who assesses the request's necessity, validity, and feasibility. Subsequently, they decide either to forward the request to the Head of the Agency/Commission/Authority, reject forwarding the request for further processing, or return it to the Investigating Officer for rectification. If the local Head of the Agency/Commission/Authority deems the request meritorious, they proceed to dispatch it to the Head of the Agency/Commission/Authority along with their own recommendations, if any.</p> <p>The Head of the Agency/Commission/Authority, after receiving the request, conducts an additional evaluation whether they decide whether to forward the request to the Central Authority for further processing, decline the forwarding, or return it to the Investigating Officer for further rectification or clarification. Upon determining the request's legitimacy and relevance, the Head of the Agency/Commission/Authority, if opting for forwarding, submits it to the Central Authority with their own forwarding and any pertinent recommendations.</p> <p><i>Example - For instance, in the scenario of a police officer from a police station investigating a criminal offense and seeking to Mutual Legal Assistance from a foreign country, the request progresses from the local police station to the Superintendent of Police, who evaluates and forwards it to the Inspector General of Police (IGP). After conducting their assessment, the IGP then forwards the request to the Central Authority for final consideration.</i></p>
<b>Step 3</b>	<p style="text-align: center;"><b>Examination of the Request by the Central Authority</b></p> <p>After receiving the request, the Central Authority may –</p> <p style="padding-left: 40px;">a) Give concurrence to the Investigating Agency for sending the MLA Request; or,</p>

<sup>1</sup>In the Act of 2012, section 4 empowers the Central Authority, i.e., MHA to receive requests made by Bangladesh (outgoing requests) for assistance from any foreign State and upon the request, to make a request to the foreign State for giving the assistance. However, the Act does not spell out who will make the request to the MHA.

	<p>b) Send it back to the Investigating Agency for amendment or rectification of request, if necessary; or,</p> <p>c) deny the concurrence sought and in case of denial, will communicate the reasons for denial with the concerned Investigation Agency.</p> <p>In general cases, all the requests will go to the Central Authority first and the Authority will decide as per law. In appropriate cases where there is possibility of involving the question of sovereignty and national security, important public interest, international relation or military offences, the Central Authority may seek the opinions of the Advisory Board, formed under Section-5 of the Act. The decision made by the Central Authority shall be final as per the provisions of Section 7 of the Act. The Central Authority may consult the contact person of the Investigating Agency whenever required in relation to the request.</p>
<p><b>Step 4</b></p>	<p style="text-align: center;"><b>Transmission of the Request to the Foreign State</b></p> <p>After giving concurrence, the Central Authority of Bangladesh will send the request to the Central Authority of the requested foreign State either directly or through diplomatic channel, depending on the provision of that requested foreign State.</p>

**PART II: PROCEDURE FOR SENDING AND EXECUTING  
LETTERS ROGATORY (LR) REQUEST**

**Figure 2.3: Procedure for making a Letters Rogatory (LR) Request**



<b>Figure 2.4: Step-by-Step Procedure for making Letters Rogatory Request</b>	
<b>Step 1</b>	<p style="text-align: center;"><b>Drafting of Request by Investigating Officer or Agency<sup>2</sup></b></p> <p>The Investigating Officer compiles the facts related to the case and brings out which assistance is required from the foreign State. Afterwards they shall prepare a Draft Request in accordance with the instructions provided in Part IV of this chapter.</p>
<b>Step 2</b>	<p style="text-align: center;"><b>Forwarding the Request to the Central Authority of Bangladesh.</b></p> <p>The Investigating Officer sends the letter of request to the concerned Superintendent of Police or the Head of the Agency/Commission/Authority, who will then send it to the Inspector general of Police (IGP) or the Head of the Agency/Commission/Authority. Finally, Inspector General of Police (IGP) / Head of the Agency/Commission/Authority will forward it to the Central Authority with their recommendations, if any.</p>
<b>Step 3</b>	<p style="text-align: center;"><b>Examination of the Request by the Central Authority</b></p> <p>After receiving the request, the Central Authority may –</p> <ol style="list-style-type: none"> <li>a) Give concurrence to the Investigating Agency for approaching the court / tribunal for issuing the LR; or,</li> <li>b) Send it back to the Investigating Agency for amendment or rectification of request, if necessary; or,</li> <li>c) deny the concurrence sought and in case of denial, will communicate the reasons of denial with the concerned Investigation Agency. The concerned Investigation Agency may re-apply for such assistance after rectifying the issues pointed out by the Central Authority and taking legal opinion / recommendation of the PP of the concerned District and Sessions Court or Tribunal.</li> </ol> <p>In General cases, all the requests will go to the Central Authority first and the Authority will decide as per law. In appropriate cases where there is possibility of involving the question of sovereignty and national security, important public interest, international relation or military offences, the Central Authority may seek the opinions of the Advisory Board. The decision made by the Central Authority shall be final as per the provisions of section 7 of the Act. The Central Authority may consult the contact person of the Investigating Agency whenever required in relation to the request.</p>

<sup>2</sup>In the Act of 2012, section 4 empowers the Central Authority, I.e., MHA to receive requests made by Bangladesh (outgoing requests) for assistance from any foreign State and upon the request, to make a request to the foreign State for giving the assistance. However, the Act does not spell out who will make the request to the MHA.

<p><b>Step 4</b></p>	<p style="text-align: center;"><b>Approaching the Court / Tribunal with the concurrence of the Central Authority</b></p> <p>After concurrence is provided by the Central Authority, the IO files an Application in the Court / Tribunal of competent jurisdiction for issuing the LR addressed to the Competent Authorities of the Requested State. The following documents are required to be presented before the Court for issue of LR:</p> <ol style="list-style-type: none"> <li>a) Application by Investigating Agency to the Court for issuing of LR;</li> <li>b) The request concurred by the Central Authority along with all the related documents;</li> <li>c) Extract of the sections of Bangladeshi law mentioned in the request including the law on limitation (For example, provisions of CrPC, Penal Code or any special law applicable);</li> <li>d) opinion or recommendation of the Public Prosecutor of the concerned Court regarding the necessity of issuing the LR.</li> </ol> <p>Note: Certain documents may be relevant for the investigation but are not related to the request and are not required to be attached for presenting the request before the Court. These documents are: • Case dairy• Copy of FIR• English translation of FIR• etc.</p>
<p><b>Step 5</b></p>	<p style="text-align: center;"><b>Issue of LR by the Court / Tribunal</b></p> <p>Court to issue LR under the relevant law i.e. The Mutual Legal Assistance in Criminal Matters Act, 2012. The Competent Court may decide to issue a LR addressed to the Competent Authority in the Requested State as prayed for or otherwise. If the Court is satisfied with the request, it will issue LR under its seal and authority.</p>
<p><b>Step 6</b></p>	<p style="text-align: center;"><b>Transmission of LR</b></p> <p>Once the LR is issued, the Investigating Agency will transmit three copies of the request to the Central Authority of Bangladesh. Afterwards, the Central Authority of Bangladesh will intimate and directly send the request to the Central Authority of the requested country. In the absence of a Central Authority in the requested country, the Central Authority of Bangladesh shall determine the competent authority to whom the request should be sent for executing the request. If the request cannot be sent directly to the Central Authority of the requested country, then the Central Authority of Bangladesh shall send it to the competent authority of the requested country through Bangladeshi Mission/Embassy/Diplomatic Channel, as the case may be.</p> <p>The following documents are required to be sent for transmission of request LR issued by the Court –</p>

	<ul style="list-style-type: none"><li>a) Forwarding letter by Central Authority of Bangladesh;</li><li>b) LR issued by the Court;</li><li>c) Extract of the sections of Bangladeshi law with highlighted sentence or penalty for the offence;</li><li>d) List of witnesses to be examined (if any);</li><li>e) List of questions to be asked from the witnesses (if any);</li><li>f) List of documents to be collected (if any) (Description of documents/articles to be collected and procedure for the same to be provided;</li><li>g) Certified copy of the order for attachment or forfeiture of property (if any).</li></ul>
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## **PART III: PROCEDURE TO BE FOLLOWED AFTER REQUEST IS SENT OR RECEIVED**

### **A. Procedure to be followed after Central Authority of Bangladesh sends a Request to a Foreign State (Outgoing Requests)**

2.1 The procedure to be followed after the Central Authority forwards the request to a foreign State is as follows:

- i) After transmission of the request to the foreign State, the Central Authority of Bangladesh may directly or through diplomatic channel takes the follow-up action for execution of the Request by making correspondence with the Ministry of Foreign Affairs, Central Authority of the foreign State, etc. The Central Authority may make a follow-up communication every 15 (fifteen) days.
- ii) The Central Authority of the foreign State/Mission may directly communicate with the Central Authority of Bangladesh in case it seeks clarification, additional material, etc., concerning to the request made.
- iii) Upon receiving the communication from a foreign State seeking clarification or additional information regarding a request sent by Bangladesh, the Central Authority would obtain the required clarifications, additional materials, etc., from the Investigating Officer concerned and transmit the same to the foreign State either directly or through diplomatic channels and a copy of such communication is marked to the Central Authority for maintaining records and follow-up.
- iv) After executing the request, the foreign State may forward the Execution Report to the Central Authority of Bangladesh and it will inform the Investigation Agency about the execution of request and shortcomings, if any. In case, after receiving the Execution Report, new facts have come to light and it is felt by the Investigating Agency to seek further information from the concerned State, a supplementary request may be sent. In Addition, after receiving the execution report, the central authority may send a supplementary request if the execution report is not satisfactory. The procedure for making a supplementary request is the same as that of sending any other request. However, such a request should clarify the fact that it is a supplementary request in its subject and make adequate reference of the original request.

### **B. Procedure to be followed the Central Authority of Bangladesh receives a Request from a Foreign State (Incoming Requests)**

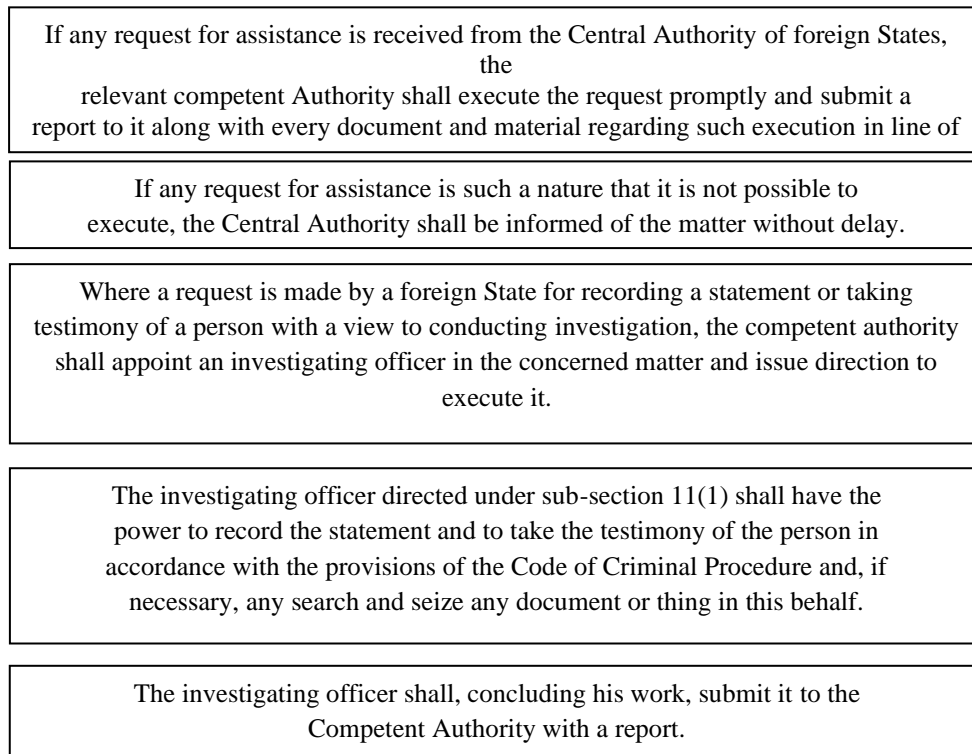
2.2 Section 11 of the Act gives the outline of execution of an incoming request in Bangladesh. All the requests to Bangladesh for the mutual legal assistance in criminal matters are made to the Central Authority of Bangladesh. The requests received through diplomatic are also forwarded to the Central Authority. After receiving the request, the Central Authority of Bangladesh examines whether the request is complete and fit to be executed in Bangladesh. While deciding about the execution of request, the Central

Authority of Bangladesh can take the assistance of the Ministry of Foreign Affairs and other relevant enforcement agencies in Bangladesh.

2.3 In case the request is found to be fit for execution, the Central Authority sends it for execution through to the law enforcement agency concerned. Whenever the Central Authority of Bangladesh decides that the request should be refused or postponed for the execution under the provisions of Section 10 of the Act, it promptly intimates the same to the Requesting State.

2.4 All the incoming requests are executed in terms of the provisions of extant Bilateral Treaties/Agreements, Multilateral Treaties/Agreements, or International Convention and in accordance with Bangladesh laws, especially as per the provisions of Section 11 and Part – 2 of the Act.

**Figure 2.5:** Execution of Incoming Request in Bangladesh



2.5 The competent authority shall provide the complete details of the execution of request to the Central Authority in the format provided below in the last week of every month or earlier, as required by the Central Authority.

**Figure 2.6: Format in which information must be provided to the Central Authority of Bangladesh**

Name of State (Give the title of case -for example M/S Green Infrastructure Ltd.)	
MHA File No	(Please mention MHA's File No.)
Interpol/ED File Number	(Please mention File No.)
Competent authority	(Please mention name of Investigating Agency and Branch/State Police)
Case No	(Please mention case No.)
MLA Request/ LR Issued by	(Please give designation of Court)
MLA Request/ LR Sent on	(Please give date of sending LR to Bangladeshi Mission abroad)
Penal sections	(Give applicable sections of law under which the offence is registered)
Allegation (if applicable): Assistance sought: Present Status:	

2.6 On quarterly basis, the Central Authority along with the officers of the competent authorities should review the compilation of data and progress of execution of requests.

2.7 Biannual meeting with the concerned ILO's for analyzing the progress of execution and issues faced in making the requests.

## **PART IV: FORM, CONTENT AND LANGUAGE OF REQUEST (OUTGOING REQUEST)**

### **A. Form of Request**

3.1 An outgoing request for assistance shall be made in writing. However, in urgent circumstances, a request may be made by email or facsimile or any other agreed forms of electronic media but shall be confirmed in writing by the Investigating/Competent Authority concerned with all relevant documents within 5 days after making such request to the Central Authority of Bangladesh.

### **B. Language of Request**

3.2 The request for assistance and all the supporting documents shall be provided in English and wherever necessary, the request and the supporting documents should be translated in the language required by the Requested State. The translated copies (if any) should be duly certified by the translator and authenticated by the concerned competent authority of Bangladesh.

### **C. Important Considerations before Making the Request**

3.3. The following points must be considered before drafting an outgoing Request for Assistance -

- 1. Necessity and grounds of request:** The Investigating Officer or Agency should ensure whether they have sufficient grounds to make a request to a foreign State.
- 2. Timeline:** The Investigating Officer or Agency should ensure whether they have sufficient grounds to make a request to a foreign State.
- 3. Potential grounds of refusal:** It should be ensured that the request does not fall under the grounds of refusal mentioned in the MLAT or Agreement or as compiled in Part I of these Guidelines.
- 4. Legal Basis of request:** The provisions of the Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention as well as requirement of the law of Requested State such as principle of dual criminality, assurance of reciprocity, etc., may be studied with view to determine that such a request would fall within the parameters of legal requirements of the Requested State. Where no such Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention exists, requests may be made based on assurance of reciprocity. The assurance of reciprocity is to be provided by the Central Authority of Bangladesh to the Requested State.

5. **Format of the document and any evidentiary requirement in requested State:**  
Before making a request, it should be checked by the competent authority whether there is a specific format prescribed by the Requested State for entertaining/execution of request or if there is any mandatory requirement in the form of assurances, etc., in the Requested State.
6. **Language of the request:** The request and supporting documents should be made or accompanied by a certified translation with a language specified in the MLAT or the official language of the Requested State (non-treaty countries).
7. **Confidentiality requirement:** It should be evaluated if there is any need for confidentiality requirement for execution of request.
8. **Limitation:** The investigation/prosecution is not barred by the period of limitation.

**D. Checklist of information to be collected for drafting the Request**

3.3. The following information should be gathered before commencing the drafting process -

1. Name of the Requested State.
2. Nature of the investigation, prosecution, or proceedings.
3. Nature of request.
4. Purpose for making the request.
5. Basis of request:
  - a. Mutual Legal Assistance Treaties
  - b. UNTOC
  - c. SAARC Convention
  - d. Hague Convention
  - e. Harare Scheme
  - f. UNCAC
  - g. Vienna Convention, 1988 (NDPS)
  - h. Any other Bilateral Treaties/Agreements, Multilateral Treaties/Agreements (Specify)
  - i. Any other International Convention/Resolution (Specify)
  - j. Assurance of Reciprocity
6. Details of the contact person at the Issuing Authority.
7. Name of the requesting office / individual and the name of the Competent Authority or Agency conducting the investigation, prosecution, or proceedings to which the request relates, or name of the Competent Authority seeking the assistance in respect of prevention or suppression of crimes.
8. Details / Contact information of the focal persons responsible for providing clarifications on the case.
9. Case/Allegation details:

- a. GD No./ FIR No./ Case Number/ Enquiry Number.
  - b. Section under which FIR/Enquiry has been registered.
  - c. Summary of the facts of the case/allegation.
  - d. Link between alleged offence(s) and assistance requested.
  - e. Applicable laws and maximum penalties for the offence in Bangladesh.
  - f. Current Status of the case.
10. Brief fact of the case.
  11. Identity, nationality and location of a person or persons who is/are the subject of investigation, prosecution, or proceedings.
  12. Information available for the person under investigation or property under investigation.
  13. Criminal history of alleged accused, if any.
  14. Such other information as is necessary for the proper execution of the request.
  15. Any other relevant information for proper execution of request.
  16. Any specific manner/procedure to be followed for the execution of request.
  17. Assistance required to be clearly defined and, if so required, formulating questionnaire required to satisfy the purpose of the request(s)
  18. Cost associated with the execution of the request.
  19. Any time limit for executing the request.
  20. Limitation of use.
  21. Confidentiality requirement with reasons (if any).
  22. Mandatory assurances.
  23. State-specific assurances, as required.
  24. Cost related to the execution of the request, where applicable.

**E. Format of the Requests:**

3.4 In case the requested country has already prescribed a specific format in which the Letters Rogatory and Mutual Legal Assistance Request are to be drafted, then the competent authority shall follow the same.

In all other cases, the appropriate format in which the Letters Rogatory and Mutual Legal Assistance Request are to be drafted is as follows –

<b>Figure 2.9: Format of Letters Rogatory and Mutual Legal Assistance Request</b>
<p><i>To,</i>  Secretary,  Public Security Division,  Ministry of Home Affairs  Bangladesh Secretariat, Dhaka-1000</p> <p>Attention:  Joint Secretary (Pol-1),</p>

Public Security Division,  
Ministry of Home Affairs,  
Bangladesh Secretariat, Dhaka-1000

**Subject: Request for Mutual Legal Assistance (MLA), or concurrence for the issuance of Letters Rogatory (whichever is applicable), in respect of \_\_\_\_\_ (Subject of the Criminal Matter).**

<p><b>Basis of the Request</b></p>	<p>Please specify the basis of the request, which may include any relevant bilateral or multilateral treaties/agreements, international conventions/resolutions for mutual legal assistance on criminal matters, or the assurance of reciprocity. This section should read like this –</p> <p><i>This request for assistance is made in accordance with the provisions (describe the relevant provisions) of the treaty between the People's Republic of Bangladesh and (Name of the Requested State), or the United Nations Convention Against Corruption, or the United Nations Convention Against Transnational Organized Crime, or the SAARC Convention, or the Harare Scheme (or any other treaty/agreement that is relevant), or on the basis of Assurance of Reciprocity in similar matters.</i></p>
<p><b>Nature of Request</b></p>	<p>[<b>This section should read like this –</b></p> <p><i>This request relates to (describe the subject of criminal matter). The Authority/agency conducting the investigation/prosecution of the criminal matter is (describe authority/agency concerned with the criminal matter).</i></p> <p>Additionally, it is also important to indicate whether judicial proceedings have been, or are to be, instituted or concluded, as the case may be, and provide details of such proceedings (example the level of the Court).]</p>
<p><b>Criminal Offences Applicable Legislation Penalties:</b></p>	<p>[In this section, the offences alleged to have been contravened in relation to the criminal proceedings, as well as the maximum penalties for these offences, should be described, and copies of the applicable legislative provisions should be attached.</p> <p>Identity of Suspect/ accused person, if known, should be specifically mentioned.</p> <p>If the matter pertains to the enforcement of foreign confiscation order etc., then the legal provisions pursuant to which the foreign confiscation order was/is intended to be made, as the case may be, must also be mentioned.]</p>

<p><b>Statement of Facts:</b></p>	<p>[This column is to be filled out on a case-by-case basis -</p> <ol style="list-style-type: none"> <li>a. Describe the material facts of the criminal matter including, in particular, those necessary to establish circumstances in the Requesting State i.e., Bangladesh connected to the evidence or assistance sought, and the relevance of the evidence in Bangladesh in the criminal matter.</li> <li>b. Clearly state the connection of material sought. e.g., if bank records are sought, the connection of bank accounts in requested State with the investigation being conducted in Bangladesh may be specifically mentioned. If the bank accounts have been utilized in the commission of crime, that may also be invariably mentioned.</li> <li>c. Indicate whether and how any person(s) has carried on or benefited from the offence(s) committed in the Requesting State. State how the thing sought to be produced by this Request (whether by itself or with another thing) will be of substantial value to the criminal matter.</li> <li>d. State whether a foreign confiscation and / or attachment order has been or may be made in such proceeding and whether any person(s) is or are affected or will be affected by such an order has been notified of the proceedings in accordance with the Domestic Law. In case of attachment or confiscation, describe the subject-matter clearly.</li> <li>e. Provide details of seizure, confiscation, restitution of the property to the Requested Party against which restraint /enforcement is sought and how such property is bona fide linked to the offence.]</li> </ol>
<p><b>Purpose of the Request:</b></p>	<p>[Describe the purpose which is intended to be achieved by the assistance sought, e.g., investigation, prosecution, prevention, suppression of crime, freezing, seizure, attachment, confiscation and return of the proceeds of crime in a criminal matter and secure admissible evidence which will be used in the trial.]</p>
<p><b>Assistance Requested:</b></p>	<p><i>[This section should read like this –</i></p> <p><i>The Competent Authority of Government of _____ (name of the Requested State) is requested to take such steps as are necessary for:</i></p> <p><i>(use only the portions which are related to the case) -</i></p> <ol style="list-style-type: none"> <li>a) <i>Examination of a witness in the Requested Party; e.g.- Mr. X of ABC Co. Ltd., (address) is to be orally examined on the following matters:</i></li> </ol>



		<ul style="list-style-type: none"> <li>▪ [Clearly specify the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well (witness rights as per Bangladesh Law)]</li> <li>▪ [Include all available personal details of the witness (including name, nationality, location, passport information and gender etc.)]</li> <li>▪ [State the status of the witness (suspect/accused, or simply a witness)]</li> <li>▪ [Include a clear explanation of how the information sought from the witness is relevant to the case.</li> <li>▪ [If so required, questionnaire is to be framed required to satisfy the purpose of the request].</li> </ul> <p>b) <i>Production of documents, records or items before a Court (and obtaining of oral evidence of the witness producing such material for the purpose of identifying and providing the material produced) e.g. - Director of ABC Co. Ltd., (address) is required to produce (describe the form of evidence e.g., "certified copies") the following documents, records or items for the period (state relevant time frame):</i></p> <ul style="list-style-type: none"> <li>▪ Specify documents, records or items or classes thereof</li> <li>▪ The above witness to be orally examined on the following matters for the purpose of identifying and proving the documents, records or items produced, confiscated, attached or seized)</li> <li>▪ state relevant particulars, e.g. to provide confirmation as to his position in a company/office and that he is responsible for keeping/ maintaining /holding the documents, records or items in relation to the subject-matter of the investigation; that he is authorized by the relevant law of the Requested Party to make the statement ; to confirm that he has access to the documents, records or items kept in relation to the subject-matter of the investigation in the normal course of his duties; to confirm the authenticity of the copies of the documents, records</li> </ul>
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		<p>or items supplied; to confirm that the documents, records or items were created in the ordinary course of business</p> <p>c) <i>Search of person or premises for persons, documents, records or items; (read sections 96 and 98 of CrPC) e.g. - The premises of ABC Co. Ltd., (address) to be searched under a search warrant for the seizure of the following from the company:</i></p> <ul style="list-style-type: none"> <li>▪ provide details of the documents, records or items sought to be searched for and seized,</li> <li>▪ provide details of the persons, as specific as possible, sought to be searched or recovered</li> <li>▪ support any request for originals of documents, records or items seized with reasons,</li> <li>▪ support the belief that relevant documents would be available on the premises of the ABC Co. Ltd.</li> <li>▪ Search being a coercive procedure, the information/evidence supplied shall invariably show the nexus of the premises/computer/electronic device with the Crime/Criminal to establish reasonable suspicion/probable cause.</li> <li>▪ State how the items seized, or the persons recovered will be relevant to the case.</li> </ul> <p>d) <i>Production of documents, records or items through production orders (read sections 94 and 95 of CrPC); e.g. - Manager of ABC Bank Ltd., (address) to be required to produce copies of the following documents, records or items under a production order:</i></p> <ul style="list-style-type: none"> <li>▪ (Describe particulars of material required to be produced and where located).</li> <li>▪ (State grounds for believing that the material sought is likely to be of substantial value to the criminal matter).</li> <li>▪ (Support any request for the production of originals of documents with reasons).</li> <li>▪ (If original cannot be produced, request for authenticated copies of the same).</li> <li>▪ For bank document, indication of the name and address of the bank, account number, account holder name, time period for the production of the bank statements, types of banking documents requested (account opening documents, statements, wires, loan agreements, among others), relation of</li> </ul>
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		<p>the bank account with the crimes committed along with the certificate provided in the respective Statute.</p> <p>e) <i>Arrangement of travel of person/persons in custody or an expert from (name of Requested Party) to assist in a criminal matter; E.g.-Arrangements to be made for Mr. X (address) to travel to (name of Requesting Party) to give assistance in a (criminal matter) by rendering the following assistance:</i></p> <ul style="list-style-type: none"> <li>▪ specify the assistance sought.</li> <li>▪ provide the undertakings required by the law of (name of Requested Party).</li> <li>▪ provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in (name of Requesting Party) pursuant to the request).</li> </ul> <p>f) <i>Enforcement of a forfeiture order/ request to assist in the restraining of dealing in property; (Read section 99A of CrPC)</i></p> <ul style="list-style-type: none"> <li>▪ include an official, certified copy of the relevant order(s)</li> <li>▪ include an official, certified copy of the conviction of the person</li> <li>▪ include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)</li> <li>▪ provide confirmation that the conviction and the order are final and are not subject to appeal</li> <li>▪ include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order</li> <li>▪ include as much information as possible to link the criminal conduct of the person to the assets located in Requesting State (including evidence of transfers or other financial information)</li> <li>▪ include any information if there is any third-party interest in any of the properties in the Requested State.</li> </ul> <p>g) <i>Assistance in locating / identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a serious offence; E.g. - Arrangements to</i></p>
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*be made to locate / identify and locate Mr. X who is believed to be in (name of Requested Party) with the last known address at (address).*

- State particulars of the person concerned.

*h) assistance in tracing property suspected to be connected to a serious offence, e.g. - Arrangements to be made to trace (description of property) believed to be in (name of Requested Party).*

- state particulars of the property concerned.

*i) Arrangement of examination of a person as witness through commission to assist in a criminal matter;*

- read Sections 356(3), 364(3) and 503 of CrPC
- Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well)
- Attach original order of the Court issuing the commission.

*j) Providing Electronic Evidence*

- If electronic evidence is being sought, the connection if relevant email/Twitter/Facebook account with crime and criminal may be mentioned. How the said account has been used in the commission of crime may also be highlighted. It may also be mentioned that preservation request has already been sent to concern SPs.]

Or any other common form of assistance described in the paragraph 1.11 of Chapter I. In all cases, provide specific information regarding the assistance sought, the manner in which the assistance needs to be provided and any other relevant information that relates to the said assistance.

<p><b>Mandatory Assurance and Undertakings</b></p>	<p>It is confirmed that this request:</p> <ul style="list-style-type: none"> <li>a) Neither relates to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of apolitical character nor it is made for the purposes of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;</li> <li>b) Does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a Competent Court or other Authority of the Republic of Bangladesh or has undergone the punishment provided by the laws of the Republic of Bangladesh, in respect of that offence or of another offence constituted by the same act or omission as that offence.</li> <li>c) As per Bangladesh Law, it is not necessary to give any notice to the accused either before issuing the LR or before examining him as a witness/ accused.</li> <li>d) Cost: Clarify which party is responsible for bearing the expenses arising from the execution of the request. As per the Rule 26 of the Mutual Legal Assistance on Criminal Matters Rule 2023, The ordinary costs of executing a request shall be borne by the requesting country unless otherwise determined by the parties. If expenses of a substantial or extraordinary nature are or will be required to execute the request, the parties shall consult in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne.</li> </ul> <p>However, in most mutual legal assistance treaties, it is generally stipulated that, the cost of execution of letter of Request shall be borne by requested State as per the provisions of the Mutual Legal Assistance Treaty. But, if there are significant costs involved like travel of witnesses/Cost of obtaining Expert Opinion etc., mention the readiness to meet the expenditure to be incurred.</p>	
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		<p>Therefore, in all cases, first see if there is any agreement on mutual legal assistance that has been entered into with the requested state. Based on the contents of such agreements, clearly state which party is to borne the costs of executing the request.</p> <p>e) Should the Judicial Authority of the Requested State require the return of any information / evidence / thing obtained in pursuant to this request at the conclusion of the criminal proceeding, the same shall be returned to the Judicial Authority of the Requested State.</p> <p>f) The person(s) whose attendance is requested shall not:</p> <ul style="list-style-type: none"><li>i. be detained, prosecuted, punished, and subjected to any other restriction of personal liberty in the territory of Republic of Bangladesh for any acts, omissions of convictions which preceded the person(s) departure from the Requested State other than that to which the request relates.</li><li>ii. be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred before the person's departure from the Requested State.</li><li>iii. be required to give evidence in any proceeding or to assist in any investigation(s) other than the proceeding or investigation(s) to which the request relates, without the person's consent.</li></ul> <p>g) In the matter of investigation of an offence for which the maximum punishment prescribed under the law is death, an assurance for non-execution of such penalty by commutation or remission of such penalty may be given on a case-to-case basis.</p> <p>h) Paragraph (f) shall cease to apply if a person, being free to leave the State has not left within 30 days or for any period agreed upon or after receiving official notification that the person's attendance is no longer required has remained voluntarily in the territory of the State or, having left has voluntarily returned.</p>
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<b>Limitation of Use:</b>	<i>[Unless otherwise agreed, the Investigation agency of Bangladesh, who is conducting investigation in the present case, shall not, without the consent of the Requested State, use or transfer information or evidence provided by the Requested State for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.]</i>
<b>Execution of Request:</b>	<p>[This section should read like this –</p> <p><i>During the execution of the request, the following procedures are to be followed:</i></p> <ul style="list-style-type: none"> <li>▪ <i>(State details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.)</i></li> <li>▪ <i>(State any special requirements as to certification / authentication of documents.)</i></li> <li>▪ <i>(State if attendance by representative of appropriate Authority of Requesting Party is required at examination of witnesses / execution of request and, if so, the title of the office held by the proposed representative.)</i></li> </ul> <p><i>E.g.-Permission is requested for an officer of (name of appropriate Authority in Requesting Party) to travel to (name of Requested Party) to remain present during the examination of witness and to assist the authorities of Requested State (if required) during the execution of this request.]</i></p>
<b>Period of Execution:</b>	<i>If required, state that it is requested that the request be executed urgently / within (state period giving reasons i.e., specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request).</i>
<b>Confidentiality:</b>	<i>[Here explicitly mention the confidentiality requirement during handling of the request by Requested State if any. E.g., "The details of this investigation are considered sensitive. Therefore, please treat this request, its contents, the fact that this request has been made and the results of its execution as confidential and do not disclose it and share it with any subjects, except all those who are dealing with this request for the purpose of its execution, without the consent of the Requesting Authority."]</i>
<b>Liaison:</b>	<i>[Provide the details of the officers who are handling this request for liaising with Requested State: State name of officer(s); Address; Telephone Number; Facsimile Number; Electronic mail address]</i>

Please accept the assurance of our highest consideration and gratitude.

(Signature along with seal)

Name:

Office:

Date:

## F. Format for the forwarding letter from the Central Authority

3.5 In both cases of Letter Rogatory (LR) and Mutual Legal Assistance (MLA) requests, when the Central Authority is prepared to dispatch the request to the requested country, it must include a forwarding letter certifying the request. This letter is to be signed by the designated officials overseeing the Central Authority. An example format for this forwarding letter is as follows:

### **Figure 2.10: Format of the Forwarding from the Central Authority of Bangladesh (to be prepared and attached to the request by the Central Authority before forwarding to the requested country)**

*To,*

*The Central Authority/Competent Authority of the \_\_\_\_\_ (Requested State)*

*Certificate on behalf of the \_\_\_\_\_ (Requesting State)*

***Subject: Request for Mutual Legal Assistance in respect of  
\_\_\_\_\_ (Subject of the Criminal Matter).***

*I, \_\_\_\_\_ (name and title of the person in charge of the Central Authority), the Central Authority of Bangladesh, being authorized to make this request for mutual legal assistance in criminal matters on behalf of government of Bangladesh, and certify that the Government of \_\_\_\_\_ (Requested State) in relation to criminal proceeding involving \_\_\_\_\_ (describe nature of criminal proceedings)].*

*This request is made by the Government of the People's Republic of Bangladesh for assistance in accordance with the provisions (please describe the relevant provisions) of the treaty between the People's Republic of Bangladesh and (Name of the Requested State), or the United Nations Convention Against Corruption, or the United Nations Convention Against Transnational Organized Crime, or the SAARC Convention, or the Harare Scheme (or any other treaty/agreement that is relevant).*



*Or,*

*This request is made by the Government of the Peoples Republic of Bangladesh for assistance in accordance with the Assurance of Reciprocity in similar matters.*

*The request, as produced by the \_\_\_\_\_ (name of the Investigating Agency), along with the relevant documents, is attached herewith for your kind perusal. Your prompt action in providing the assistance detailed in this request would be highly appreciated.*

*Please accept the assurance of our highest consideration and gratitude.*

*Sincerely,*

*(Signature, along with seal of the person in charge of the Central Authority)*

### **G. Checklist of documents to be attached to the Draft Request**

3.6 The following documents shall be attached to the Draft Request by the Investigating Officer –

- a) Copy of FIR, GD, etc., where applicable;
- b) English translation of FIR, GD, etc., if filed in vernacular language, where applicable;
- c) Opinion/recommendation of the Prosecutor of the concerned District and Sessions Court / Tribunals written in English, commenting on the need for making such request, where applicable;
- d) Application by Investigating Agency through the Prosecutor to the Court for issuing LR, where applicable;
- e) Copy of the applicable Laws of Requesting State;
- f) Any other necessary documents related to evidence sought from the foreign State; e.g., the corresponding search warrant, summon, court order etc. directing the collection of the requested evidence/ assistance;
- g) Contact details of the officer of the law enforcement or investigation agency concerned.

### **H. Checklist of Documents to be sent to the Central Authority after Letters Rogatory has been issued by the concerned Court**

3.7 The following documents shall be sent to the Central Authority after the Letters Rogatory has been issued by the concerned Court -

- a) Covering Letter by Investigating Agency or Court;
- b) LR issued by Court under relevant provisions of law;
- c) Extract of sections of Bangladesh law or laws mentioned in the request; and,

- d) English translation of all the documents attached and translation in the language required by the requested State (wherever required).

Case-wise list of documents to be attached with the request -

- a) List of witnesses to be examined (if any);
- b) List of questions to be asked from the witness (if any);
- c) List of documents to be collected (if any) (Description of documents/articles to be collected and procedure for the same is to be provided);
- d) Certified copy of the order for attachment or forfeiture of property (if any);  
and,
- e) Certified copy of any other necessary order, if any.

## **CHAPTER III: SERVICE OF SUMMONS, NOTICES AND JUDICIAL PROCESS**

### **A. Request for Service of Summons/Notices/ Judicial Processes on Persons Residing Abroad**

3.1 In Bangladesh, Rule 16 of the Mutual Legal Assistance in Criminal Matters Rules, 2013 etc., provides for the reciprocal arrangements made by the Government of Bangladesh with the foreign countries with regard to the service of summons, notices or any other judicial documents/processes.

3.2 The Central Authority of Bangladesh may make arrangement with the appropriate authority of the foreign State for the purpose of return of that person from the foreign State to Bangladesh or such other relevant steps as may be required.

3.3 The request for service of summons/notices/ judicial processes on persons residing abroad should include:

- Complete name and address of the individual/organization on whom the documents are to be served;
- Status of the person (witness/accused) against whom the summons or notice has been issued;
- Next date of hearing of the case or other deadlines to be followed;
- Material facts of the case including purpose of the request, the nature of the assistance sought;
- The link between alleged offence(s) and assistance requested in case of service of summons/notices/ judicial processes is to be made on suspects;
- Specific instructions, if any, as to how the document has to be served in a foreign State;
- Confirmation from the Court/Agency that:
  - ✓ the case is criminal in nature.
  - ✓ the court will bear any expenditure if charged by foreign government/agency for service of summons/notices/ judicial processes.
- Complete address of the issuing Authority to which the judicial papers/service reports may be returned;
- Details of any allowances and expenses to which the summoned person is entitled.

3.4 In case, the option of recording of evidence through audio-visual means is provided by the Court, the following information shall also be included in the request:

- Copy of Order providing the option of recording of evidence through audio-visual means;
- Tentative date and time range (considering the time difference between the countries) for recording of statements;
- link for conducting video conferencing;
- Details of the technical requirements for establishing the link;
- Contact details of the person (coordinator at the Court) who could be contacted for technical assistance and testing of the links during recording of evidence through audio-visual means (Name, designation, phone number, email, etc.)

## **B. Important Points to be noted for making a Request for Service of Summons/Notices/Judicial Processes**

- 1) It is to be noted that foreign Courts or authorities require at least a period of 10 weeks for transmission of request and service of summons/notices/judicial processes upon the person concerned. The next date of hearing/appearance for the case may be decided accordingly.
- 2) In the case of countries referred to in Figure 4.4 and other non-English speaking countries, the summons/notices/judicial documents should be accompanied with the certified/authenticated translation (in duplicate) in the official language of the State where such document is proposed to be served.
- 3) The documents are served by the Requested State as per their domestic laws and procedure.
- 4) For the purpose of Figure 4.6 the issuing Authority shall be the Authority issuing summon/notice/judicial processes.
- 5) The execution of non-bailable warrants of arrest amounts to extradition. Hence, they do not come under the ambit of service of judicial documents. However, only the service and not the execution of non-bailable warrants can be done by the Central Authority.
- 6) The Central Authority shall make endeavors to transmit summons/notices/judicial processes in cases relating to serious crimes against women and children to the Requested State preferably within a period of ten working days. It is however clarified that the MHA cannot quantify the time taken by the Requested State to serve such summons/notices/judicial processes on the witness.

## **C. Service of Summons in Foreign State for Recording of Statement or Collection of Evidence through Audio-Visual Means**

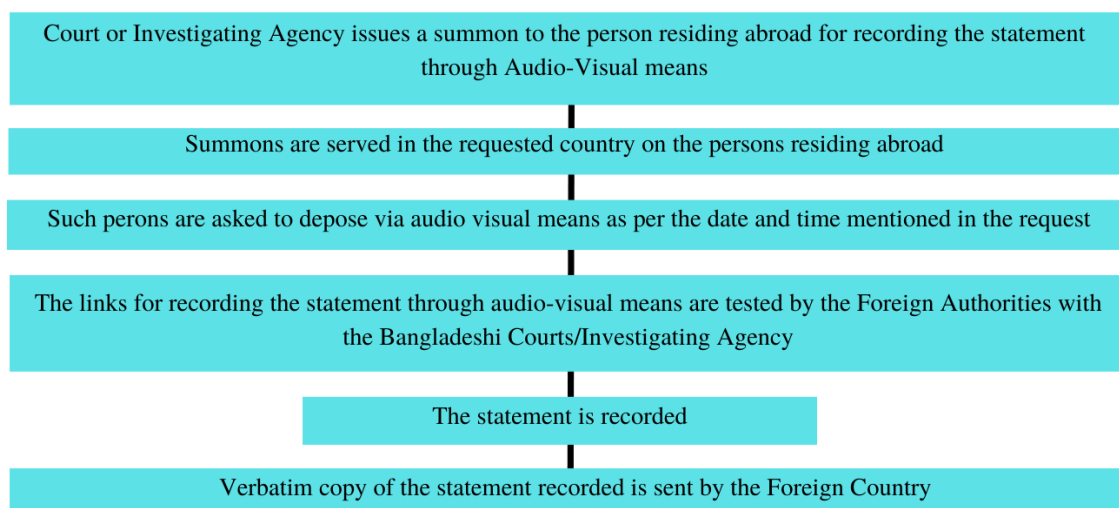
4.5 For taking statements or evidence through audio-visual means in a foreign State, a summon must be issued by a judicial body of Bangladesh and forwarded along with the request to Central Authority of Bangladesh for further transmission to the foreign State. After the summon is duly served upon the person residing abroad through the

competent Authority in the foreign State, such a person has to appear on the date, time and place agreed upon by the Court, the Central Authority of Bangladesh and the Central Authority of the Requested State.

4.6 The request for recording of statement through audio-visual means should also include details of the people who should be present in the room while recording the statement. The details of the links provided in the request are tested by the Bangladesh Courts as well as the foreign Authorities.

4.7 After recording the testimony of the person through audio-visual means, the foreign State sends back the verbatim copy of the statement recorded to Bangladesh.  
Procedure for Recording of Statement through Audio-Visual Means –

**Figure 3.1: Procedure of recording statement through Audio-Visual means**



4.8 Recording of statements through audio-visual means shall be conducted as per the provisions of the Evidence Act, 1872 (as amended up to 2022), the Cyber Security Act, 2023, the Code of Criminal Procedure, 1898, and any other special laws provided therein. A Court may either suo moto or on application by the Investigating Officer/Agency made through the prosecution direct any person residing abroad to appear before it or give evidence or make submissions through the use of audio-visual means.

4.9 The coordinators are to be appointed for recording of statement by audio-visual means by the Central Authority/Court in Bangladesh as well as the Competent Authority in Requested State. For the Requested State the coordinator may be the Central Authority of Requested State or if the law of Requested State permits the official of Consulate/Embassy of Bangladesh.

4.10 Recording the statement through audio-visual means shall ordinarily take place at the mutually agreed time between the Court in Bangladesh and the Requested State keeping in view the time difference, if any, between Bangladesh and Requested State.

4.11 The identity of the person to be examined shall be confirmed by the Court with the assistance of the co-coordinator at the time of recording of the evidence. For examination of prosecution witness or Court witness, the prosecution and where person to be examined is a defense witness, the defense counsel will confirm to the Court his location, willingness to be examined by audio-visual means, place and facility of such recording of statement through audio-visual means. In case the person to be examined is an accused, prosecution will confirm his location.

4.12 Establishment and disconnection of links between the Court in Bangladesh and the point at Requested State would be regulated by orders of the Court in Bangladesh. The Court shall satisfy itself that the person to be examined at the Requested State can be seen and heard clearly and similarly that the person to be examined at the Requested State can clearly see and hear the Court. The Court shall at all times have the ability to control the camera view in the Requested State so that there is an unobstructed view of all the people present in the room. The Court shall have a clear image of each deponent to the extent possible so that the demeanor of such person may be observed.

4.13 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined; direct appropriate measures to protect his privacy keeping in mind his age, gender and physical condition.

4.14 Where a party or a lawyer request that in the course of recording of statement through audio-visual means some privileged communication may have to take place, Court will pass appropriate directions in that regard.

4.15 In case any party or his/her authorized person is desirous of being physically present at the requested State at the time of recording of the evidence, it shall be open for such party to make arrangements at its own costs including for appearance/representation at the requested State subject to orders to the contrary by the Court.

4.16 Third parties may be allowed to be present during recording of statement through audio-visual mode subject to orders to the contrary, if any, by the Court. Where, for any reason, a person unconnected with the case is present at the requested State, then that person shall be identified by the coordinator of the Requested State at the start of the proceedings and the purpose for his being present explained to the Court.

4.17 The issues related to the cost incurred on recording of statements by audio-visual means shall be borne by the requesting State and in case of non-treaty countries with mutual consent of the Central Authorities.

Technological and coordination of Requirements of recording of statement through Audio-Visual means -

4.18 The respective coordinators shall conduct a test between both the countries well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.

4.19 The equipment including hardware and software required for recording of statements by audio-visual means are:

- (a) A computer resource, desktop or laptop with internet connectivity and printer;
- (b) Device ensuring uninterrupted power supply;
- (c) Video Camera;
- (d) Microphones and speakers;
- (e) Display unit;
- (f) Document visualizer;
- (g) Comfortable sitting arrangements ensuring privacy;
- (h) Adequate lighting;
- (i) Insulations as far as possible/proper acoustics
- (j) Digital signatures from licensed certifying authorities for the coordinators at the Court point and the remote point.

4.20 The coordinator on both sides shall provide:

- i) a translator in case the person to be examined is not conversant with the language of the Court;
- ii) an expert in sign language in case the person to be examined is speech and/or hearing impaired;
- iii) an assistance, for reading of documents in case the person to be examined is visually challenged;
- iv) an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently disabled.
- v) a transcriber, who will transcribe the statements made in the room. The typed words should be made visible to all the concerned persons, including the witness, so that they may suggest corrections on the spot.

4.21 It should be ensured by the coordinators that:

i) person to be examined or heard is available and ready at the room earmarked for the recording of statement through audio-visual means at mutually agreed time.

ii) no other recording device is permitted in the room except the one installed for recording of statements through audio-visual means;

iii) entry into the video conference room shall be regulated.

iv) coordinator at the Court should ensure that the co-coordinator at the Requested State has certified copies or soft copies of all or any part of the Court record in a sealed cover directed by the Court sufficiently in advance of the scheduled recording of statement.

4.22 If in the course of examination of a person at a Requested State, it is necessary to put a document to him, the Court may permit the document to be put in the following manner:

i) if the document remain at the disposal of a Court in Bangladesh, by transmitting a copy of it to the Requested State electronically including through a document visualizer and the copy so transmitted being then put to the person;

ii) if the document is at the Requested State, by putting it to the person and transmitting a copy of it to the Court electronically including through a document visualizer. The hard copy would also be sent subsequently to the Court by courier/mail.

4.23 The matters with respect to which no express provision has been made in these guidelines shall be decided by the Court in consultation with the Requested State,

#### **E. Execution of Request for Service of Summons/Notices/Judicial Processes Issued by the Foreign Courts/Authorities**

4.24 The request for service of summons/notices/judicial processes from a Contracting State or foreign State is received by the Central Authority of Bangladesh through diplomatic channels or directly from the Central Authority of Contracting State or foreign State.

4.25 After receipt of the request, the Central Authority of Bangladesh shall examine the documents and having found them fit for service should-

i) forward the same to the competent court, which shall thereupon summon the person before it and record his statement or cause the document or thing to be produced, or



- ii) send the document to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within Bangladesh.

4.26 The Central Authority shall ensure that summons/notices/judicial processes received from the Contracting States or foreign States are compliant to the provisions of the Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention under which they have been sent for service and the translated copy of such documents are enclosed in the language specified in Treaty. For the non-treaty countries, the Central Authority should ensure that the documents are translated into English (refer to Figure 4.5 of these Guidelines).

4.27 The concerned Authorities after service of these documents upon the person shall prepare a report of service of such documents and forward the report along with proof of service in original as per the domestic law and procedure of Bangladesh or in the manner mentioned in the Request. The proof of service along with connecting documents shall be forwarded to the Central Authority. The Central Authority of Bangladesh shall further forward the proof of service along with the connecting documents to the Requesting State through diplomatic channels or through the same channel through which the request for service was received.

4.28 The Competent Authorities assigned the task of service shall endeavor to serve the documents promptly and expeditiously, preferably within two weeks.

4.29 If the service of the documents cannot be affected upon, the reasons thereof shall be communicated within 7 days to the Central Authority through the ILO concerned.

**Figure 3.2: Format of the Request for Service of Summons/Notices/Judicial Processes**

1)	Purpose for making request	Service of summon/notice/judicial documents		
2)	Nature of request			
3)	Name of Requested State			
4)	Basis of request		MLAT	UNTOC
			SAARC Convention	UNCAC
			Haque Convention	Harare Scheme
			Vienna Convention, 1988 (NDPS)	
			Any other Bilateral Treaties/Agreements, Multilateral Treaties/Agreements..... (Specify)	
			Any other International Convention/Resolution .....(Specify)	
		Assurance of Reciprocity		
5)	Complete Name and Address of the person to be served	Name: Address: Telephone /Mobile Number: Email:		
6)	Issuing Authority	Name:		

		Address: Pin Code: Details of the person at Issuing Authority: Designation: Phone/Mobile Number: Email:
7)	Contact details of person/officer who could be contacted for clarifications about the document	Name: Designation: Phone No: Fax Email ID:
8)	Case Details	FIR No./ Case Number: Section under which FIR / Case Number has been registered:
9)	Brief summary of the case	Brief fact of the case: Applicable laws and maximum penalties for the offence in Bangladesh:
10)	Status of the person to be served abroad (Witness/accused)	
11)	Details of allowances and expenses payable to the person if any	
12)	Confirmation to pay any expenditure, if charged by foreign government/agency for service of documents	
13)	Any specific manner in which a service has to be made	
14)	Date by which the document is expected to be served abroad	
15)	Next date of hearing	
16)	Confidentiality requirement with reasons (if any)	
Option for recording evidence through audio - visual mean		
17)	Mode of recording evidence	Audio/videoconferencing/any other mode
18)	Link for conducting video conferencing	

19)	Details of the technical requirements for establishing the link	
20)	Detail of the person who would provide technical assistance to Requested State	Name
		Designation
		Phone number
		Email
Date: (To be signed and stamped by the Issuing Authority)		

**Figure 3.3: Format for summons to accused as provided in CrPC**

FORM No. 1

SUMMONS TO AN ACCUSED PERSON

To (name of accused) of (address)

WHEREAS your attendance is necessary to answer to a charge of \_\_\_\_\_ (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of \_\_\_\_\_, on the \_\_\_\_\_ day. Herein fail not.

Dated, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

(Seal of the Court) \_\_\_\_\_ (Signature)

**Figure 3.4: Format for summons to witness as provided in CrPC.**

FORM No. 33

SUMMONS TO WITNESS

To \_\_\_\_\_ of \_\_\_\_\_

WHEREAS complaint has been made before me that \_\_\_\_\_ (name of the accused) of \_\_\_\_\_ (address) has (or is suspected to have) committed the offence of \_\_\_\_\_ (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution;

You are hereby summoned to appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ next at \_\_\_\_\_ in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated, \_\_\_\_\_ day of, 20\_\_\_\_

(Seal of the Court)

(Signature)

## **CHAPTER IV: MISCELLANEOUS PROVISIONS RELATING TO RECIPROCAL ARRANGEMENTS**

### **A. Request for Recording of Statement and Taking Evidence from Persons Residing Abroad**

#### **4.1 The statement of the persons residing abroad can be recorded in the following ways:**

- i) Recording of the statement by the Competent Authority of the Requested State;
- ii) Obtaining statement through Commission Issued by Bangladesh Court;
- iii) Making available persons in Bangladesh for recording of statement (including person in custody);
- iv) Obtaining statement through Audio-Visual Means in foreign State.

#### **4.2 Recording of the statement by the Competent Authority of the Requested State**

4.2.1 Section 14 of the Act, where a request is made by a foreign State for recording a statement or taking testimony of a person with a view to conducting investigation, the competent authority shall appoint an investigating officer in the concerned matter and issue direction to execute it. The investigating officer shall have the power to record the statement and to take the testimony of the person in accordance with the provisions of the Code of Criminal Procedure (CrPC). The requests for assistance for obtaining evidence in foreign State can be initiated by an Investigating Officer who has a reasonable ground to believe that evidence may be available in such foreign State. On such a request of the Investigating Officer, any Criminal Court in Bangladesh may issue a letter of request for recording the testimony of any person including a person in custody and produce documents, records, articles or objects in the foreign State.

#### **4.3 Obtaining statement through Commission Issued by Bangladesh Court**

For recording of the statement of the person residing abroad, a Court in Bangladesh may issue a commission under Section 503 of CrPC<sup>3</sup>, subject to the domestic laws of the foreign State.

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<sup>3</sup> Section 503 (1) Whenever in the course of an inquiry, a trial or any other proceeding under this Code, it appears to 1[a Metropolitan Magistrate], 2[a Chief Judicial Magistrate], a Court of Session or the High Court Division that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate, 3[Chief Metropolitan Magistrate or Chief Judicial Magistrate], within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(2) and (2A) [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]

#### 4.4 Making available persons in Bangladesh for recording of statement

For making available persons (including person in custody) in Bangladesh for recording of statement the provisions of Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention shall be followed.

**Figure 4.1: Format for Issue of Commission**

IN THE COURT OF

Commission to examine witness outside Bangladesh (Sec 503 of the Code of Criminal Procedure, 1898) To

Through the \_\_\_\_\_ (Name of Ministry), Government of Bangladesh

Whereas it appears to me that the evidence of ..... is necessary for the ends of justice in case No..... vs..... in the Court of ..... and that such witness residing within the local limits of your jurisdiction and his attendance cannot be procured without an amount of unreasonable delay, expense or inconvenience, I ..... have the honor to request and do hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witness to attend at such time and place as you shall appoint and that you will cause such witness to be examined upon the interrogatories which accompany this commission (for viva voce).

Any party to the proceeding may appear before you by pleader, or, if not in custody, in person, and may examine, cross-examine or re-examine (as the case may be) the said witness.

And I further have the honor to request that you will be pleased to cause the answers of the said witness to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by your official seal (if any) and by your signature and to return the same together with this commission to the undersigned through \_\_\_\_\_ (Name of Ministry), Government of Bangladesh, New Delhi.

Given under my hand and the seal of the Court on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

Judge  
Judicial Magistrate  
Metropolitan Magistrate

(2B) When the witness resides in the United Kingdom or any other State of the Commonwealth other than Bangladesh, or in the Union of Burma, or any other State in which reciprocal arrangement in this behalf exists, the commission may be issued to such Court or Judge having authority in this behalf in that State as may be specified by the Government by notification in the official Gazette.

(3) The Magistrate or officer to whom the commission is issued, or if he is the 4[Chief Metropolitan Magistrate or the Chief Judicial Magistrate], he, or 5[any other Magistrate] as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

#### **4.5 Obtaining statement through Audio-Visual Means**

A. Section 4 of the Adalat Kartrik Tathya Projukti Byabohar 2020 (Act No. 11 of 2020), provides that the examination of witness may also be done by audio-visual electronic means. It is further confirmed in the Writ Petition No. 4611 of 2020<sup>4</sup> that the Hon'ble President by exercising his exclusive jurisdiction under Article 93(1) of the Constitution promulgated Ordinance No.1 of 2020 with a view to empowering the courts to continue with the trial of the cases, judicial inquiry, application or appeal hearing, taking evidence, argument hearing or pronouncement of judgment or order through audio-video or using any other electronic device with virtual presence of the litigant parties or their advocates or any other person concerned or the witnesses.

B. Where a Court or other Authority or agency or an officer having jurisdiction, in the course of investigation or prosecution, finds it necessary that evidence may be recorded by audio-visual means to avoid amount of delay and expenses, it may forward an application to the Central Authority of Bangladesh for the said purposes. Audio-visual means may be used for:

- i) facilitating examination of a witness or an expert in foreign State.
- ii) identification of persons or object, or
- iii) any other purposes related to investigation and prosecution of a criminal matter.

C. For recording of statements through audio-visual means, Chapter III of this Guideline may be referred.

#### **B. Visit of Investigating Officers Abroad for Assisting in Execution of Request and Joint Investigation**

##### **4.6 Visit of Investigating Officers Abroad for Assisting in Execution of Request**

1. Sometimes, it may become necessary to send official(s) of competent authority from Bangladesh to a foreign State for assisting foreign State in execution of LRs or MLA Request or for collecting information or leads during the course of investigation of a case keeping in view the importance of the case and the complicated nature of offences under investigation. As any Investigating Officer of Bangladesh does not enjoy Police powers/investigative powers in a foreign State, such visit by an Investigating Officer without the express consent of any State may be considered interference in the sovereignty of that State unless some required formalities are observed.

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<sup>4</sup> A.K.M Asiful Haque vs Secretary, Law and Justice & Division, Ministry of Law, Justice & Parliamentary Affairs, Government of the People's Republic of Bangladesh, Bangladesh Secretariat. Shahbagh, Dhaka and others

2. When it is considered necessary to send a team of Officers abroad, the competent authority may send a proposal to the Central Authority of Bangladesh for obtaining the approval for the proposed visit, whenever necessary.

3 Subject to the law of foreign State such police officers may participate in taking of the evidence and may also pose questions to the person examined. He may also make a verbatim transcript of the proceeding.

4. The visit will not commence before the required permission is received. The visiting Investigating Officers must get in touch with the Bangladesh Mission on their arrival. In case, the State does not have a mission, the accredited mission for Bangladesh may be kept informed with regard to the visit of the Investigating Officers.

5. The following information needs to be sent to the IS-II Division, MHA (Central Authority of Bangladesh) for taking up the matter with the State to which such team is proposed to be sent:

- A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the Requested State. This is to enable the authorities to assess whether the request is justified.
- All available particulars about identity or particulars of the person to be contacted or documents to be scrutinized, etc. This would help the Requested State to make all necessary preparations.
- Information about the penal offence to which mission relates.
- Exact date and duration of the mission and information about the police officers such as their name, ranks, contact details, etc.,
- Any other information which may be relevant in processing such a request.

#### **4.7 Visit of Investigating Officers of Foreign State for Assisting in Execution of Request in Bangladesh**

A. The request for the visit of the Investigating Officer of the Contracting State intending to visit Bangladesh in relation to execution of LR/ MLA Request or for capacity building in mutual legal assistance shall be made to the Central Authority of Bangladesh for remaining present or assisting in the execution of request. The tentative travel itinerary of the persons visiting should also be provided to Central Authority of Bangladesh well in advance.

B. If the Central Authority of Bangladesh agrees for allowing the presence of officers of a foreign State, the dates of the visit should be finalized with mutual consent after ensuring the availability of witnesses.

C. It should be ensured that any foreign Police Personnel/ Legal Attaches of the Diplomatic Mission of foreign countries or foreign officials visiting Bangladesh for investigative purposes are not permitted to establish any direct contact with the competent authority at the State Level unless specifically authorized by the Central

Authority of Bangladesh. Any attempt by such foreign police /legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of the Central Authority of Bangladesh.

#### **4.8 Joint Investigation**

A Joint Investigation Team is a team set up for a set period, based on mutually agreed terms between the Contracting States for a specific purpose in relation to the investigations, prosecution or proceedings. The procedures under which the joint investigation team has to operate in Contracting States should be mutually agreed upon such as its composition, duration, location, organization functions, purpose and terms of participation of team members.

### **C. Protection and Preservation of Data**

#### **4.9 Data Retention/Preservation**

Data preservation is the key step in investigation of offences of cybercrimes and offences involving digital evidence. Accessing the internet through an Internet Service Provider (ISP) creates important records and other information such as customer records, connection information and stored data. This is very important evidence to prove the intention (mens rea) of the accused. Since this type of evidence can disappear quickly, it is of paramount importance to get the data preserved expeditiously through appropriate channels. 5.12 The request for data protection/preservation may be sent using official ID's directly to the Central Authority who would in turn get the data preserved through the Central Authority which is being the contact point in respect of Bangladesh Network. It allows Law Enforcement Agencies of Bangladesh making urgent preservation requests of the digital data before it perishes. The concerned agency will keep the Central Authority of Bangladesh informed of making such preservation requests. Generally, the data is preserved for an initial period of 90 days from the receipt of Request. During this period, the investigation Agencies including State Law Enforcement Agencies should send a proposal to the Central Authority for the issuance of LR or MLA Request for obtaining the data from concerned service provider. If the investigation is continuing, then after every 60 days the request for preservation of data shall be served to the State concerned.

#### **4.10 Obtaining Subscriber Information**

In order to obtain subscriber information, the Investigation Agency need only establish that the evidence sought is relevant and related to the criminal investigation. It is not enough to show that the accused had an email account; the account must have something to do with the crime being investigated. This is the lowest legal standard required of all investigative processes.



#### **4.11 Obtaining Transactional Information**

In order to obtain the transactional information, the Investigation Agency must provide specific facts detailing how the records or other information sought are relevant and material to criminal investigation. This is because the law in many foreign countries requires prosecutors to provide the Court with a factual summary of the Investigation and how the records requested will advance that investigation.

#### **4.11 Obtaining Contents**

In order to obtain the content in most cases, the Investigation Agency must provide information in the formal request that satisfies two legal standards. i.e., (1) probable cause and (2) that the facts supporting the request are correct.

#### **4.12 Safeguards for Protection and Preservation of Data**

While seeking the assistance of protection and preservation of data, the following safeguards, subject to Digital Security Act, 2018 and other relevant laws, should be ensured:

- a) Data including personal data must be obtained and processed fairly and lawfully and must be appropriate, relevant and not excessive with regard to the purposes for which it is sought and transferred.
- b) The Requested State has to be informed about the time period for which the data is required. Such period shall be consented by the Requested State.
- c) The transferred data shall be kept for no longer than the period required for the purpose for which it has been received and shall be returned to the Requested State or deleted at the end of the period specified.
- d) The Requested State shall be informed in advance in case the data has to be kept for a longer period in Bangladesh.
- e) The Competent Authorities of the Contracting States shall take all reasonable measures to prevent the transfer of inaccurate, incomplete or out-of-date data. If it is established that inaccurate or nontransferable data has been transferred, it shall be immediately informed to the Requested State and provide correct or accurate data. Any inaccurate data so received should be deleted or returned to the Requested State.
- f) The data should not be transferred to a third State, a private individual or an international body without the consent of the Requested State.
- g) The data transferred should be protected from accidental or unauthorized destruction, accidental loss, and unauthorized access, modification or dissemination.

h) A record of the data transferred and its destruction should be maintained.

#### **D. Identification of Bank Information**

**4.13** Where a Court or Authority or Agency or Officer having jurisdiction in this regard for investigation into a criminal offence desire to obtain financial information of a person or entity who is in any place in a foreign State, it may forward a request to the Central Authority of Bangladesh for ascertaining in the foreign State that:

- i) if the banks located in the Contracting State have any information related to the bank account held by the person suspected or charged with a criminal offence in Bangladesh; or
- ii) any other financial detail thereof

**4.14** The request for identification of bank information should also include:

- name of the Bank; name of the account holder; bank account number;
- address and branch code of the bank where the account is held;
- grounds for believing that banks in the foreign State hold account(s);
- time period over which the information is sought;
- any other documents required (e.g., account opening information, bank statements, etc.) and its relevance to the investigation
- certified copy of the any other relevant documents, e.g., the corresponding court orders, FIR, charge sheet, complaint petition, application, etc.

#### **E. Interception of Postal Items**

**4.15** For preservation and suppression of crime, a request for interception of a postal item during the course of its carriage by a postal service may be made, where there are reasonable grounds to believe that such interception would prevent or be relevant in the commission of offence in Bangladesh or foreign State concerned or such interception is required for the purpose of any investigation or proceeding in criminal matter.

**4.16** The request for interception of postal item should include:

- date of dispatch of the postal item;
- sufficient information to identify the item;
- the course of transit, anticipated delivery time;
- details of courier (if applicable);
- explanation of how the item relates to the criminal investigation in the Requesting State; and,
- certified copy of the any other relevant documents, e.g., the corresponding court orders, FIR, charge sheet, complaint petition, application, etc.

### **Figure 4.2: Do's and Don'ts for the Competent Authority**

#### **Do's**

- While making a request or preparing execution report, the following precautions may be taken by the Investigating Agencies:
  - Any documents, photographs, and objects, if enclosed with the request/execution report, should be clearly marked and referred to in the body of Request.
  - All the photocopied papers/ documents enclosed must be legible and if required must be translated in the language mentioned in the Treaty/Agreement or International Convention. The translated copies should be duly signed by a translator and authenticated by the Investigating Agency.
  - The request /execution report should be neatly bound, and page numbered.
- At least, four copies of the request should be prepared including the original.
- A soft copy of the request should be made and forwarded to the Central Authority.
- In case of service of documents, clear and complete address of the person on whom the service needs to be affected should be mentioned.
- The request for assistance, its contents and its supporting documents should be kept confidential. In case the request cannot be executed without breaching confidentiality, the foreign country should be so informed.
- Investigating Agencies should ensure that any foreign Police Personnel/ Legal Attaches at the Diplomatic Mission of foreign countries or foreign officials who are visiting Bangladesh for investigative purposes are not permitted to establish any direct contact with the police personnel at the State Level unless specifically authorized by Central Authority. Any attempt by such foreign police /legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of the Central Authority of Bangladesh.

#### **Don'ts**

- The request made should not be vague. Fishing inquiries should be avoided.
- Requests which are civil or commercial in nature should not be made to the Ministry of Home Affairs. Such request should be made to the Ministry of Law and Justice.
- Information which is not relevant for the investigation and prosecution of the criminal case should not be asked in the request.
- The request for execution of the non-bailable warrants should not be made under MLAT or Letters Rogatory.
- Requests which are trivial or de minimis in nature should be avoided.
- Authorities should not disclose the contents of a request without the consent of the foreign Country.
- Without the consent of the foreign country, any information or evidence provided by the foreign country for investigations or proceedings should not be used or transferred for any other purpose than those stated in the request.

\* \* \*

## GLOSSARY

1. Assurance of Reciprocity: It is a promise that the Requesting State will provide the Requested State the same type of assistance in the future, should the Requested State ever be asked to do so. This principle is a useful tool in a situation in which there is no treaty, as it can be viewed as a stand-alone promise that one State will do the same for another State in future should the need arise.
2. Attachment: It means prohibition of transfer, conversion, disposition or movement of property by an order.
3. Contracting States: Any State or place outside Bangladesh in respect of which arrangements have been made by the Central Government with the Government of such State through a treaty or otherwise
4. Data: Data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.
5. International Criminal Police Organization (INTERPOL): INTERPOL is the world's largest international police organization, with 194 member countries. Its role is to enable police around the world to work together to make the world a safer place and ensure public safety. In the extradition and mutual legal assistance field, the communications network and other services of INTERPOL provide highly effective assistance in furtherance of these actions.
6. Personal Data: Personal Data means data about or relating to a natural or legal person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person or legal, or any combination of such features, or any combination of such features with any other information.
7. Preservation of Computer Data: It means protection of computer data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate.
8. Proceeds and Instrumentalities of Crime: It means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property.
9. Property: It means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments

evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds and instrumentalities of crime.

10. Requested State: Any State to which a request for mutual legal assistance has been made.

11. Requesting State: Any State which is making a request for mutual legal assistance.

12. Tracing: Tracing means determining the nature, source, disposition, movement, title or ownership of property.