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**JUDICIAL COOPERATION NETWORK FOR
CENTRAL ASIA AND SOUTHERN CAUCASUS**

A satellite-style image of the world at night, showing the glowing lights of cities and urban areas against the dark background of the oceans and unlit landmasses.

**Compendium of the National Legal Requirements
for International Judicial Cooperation
in the Southern Caucasus Countries**

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Foreword

In the modern world, international cooperation, especially in criminal matters is of greatest importance provided. This is because, on one hand, globalization and technological progress are at the highest level ever and inter-state travel is much easier; on the other hand, the scope of transnational (organized) crime is increasing from day to day. Therefore, the necessity of effective cooperation between states is of vital significance. The main mechanisms of international cooperation in criminal matters (hereinafter – ICCM) are extradition and mutual legal assistance (hereinafter – MLA).

Extradition is the formal process whereby a state requests from another state the surrender of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting State. **MLA** in criminal matters is a process by which one state requests another state the assistance in performing particular procedural measures, including gathering evidence within the latter's territory, for use in criminal cases.

It should be highlighted that in many cases, extradition and MLA are the sole means of bringing those responsible to justice and acquiring evidence decisive for a criminal case. Despite crime having no boundaries, the offender's post-criminal behavior must be bounded territorially and solid institutional guarantees must be implemented to ensure that such offenders will be held accountable. Therefore, states must rely on each other to bring the alleged offenders to justice.

Extradition and MLA are valuable tools for all countries around the world. Even more significant are these means of ICCM for and in respect with Southern Caucasus countries – **Republic of Armenia** (hereinafter - Armenia), **Republic of Azerbaijan** (hereinafter – Azerbaijan), and **Georgia**. In particular, geographically, the region is located on a crossroad between Europe and Asia, which makes it transit hub and also considerably increase the number of international visitors.

The present compendium provides the states seeking for ICCM from Southern Caucasus countries with the step-by-step guide of the respective procedures, legal and practical requirements concerning MLA and Extradition. It aims to assist the requesting states in determining precise information, requirements and procedure of submitting the MLA and Extradition requests, which will result in receiving and processing the request most efficiently and promptly .

There are several bases on which ICCM can be requested from Southern Caucasus countries, including bilateral and multilateral treaties. However, in case some required information is missing from the request or the submission procedure is not met, the execution of such request will be delayed or impossible highlighting the compendium's value.

Common challenges identified in the process of seeking ICCM from foreign states include a lack of understanding of its legal and practical requirements, a lack of appropriate contact information, difficulty in acquiring informal consultation before making formal requests, and knowledge of the

proper procedure. Considering the aforementioned issues, the compendium aims to overcome these obstacles and assist the interested parties. Particularly, the compendium is focused on providing States with most relevant and sufficient information to assist them in duly preparing and submitting the requests concerning ICCM. In particular, the compendium includes general information of central/competent authorities, legal and practical requirements on cooperation and a practical step-by-step guide for application and follow up procedures related to requests on MLA and extradition.

Last but not least, I wish to express my gratitude to the UNODC, UNOV, and CASC network for their generosity for involving me in this project.

My special thanks to the people in charge of the project, Luis Francisco de Jorge Mesas, Maruf Khakimov, and Shokhista Khadjieva at UNODC.

A draft of Armenia's contribution/chapter/section? of the compendium was forwarded to the representative of Prosecutor General's Office of Armenia. My special thanks to Deputy Head of the Department of International Legal Cooperation – Louise Manukian for her valuable assistance.

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REPUBLIC OF ARMENIA

MUTUAL LEGAL ASSISTANCE (MLA)

INTRODUCTION

Armenia provides MLA to foreign countries based on multilateral or bilateral treaties. In the absence of a treaty, Armenia may consider the principle of reciprocity as a basis for MLA.

On the national level, MLA matters are regulated by the *Code of Criminal Procedure of the Republic of Armenia of September 1st, 1998*. The Code, in conjunction with the respective international treaties of Armenia, determines the scope, procedure and conditions for MLA matters between Armenia and foreign states.

- **Assistance based on the multilateral/bilateral treaty**

Armenia has concluded special bilateral and multilateral international treaties on MLA with foreign states. In particular, Armenia is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959, its Additional Protocol of 1978 and second additional protocol of 2001, as well as the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (hereinafter – Minsk Convention) and the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (hereinafter - Chisinau Convention) concluded within the framework of the Commonwealth of Independent States.

Legal assistance can also be rendered under the United Nations Convention against Corruption of 2003, the United Nations Convention against Transnational Organized Crime of 2000, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990, and other multilateral conventions that include provisions on mutual legal assistance in criminal matters.

- **None-Treaty requests for assistance**

As previously mentioned, in case of an absence of a treaty, Armenia may execute the MLA request in exceptional cases based on the principle of reciprocity. One of the main conditions of the assistance based on the reciprocity principle is the readiness of the requesting state to provide the same legal assistance to Armenia.

Furthermore, the assistance based on this principle will be rendered according to the conditions agreed upon. It needs to be highlighted that the aforementioned conditions should be arranged **through diplomatic channels**. The reciprocal conditions must be agreed in advance with either PGO (ICCM in pre-trial stage) or MoJ (ICCM in court proceedings and execution of judgments; see section II below).

In Armenia's case, the principle of reciprocity also applies for extradition matters. For instance, recently Armenia has agreed on cooperation in the field of **MLA** based on the principle of reciprocity with the Hong Kong Special Administrative Region of the People's Republic of China, Japan, Malaysia, and in the field of **extradition** with the Republic of India.

- **Double criminality requirement**

Double criminality requirement is necessary especially when this requirement is prescribed by the international treaty or reservation of Armenia to the respective treaty. In general, regarding the MLA requests, the double criminality requirement is considered less as a condition to refuse the request.

CENTRAL AUTHORITY – CONTACT INFORMATION

In regards to MLA, depending on the stage of proceedings in the requesting country, there are two central authorities of Armenia. Particularly:

In case the proceedings are at a pre-trial stage in requesting country, the central authority entitled to receive the MLA request is the Office of the Prosecutor General of the Republic of Armenia (hereinafter – PGO). In particular, the Department of International Legal Cooperation is dealing with incoming and outgoing MLA requests at PGO.

Contact information of PGO:

The Office of the Prosecutor General of the Republic of Armenia

Department of International Legal Cooperation

5 Vazgen Sargsyan street, 0010 Yerevan, Republic of Armenia

Telephone: +374 (10) 511 680

E-mail: international@prosecutor.am; l.manukian@prosecutor.am; info@prosecutor.am

Where the proceedings are at the trial stage, the MLA request should be submitted to the Ministry of Justice of the Republic of Armenia (hereinafter – MoJ). Namely, the Department of Mutual Legal Assistance is dealing with incoming and outgoing MLA requests.

Contact information of MoJ:

Ministry of Justice of the Republic of Armenia

Department of Mutual Legal Assistance

3/8 Vazgen Sargsyan street, 0010 Yerevan, Republic of Armenia

Telephone: +374 (10) 59 40 29

E-mail: info@moj.am; armenuhi.harutyunyan@moj.am; mla@justice.am

CHANNELS OF COMMUNICATION

- **Submission of the request**

It should be highlighted that Armenia accepts formal correspondence, including MLA requests received either by post, or through the diplomatic and/or Interpol channels.

In case of urgency, Armenia also accepts MLA requests submitted electronically by e-mails. Where the requesting country submits the documents in an electronic form, **the original documents (hard copy) should be provided at the earliest**. Depending on the applicable treaty/agreement, the original documents should be submitted either through the Ministry of Foreign Affairs, MoJ, or directly to PGO. The request should be in a **written form and dully signed** by the authorized official.

It must be noted that in case the document is submitted electronically, it should be possible to determine the authenticity of the document. In this regard, the electronic signature is not the only way to verify authenticity of the electronic document, and a receipt from government-issued e-mail, etc. will suffice.

Note: where the request concerns letters rogatory addressed directly by the judicial authorities of the requesting country to the judicial authorities of Armenia, if submitted in case of urgency, a copy of all such requests should be transmitted simultaneously to the MoJ or Ministry of Foreign Affairs, depending on the applicable treaty and/or Armenian reservation to such treaty.

- **Language of the request**

It is most desirable that the request for legal assistance and annexed documents be provided in the Armenian language. Since all the foreign language requests are translated before proceeding, submitting the documents in Armenian translation will considerably shorten the process of consideration and execution of the request. In this respect, due regard must be given to the **quality of the translation** which is vital for prompt and efficient execution of the request.

Furthermore, the request and other documents may also be submitted in the language stipulated in the applicable treaty and/or agreed by the parties (e. g. for CoE treaties - one of the official languages of the Council of Europe).

STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM ARMENIA

In the interests of efficiency and fruitfulness, it is desirable to follow the steps outlined below:

Step 1: FOR URGENT/SERIOUS CASES CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is recommended to contact the appropriate central authority of Armenia before preparing and submitting the MLA request **for urgent and/or serious cases** and consult the details in advance. It will ensure submission of complete and flawless requests. An incomplete request for assistance will not automatically be returned, but additional information may be requested.

Step 2: INDICATE THE COOPERATION INSTRUMENT FOR SEEKING THE ASSISTANCE

The treaty, convention on cooperation should be clearly identified and noted in the request. If no convention/treaty is applicable, it should be explicitly specified that the request is made pursuant to the reciprocity principle.

Step 3: IDENTIFY THE AUTHORITY CONDUCTING CRIMINAL PROCEEDINGS

In the MLA request, the authority conducting criminal proceedings in the case for which assistance is requested as well as the authority requesting MLA should be clearly identified.

Step 4: INCLUDE ALL RELEVANT INFORMATION IN THE MLA REQUEST

The MLA request addressed to Armenian central authorities should always be submitted in writing and as a general rule should include the following information:

- **Title of the request**

The title of the request should be short and precise. To be clear and easily identifiable what kind of assistance is requested, the title should indicate the nature and range of activities.

- **Urgency and/or confidentiality**

Where applicable, the level of urgency and/or confidentiality should be noted, preferably in the opening of the request. It is recommended that the reasons for the urgency of the request are indicated therein which will enable Armenian central authorities to prioritize the request accordingly

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request contact person with whom Armenian authorities may seek any clarification if need be.

- **The title of the central authority of Armenia to which the request is addressed**

See the detailed contact information of Armenian central authorities in section II above.

- **Other information**

The following information should also be included in the MLA request:

- The description of factual circumstances of the case and the respective legal qualification;
- Applicable criminal law provision and, where necessary, extracts from other legislative acts;
- Assistance requested;
- The object of and the reason of the request;
- Accurate identification of characteristics of the person for whom assistance is requested, including the citizenship, occupation, address or location;
- Where the request concerns a legal person, their title and location;
- Where necessary, type of damage and where applicable, information on the amount of damage caused;
- Other relevant information.

- **Presence of the representatives of the requesting country and application of latter's legislation**

Where there are relevant legal grounds, the representatives of a requesting country may be present during the execution of a MLA request with the **prior consent** of the central authority of Armenia. The latter (or relevant investigative body) will consider the request and inform the requesting country.

In the case the implementation of the request requires the presence of the representatives of the foreign state, the relevant indication regarding the purposes and benefits of their presence, and their information (full name, position and contact info) should be indicated in the request. Furthermore, upon confirmation, respective authority of Armenia should be notified about the expected time of their arrival.

It should also be stated that unless otherwise provided for by an international treaty/agreement of Armenia or the conditions of reciprocity, in case of a relevant request, the Armenian legal system makes it possible for the legislation of the requesting foreign state to also be used (if does not contradict to Armenian legislation) in the execution process of the request.

Step 5: THE ASSISTANCE REQUESTED

The type and content of the assistance requested, as well as any particular requirements that must be met, should be clearly and explicitly noted in the MLA request.

Furthermore, depending on the type and nature of the assistance sought, the following information should be provided:

a) Witness statements/testimony

- **Competent authority which should perform interrogation**

According to Armenian legislation, as well as according to the practice of execution of MLA requests, the witness or other person concerned is always questioned by an investigator.

- **The information about the status of the person to be interrogated and rights and obligations he/she should be informed of**

Information about the **status of the person** to be heard should be clearly indicated in the request. Furthermore, in case the requesting state wishes to observe the specific formalities and procedures (e.g. presence of the lawyer during the hearing, notifying the rights and obligations before hearing in a written form, hearing the witness under oath, consequences for remaining silence or providing the false information, etc.) within the frame of execution of the request, it should be explicitly noted in the request. Such formalities and procedures may be observed to the extent that they do not contradict the procedural norms stipulated by the Code of Criminal Procedure of Armenia.

- **Questions to be asked**

The **list of questions** which requesting authorities wish the person concerned to be asked should be noted in the request. Considering the nature and specifications of interrogating, questions may not be exhaustive but indicative. Armenian authorities may, upon the request of the requesting state, broaden the hearing, by increasing the number and content of the questions, where interests of justice and prevention of additional questioning so require.

Note: It should be highlighted that at the time of execution of any letters rogatory for procuring evidence through testimony, Armenia will take into account the right to be exempt from the obligation to testify prescribed by the Article 65 of the Constitution of Armenia which states that no one shall be obliged to testify against themselves, his or her spouse or close relatives if it is reasonably assumed that

it may be used against them in the future. The law may prescribe other cases of being exempt from the obligation to testify.

b) Hearing by audio/video conference:

In addition to the information stipulated in Step 4 , the request for hearing by audio or video conference of a witness, expert, victim, or an accused located in the territory of Armenia, should also include:

- The legal status of the person whose examination is requested within the criminal case for which assistance is requested;
- The reasons why the person is unable to personally appear before the foreign authority conducting the proceedings;
- The name of the authority and the person(s) authorized to examine the witness, expert, victim, or accused using audio or video conference;
- Information about the location of the person concerned (if known);
- Indication that a person subject to criminal prosecution in the requesting country is willing to be examined by audio/video conference;
- Indication that the witness, expert, or a victim is willing to take part in a hearing by audio conference.
- A proposed date and time for hearing.

c) Search and seizure

The competent authorities of Armenia will execute the MLA request concerning *search and seizure* only if the following criteria is met:

- The crime in respect to MLA is sought is punishable both under the law of the requesting foreign state and of Armenia
- It should be highlighted, that given ICCM, Armenia applies *in abstracto interpretation of double criminality principle*. In particular, this requirement shall be deemed fulfilled, irrespective of whether Armenian laws place the offense within the same category as the requesting country if the conduct underlying the offense for which assistance is sought is a criminal offense under Armenian law.
- The offense for which the MLA is requested, is an extraditable offense according to Armenian legislation
- According to Armenian legislation, extraditable offenses are those punishable under the laws of the requesting country and of Armenia by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence has occurred or a detention order has been made in the territory of the requesting country, the punishment awarded must have been for a period of **at least six months**.
- The execution of the letters rogatory is consistent with the law of Armenia

It should be highlighted that execution of the request for search and seizure should be in compliance with the fundamental principles of Armenian law. For instance, it should be conducted only **where authorized by the Court or other appropriate authority**, etc.

Note: Armenian authorities will not execute the MLA request for search or seizure of property in regard with fiscal offenses.

- **Items to be searched and seized, their location**

The identification of the items wished to be searched/seized should be noted in the request. In case the list of items is too general and indefinite, it will be impossible to execute the request.

In addition, the exact characteristics of **home, office, or other premises** (other objects) to be searched should also be stressed in the request as accurately as possible. The provided information should include the location and exact address of the place that is supposed to be searched, the name of the owner of the premises and the purpose of their usage, if possible.

Where the **search/seizure of the vehicle** is requested, the identity of its owner, plate and VIN numbers and other relevant information should be provided.

In case **body search** is requested, all available information about the person to be searched should be provided, including full information regarding their identity characteristics.

The aforementioned information is vital for Armenian authorities to obtain an order/authorization for search/seizure from the court and correspondingly to perform the request thoroughly and in a prompt manner.

- **Type of search and its purpose**

Considering that there are different types of search, it should be distinctly mentioned in the request, which one is supposed to be conducted (e. g. home search, body search, car search, office search, etc.). It is also significant to identify the purpose of the search – whether it is requested in the interest of collecting evidence, seizure/confiscation, etc.

- **Submission of the order and indictment**

As mentioned earlier, the request for **coercive measures, including search/seizure** may only be executed in case such measure is **authorized by the court or other entitled authority** of the requesting country. Therefore, **the court order or respective decision of other authority should be enclosed to the request.**

In addition, together with the request for search/seizure, **indictment** issued by the relevant authority or other analogous document should be submitted to the Armenian authorities.

d) Measures related to computer data

For procuring computer data, depending on the subject matter, some issues need to be considered when aiming to request computer-related data from Armenia.

- **Preservation of data**

In order to enable Armenian authorities to preserve computer data the following information should be provided:

- The authority seeking the preservation;
- The offense subject of a criminal investigation or proceedings and a summary of the related facts;
- The stored computer data to be preserved and its relationship to the offense;
- Any available information identifying the custodian of the stored computer data or the location of the computer system;
- The necessity of the preservation, including reasoning of the risk of modification or loss of the data requested;
- Assurance that MLA will be requested in respect of the data concerned.

The request to preserve computer data **should not be submitted to MoJ or PGO** but to the **Police of Armenia** through the Budapest Convention 24/7 Points of Contact Network .

The MLA request addressed to Armenian Central Authority already shall include results of preservation (preservation number or other relevant information). If necessary, the MLA request may ask for future prolongation of preservation.

- **Telephone/IP data**

Where the MLA request regards the telephone data, the following information should be submitted:

- Telephone number concerned and information of its owner;
- Information concerning the relevant period for which the data is requested.

In case the IP data is requested, the following information is to be provided:

- Indication of the IP address concerned;
- Time-stamp of use;
- Name of internet service provider.

The MLA request demanding telephone or IP data should only be executed when a court order/decision has been issued by the competent authority of the requesting country and when it is enclosed to the request.

e) Interception and electronic surveillance

Where interception and electronic surveillance are concerned, the requesting state needs to demonstrate in the MLA request, *inter alia*, the following relevant facts :

- That there are reasonable grounds to believe that specific means of electronic communication is used to commit an offense and/or information capable of being evidence is transmitted/stored through/in that means;
- That the interception or electronic surveillance requested is a last resort measure and no other alternative investigative activity is capable of producing same or analogous evidence or, if available, would require disproportionate efforts.

It should be stressed that interception and electronic surveillance are available only for the investigation and prosecution of grave and serious crimes. In addition, such measures should be authorized by the court and respective decision should be enclosed to the request.

- **Search, seizure, or disclosure of data**

When submitting the MLA request to Armenian central authorities it is of vital importance to identify the exact boundaries of data to be searched/seized. Particularly, the following information should be indicated in the request:

- Exact identification of data and information about its location;
- Identification of the person or premises to be searched as accurately as possible;
- Reference to the previous request, in case one was submitted preliminarily.

f) Search and/or confiscation of criminal assets

As a general rule, in the request of search and/or confiscation of criminal assets the following information should be included:

- Reasons to believe that the assets are located on the territory of Armenia;
- The characteristics of the procedure requesting country wishes to be followed;
- Indication that the measures requested, or similar ones are in line with the legislation of the requesting country;
- Information related to bank accounts in Armenia;
- Where applicable, the value of the assets to be seized;
- The relevant documents, proving that third parties had the opportunity to claim rights.

The request should be accompanied by the **immediately enforceable original or certified copy of the decision of search and/or confiscation of criminal assets**, issued by the court or other appropriate authority of the requesting country.

Together with the request of confiscation/seizure of criminal assets the following information should be reflected in the request:

- The title of the competent authority of the requesting country, and the title of the authority which is in charge of confiscation of the assets concerned;
- Title of the competent authority of Armenia;
- The subject and purpose of the request;
- Factual circumstances of the case and their legal qualification;
- Excerpts of relevant legal provisions;
- Where necessary, characteristics of the person/s subject to criminal prosecution in the requesting country and/or of the person's in respect of whom the MLA is requested;
- Information about the assets for which assistance is requested including the information of its location and connection of the particular person/s and/or crime with the assets concerned;
- Original or certified copy of order authorizing the search, seizure/confiscation;

Furthermore, where the confiscation of criminal assets is requested, the following information should also be provided to Armenian central authority:

- The written statement issued by the competent authority of the requesting country, indicating that the order of confiscation is final and immediately enforceable;
- Information on to what extent the execution of confiscation order is requested;
- Information concerning the use of additional measures in the process of execution of the confiscation order;

- Information whether the third parties claimed any right in respect of the assets subject to confiscation.

What needs to be noted is that a **preliminarily request** for search/seizure/confiscation/freezing of criminal assets before submission of the respective MLA request **is not accepted**. On the other hand, bank accounts and financial transactions **may be suspended** based on official correspondence between Financial Intelligence Units of the requesting country and Armenia. In that respect, prior consultation with the Armenian authorities is desirable.

g) Other measures

- **Availability of relevant information**

To obtain **real estate ownership and transaction records as well as business registry** records, Armenia requires a MLA request.

- **Bank client information**

Any **bank client information** can only be obtained through a court warrant (therefore MLA is required).

- **Other information**

Armenian government maintains central **vehicle ownership databases** and any information can be obtained either through police cooperation or MLA. In regards to **border crossing records**, this information may also be obtained promptly through police cooperation channels in case the respective treaty is in force between Armenia and the requesting country. Furthermore, **turnover and tax records** are available through centralized government databases and a MLA request is required to retrieve and extract relevant data.

h) Grounds for refusal of legal assistance

Armenian legislation stipulates in detail the basis for refusal of MLA. In particular, unless otherwise provided by the respective international treaty/agreement, the MLA request can't be executed if:

- The execution of the request contradicts the fundamental principles of the Armenian legal system;
- The execution of the request may contravene the sovereignty or security of Armenia;
- Armenia considers the crime for which assistance is requested, as a political offence;
- The execution of the request would infringe *Non bis in idem* principle;
- Where the requested measure causes interference with fundamental human rights and the act for which assistance is requested does not constitute a crime under Armenian legislation;

- In respect of the crime for which assistance is requested, the statute of limitation is expired under Armenian legislation;
- The decision of confiscation was rendered *in absentia* by the competent authority of the requesting country and the person concerned was not provided with minimal defense rights.
- Using the requested measure would be impossible for Armenian authorities to use in investigating a similar crime committed in Armenia.

i) Limitations on use of evidence provided

Any evidence that Armenia provides the foreign country in response to a MLA request may only be used for the specific purpose/s stated in the request. If further use of the evidence is required, the foreign country must seek for consent of the central authority of Armenia in advance.

EXTRADITION

INTRODUCTION

Armenia cooperates with foreign countries in the field of extradition based on multilateral or bilateral treaties. In the absence of a treaty, Armenia may cooperate with the foreign state in the matters of extradition employing the principle of reciprocity.

On the national level, extradition matters are regulated by the *Code of Criminal Procedure of the Republic of Armenia of September 1st, 1998*. The Code, with the respective international treaties ratified by Armenia, determines the scope, procedure, and conditions for extradition between Armenia and foreign states.

CENTRAL AUTHORITY – CONTACT INFORMATION

With regard to extradition matters, the competent authorities of Armenia communicate and exchange information following the procedure that is applicable to mutual legal assistance cases (see the detailed information in the MLA part above, section II).

CHANNELS OF COMMUNICATION

- **Submission of the request**

Armenia accepts formal correspondence, including extradition requests received either by post, through the diplomatic and/or Interpol channels.

In case of urgency, Armenia also accepts extradition requests submitted electronically by e-mails mentioned above (see MLA part, section II). Where the requesting country submits the documents in an electronic form, **the original documents (hard copy) should be provided at the earliest**. Depending on the applicable treaty/agreement, the original documents should be submitted either through the Ministry of Foreign Affairs, MoJ, or directly to PGO. The request should be in a written form and dully signed by the authorized official.

It must be noted that in case the document is submitted electronically, it should be possible to determine the authenticity of the document. In this regard, electronic signature is not the only way to verify authenticity of the electronic document, and a receipt from government-issued e-mail, etc. will suffice.

- **Language of the request**

An extradition request and supporting documents should be provided to the Armenian central authority either in Armenian, one of the official languages of Council of Europe (for CoE countries), or in a language stipulated by the applicable treaty and/or agreed by the parties.

In general, it is most desirable that the extradition request and supporting documents be provided in Armenian . Since all the foreign language requests are translated before proceeding, submitting the documents in Armenian will considerably shorten the process of consideration and execution of the request. In this respect, due regard must be given to the **quality** of the translation which is vital for prompt and efficient proceedings.

STEPS TO FOLLOW WHEN REQUESTING EXTRADITION FROM ARMENIA

In the interests of efficiency and fruitfulness, it is recommended to follow the steps outlined below:

Step 1: IF NECESSARY, CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

Immediately after the arrest of a person concerned, Armenian central authority notifies the central authority of the requesting foreign country through direct, diplomatic or Interpol channels. In case any clarification is needed, the central authority of the foreign country can consult with the Armenian central authority.

Step 2: INDICATE THE COOPERATION INSTRUMENT

The treaty, or convention for cooperation should be identified and noted in the request.

Step 3: INCLUDE ALL RELEVANT INFORMATION IN THE EXTRADITION REQUEST

The extradition request addressed to the Armenian central authority should always be submitted in writing and as a general rule should include the following information:

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request a contact person with whom Armenian authorities may seek any clarification if need be.

- **The title of the central authority of Armenia to which the request is addressed**

See the detailed information about the Armenian central authority in the MLA part, section II above.

- **Identification characteristics of the person concerned**

The extradition request should include a description of the person concerned as accurately as possible. In particular, full name, date and place of birth, nationality, and any other necessary information.

- **Other information**

- The following information should also be included in the extradition request:
- A statement of the offense for which extradition is requested, the time and place of its commission, its legal description and a reference to the relevant legal provisions, set out as accurately as possible;
- Information about the maximum penalty set forth by the legislation of the requesting country that may be applied to the person concerned;
- Where applicable, the length of the custodial sentence imposed;
- Information about the limitation period for prosecution/enforcement of the judgment;
- In case the extradition is requested to enforce a judgment, information that the judgment subject to extradition is immediately enforceable;
- In case the extradition is requested to enforce the judgment, information that the **proceedings were held and the judgment was rendered** in the presence of the person subject to extradition;
- Where the judgment subject to extradition was rendered *in absentia*, information justifying rendering of the judgment in the absence of the defendant or **clear assurance** that the person concerned will enjoy the right to retrial in case of their extradition and he/she will have the possibility to enjoy the defense's rights;
- Where the offence for which extradition is requested is punishable by death under the law of the requesting country, **clear assurance that death penalty will not be applied** in the present case.

It should be highlighted that in case the extradition is requested to enforce a judgment, Armenian authorities will grant the request only if the custodial sentence imposed on the person concerned **is at least six months or a more severe penalty**.

- **Supporting documents**

The extradition request should be supported by the following documents:

- The original or an authenticated copy of the arrest or detention order or other order having the same effect and issued per the procedure laid down in the law of the requesting country;
- Where the extradition is requested to enforce a judgment, the original or an authenticated copy of the immediately enforceable judgment;
- A copy of the enactments stipulating criminal responsibility for the crimes subject to extradition, as well as other relevant provisions of law. Where this is not possible, a statement of the relevant law;
- Articles of the law stipulating a limitation period for prosecution/enforcement of the judgment;

- Where possible, the photo, fingerprints, and other means of identification of the person concerned.

REQUEST FOR PROVISIONAL ARREST

In case of urgency, the competent authorities of the requesting country may request the Armenian central authority to provisionally arrest the person sought. The following information should be included in such request:

- Information about the existence of the detention order (arrest warrant) or immediately enforceable judgment;
- Indication that the extradition request will be submitted additionally;
- Indication of the offense for which extradition will be requested;
- A statement of the offense for which extradition will be requested, the time and place of its commission;
- Accurate Identification of characteristics of the person concerned.

Please, note that the extradition request and supporting documents should be submitted to the Armenian central authority through the means stated above **within 30-40 days after arrest**. The exact deadline for receipt of the extradition request depends on the applicable treaty.

Where the **European Convention on Extradition** is applied, the extradition request and supporting documents should be submitted **within 30 days after arrest (upon declaration of Armenia to the Convention)**.

Where the **Minsk Convention** is applied, the extradition request and supporting documents should be submitted **within 30 days after arrest**. In case the requesting country has ratified the additional protocol to the Minsk Convention, the extradition request and supporting documents should be submitted **within 40 days after arrest**.

In case of absence of a respective international treaty, the extradition request and supporting documents should be submitted **within 30 days after arrest**.

In case the request and documents are not provided within this timeframe, the person concerned **will be released from detention immediately**.

FOLLOW UP PROCEDURE IN RESPECT OF ICCM

The central authorities of Armenia have created a database for incoming and outgoing MLA and extradition requests, as well as for requests for transfer of proceedings in criminal matters. In the database, all relevant information is included, including the status of the request. It is periodically monitored to review the pending request, to derive the common challenges, and to ensure proper statistics.

All follow-up documents may be submitted to the Armenian central authorities through the means, stated above.

REPUBLIC OF AZERBAIJAN

MUTUAL LEGAL ASSISTANCE (MLA)

INTRODUCTION

Azerbaijan provides MLA to foreign countries based on multilateral or bilateral treaties. In the absence of such treaty, MLA may be provided with reference to the principle of reciprocity.

On the national level, MLA matters are regulated by the *Constitution of Azerbaijan, Law of Azerbaijan on Legal Assistance in Criminal Cases of June 29, 2001, as well as, by the Code of Criminal Procedure and Criminal Code of Azerbaijan*. These acts, together with the respective international treaties or reciprocal conditions, determine the scope, procedure, and conditions for MLA.

- **Assistance based on the multilateral/bilateral treaty**

Azerbaijan has concluded bilateral agreements and joined multilateral treaties on MLA with foreign states. In particular, Azerbaijan is a party to the European Convention on Mutual Assistance in Criminal Matters of 1959 and its Additional Protocol of 1978, as well as the Minsk Convention and Chisinau Convention.

Legal assistance can also be rendered under the United Nations Convention against Corruption of 2003, the United Nations Convention against Transnational Organized Crime of 2000, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990, and other multilateral instruments that create the possibility for mutual legal assistance in criminal matters.

- **None-Treaty requests for assistance**

As it was noted above, in case of the absence of a treaty, a foreign state can seek MLA from Azerbaijan based on the principle of reciprocity. Particularly, Azerbaijan will consider the execution of such request in case the requesting state would reciprocate if Azerbaijan requested the same legal assistance. Furthermore, where reciprocity is applied, the legal assistance will be provided to the foreign state complying with the provisions set forth by the *Law of the Republic of Azerbaijan on Legal Assistance in Criminal Cases of June 29, 2001*.

- **Double criminality requirement**

As a general rule, in regards to MLA requests, the **double criminality requirement is an obligatory criterion**. According to the legislation of Azerbaijan, the MLA request shall be executed only if the double criminality criteria, together with other conditions, is met.

CENTRAL AUTHORITY – CONTACT INFORMATION

In view of MLA, the central authority of Azerbaijan is the Ministry of Justice of the Republic of Azerbaijan (hereinafter – MoJ). In particular, the International Cooperation Department at the Ministry is dealing with incoming and outgoing MLA requests. Simultaneously, the Prosecutor General’s Office of Azerbaijan (hereinafter – PGO) coordinates the process.

Contact information of MoJ:

Ministry of Justice of the Republic of Azerbaijan

International Cooperation Department

Address: Inshaatchilar avenue 1, AZ1073, Baku, Azerbaijan

Telephone: +994 12 430 01 67; +994 12 539 14 78

E-mail: international@justice.gov.az

In case the mechanism for MLA is the Minsk Convention or Chisinau Convention, the central authority of Azerbaijan is the PGO. Particularly, International Relations Department is dealing with incoming and outgoing MLA requests.

Contact information of PGO:

Office of the Prosecutor General of the Republic of Azerbaijan

International Relations Department

Address: 7 Nigar Rəfibəyli, AZ1001, Baku, Azerbaijan

Telephone: +994 12 492 61 98 (English, Russian); +994 12 437 28 69 (English, Russian)

E-mail: e.alikhanov@prosecutor.gov.az a.ojaqverdiyev@prosecutor.gov.az;
a.zeynalabdiyeva@prosecutor.gov.az; international@prosecutor.gov.az.

CHANNELS OF COMMUNICATION

- **Submission of the request**

Azerbaijan accepts formal correspondence, including MLA requests received either by post, through the diplomatic and/or Interpol channels.

In case of urgency, Azerbaijan also accepts MLA requests submitted electronically through the e-mail addresses mentioned above. Where the requesting country submits the documents in an electronic form, **the original documents (hard copy) should be provided at the earliest possible**.

The request should be in a written form on the official paper (with the respective coat of arms), duly signed by the authorized official, and confirmed with a seal reflecting the national coat of arms. Electronic signatures are accepted.

Furthermore, where the MLA is provided on the basis of reciprocity, the supporting documents should be duly sealed.

If a document is submitted electronically, it should be possible to determine the authenticity of the document. In this regard, the electronic signature is not the only way to verify authenticity of the electronic document but a receipt from an established electronic transmission system, government-issued e-mail, etc. will suffice.

- **Language of the request**

Where **European Convention on Mutual Assistance in Criminal Matters** of 1959 is applied, requests or any other documents shall be accompanied by a translation into Azerbaijani or English . Nevertheless, it is most desirable that the request for legal assistance and annexed documents be provided in Azerbaijani language. Since all the foreign language requests are translated before proceeding, submitting the documents in Azerbaijani translation will considerably shorten the process of execution of the request. In this respect, due regard must be given to **the quality of the translation**, which is vital for prompt and efficient execution of the request.

Furthermore, with the consent of the Ministry of Justice of the Republic of Azerbaijan, the request and other documents may also be submitted in one of official languages of United Nations.

In regards to **Minsk and Chisinau Conventions** the request and enclosed documents should be accompanied by the certified **Azeri or Russian translation**.

STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM AZERBAIJAN

In the interests of efficiency and fruitfulness, it is recommended to follow the steps outlined below:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is desirable to contact the central authority of Azerbaijan before preparing and submitting the MLA request and consult the specifications in advance. Prior consultation is especially important in serious cases and/or where the immediate execution of the request is decisive.

Prior consultation is also vital considering legislation of Azerbaijan states that the MLA request will not be executed unless the form and content of the request meet the requirements stipulated. .

Step 2: INDICATE THE COOPERATION INSTRUMENT FOR SEEKING THE ASSISTANCE

The treaty or convention for cooperation should be identified and noted in the request. If no convention/treaty is applicable, it should be explicitly specified that the request is made on the basis of the reciprocity principle.

Step 3: INDICATE THE AUTHORITY CONDUCTING CRIMINAL PROCEEDINGS

In the MLA request, the authority conducting criminal proceedings for which assistance is requested, and the requesting authority should be identified.

Step 4: INCLUDE ALL RELEVANT INFORMATION IN THE MLA REQUEST

The MLA request addressed to the central authority of Azerbaijan,, should always be submitted in writing and as a general rule should include the following information:

- **Title of the request**

The title of the request should be short and precise. To be clear and easily identifiable what kind of assistance is requested, the title should indicate the nature and range of activities.

- **Urgency and/or confidentiality**

Where applicable, the level of urgency and/or confidentiality should be noted, preferably, in the opening part of the request. It's recommended to indicate in the request the reasons for the urgency of the request, which will enable the central authority of Azerbaijan to prioritize the request considering the circumstances justifying its urgency.

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request the contact person with whom the central authority of Azerbaijan may seek any clarification if need be.

- **The title of the central authority of Azerbaijan to which the request is addressed**

See the detailed information about the central authorities of Azerbaijan in section II above.

- **Other information**

The following information should also be included in the MLA request:

- Brief information about the criminal case, the summary of the facts and the respective legal qualification, as well as the signs of *corpus delicti*;
- The applicable criminal law provisions of the requesting foreign state, and, where necessary, extracts from other legislative acts;
- The type of assistance requested and its content;
- The object and reason of the legal assistance requested;
- Accurate identification of characteristics of the person for whom assistance is requested including the name, surname and patronymic of the person;
- Where applicable, accurate identification of characteristics of the legal person for whom assistance is requested ;
- Where the essence of the request so requires, place of residence of the person concerned;
- Other relevant information.

- **Presence of the representatives of the requesting country and application of latter's legislation**

Where there are relevant legal grounds, the representatives of a foreign state requesting legal assistance may be present during the execution such request with the **prior consent** of the relevant executive or other competent authority of Azerbaijan. The latter will accept, if the presence of such representatives/interested persons is likely to render the execution of the request more responsive to the needs of the requesting country and, therefore, likely to avoid the need for supplementary requests.

In case the implementation of the request requires the presence of the representatives of the foreign state, the relevant indication regarding the purposes and benefits of their presence, information on the officials (full name, position, and contact information) should be noted in the request. Furthermore, upon confirmation, the respective authority of Azerbaijan should be notified about their expected time of arrival.

It should also be stated that unless otherwise provided for by an international treaty/agreement of Azerbaijan or reciprocal conditions, the legislation of the requesting foreign state may also be used if doing so does not contravene the fundamental principles of the legislation of Azerbaijan.

Step 5: THE ASSISTANCE REQUESTED

The type and content of the assistance requested, and any particular requirements that must be met should be clearly and explicitly noted in the MLA request.

Furthermore, depending on the type and nature of the assistance sought, the following information should be provided:

a) Witness statements/testimony

- **Competent authority which should perform interrogation**

Generally, the witness or other person concerned will be interrogated by the relevant law enforcement authority of Azerbaijan. Where the legislation of the requesting country stipulates the special procedure and requirements for interrogation, clear and detailed information in connection to this matter should be noted in the request (e. g. the witness/accused/victim should be interrogated in the presence of a judge, etc.).

- **The information about the status of the person to be interrogated and rights and obligations he/she should be informed about**

Information about the status of the person to be interrogated is important provided that their rights and obligations depend on the status they have in the proceedings taking place in the requesting country.

It should be highlighted that, according to Azerbaijani legislation, the person who is supposed to be interrogated, may refuse to testify in the following cases:

- If, following the legislation of Azerbaijan, there is a right to refuse to testify in a similar case being investigated or under judicial investigation by Azerbaijani authorities;
- If there is a right to refuse to testify on an investigated or pending case per the legislation of a foreign state.

Therefore, ascertaining the status of the person to be interrogated is also the mechanism to ensure the interrogation of the person concerned in conformity with the fundamental principles of Azerbaijani law.

Furthermore, in case the requesting state wishes to observe the **specific formalities and procedures in line with the right to a fair trial** (e. g. presence of the lawyer during the interrogation, notifying the rights and obligations before interrogation in a written form, interrogation of the witness under oath,

consequences for remaining silent or providing the false information, etc.) within the frame of execution of the request, it should be explicitly noted in the request.

- **Questions to be asked**

The questions which requesting authorities want the person concerned to be asked should be stipulated in the request. Considering the nature and specification of interrogation, questions may not be exhaustive but indicative. Azerbaijani authorities may broaden the interrogation, number, and content of the questions, where interests of justice and prevention of additional interrogation so require.

b) Hearing by audio/video conference:

Examination of the person concerned through the audio/video conference is possible based on the principle of reciprocity. Therefore, the conditions and requirements for examination through the audio/video conference should be agreed upon between the parties.

c) Search and seizure

Azerbaijan will execute the MLA request concerning **coercive measures**, including **search and seizure** only in case such measure **is authorized by the court or other competent authority** of the requesting country, the **decision is submitted to Azerbaijani authorities** and at the same time, all the requirements, indicated herein, are met.

- **Items to be searched and seized, their location**

The identification of the items that the requesting authority is willing to be searched/seized should be noted in the request. If the list of items is too general and indefinite, Azerbaijani authorities will be unable to execute such requests since its national law does not allow to perform search/seizure based on such information.

In addition, the **exact characteristics of a home, office, or other premises**, or material evidence to be seized to be searched should also be provided in the request,

The provided information should include **the location and exact address of the place** that is supposed to be searched, the **name of the owner of the premises**, and the purpose of their usage, if possible.

In case a **car search/seizure** is requested, the identity of its owner, plate and vehicle identification number (VIN), and other relevant information should be provided.

Where **body search** is requested, all available information about the person to be searched should be provided, including description and full information regarding their identity characteristics

- **Type of search and its purpose**

Considering that there are varieties of search types, it should be distinctly mentioned in the request which one is to be conducted (e. g. home search, body search, car search, office search, etc.). It is also significant to identify the purpose of the search, and whether it is requested in the interest of collecting evidence, seizure/confiscation, etc.

- **Submission of the order**

As mentioned earlier, the request for **coercive measures, including search/seizure** may only be executed if it is **authorized by the court or other competent authority** of the requesting country. Therefore, **the original or certified copy of the court order or respective decision of another authority should be enclosed with the request.**

d) Measures related to computer data

- **Preservation of data**

In order to enable Azerbaijani authorities to preserve computer data the following information should be provided:

- The authority seeking the preservation;
- The offense subject of a criminal investigation or proceedings and a summary of the related facts;
- The stored computer data to be preserved and its relationship to the offense;
- The necessity of the preservation, including its justification
- Sufficient information to identify the data to be preserved, as well as information about the location of it ;
- Assurance that the MLA will be requested in respect of the data concerned.

- **Search, seizure, or disclosure of data**

The nature of computer data makes it harder to identify the boundaries of search and seizure. Therefore, where search/seizure of the computer data is requested, the type of data and relevant period, as well as the reasoning of relevance of the period concerned must be noted in the request. The identification of the data concerned will prevent unreasonable searches and searching/seizing irrelevant data. Thus, the following information should be indicated in the request:

- Exact identification of data and information about its location;
- Identification of the person or premises to be searched as accurately as possible;
- Reference to the previous request, in case one was submitted preliminarily.

According to the legislation of Azerbaijan, the computer data may only be searched and/or seized if it is **authorized by the Court or other competent authority** of the requesting country. Correspondingly, **a court order or decision of other competent authority should be enclosed with the request.**

- **Telephone/IP data**

Where the MLA request refers to telephone data, the following information should be submitted:

- Telephone number concerned and information of its owner;
- Information concerning the relevant period during which the data is requested.
- In case the IP data is requested, the following information is to be provided:
- Indication of the IP address concerned;
- Time-stamp of use;
- Name of internet service provider.

- **Interception and electronic surveillance**

Where the interception and electronic surveillance are concerned, the requesting state needs to demonstrate in a set of relevant facts the following:

- That there are reasonable grounds to believe that a specific means of electronic communication is used to commit an offense and/or information capable of being evidence is transmitted/stored through/in that means;
- That the interception or electronic surveillance requested is the last resort measure and no other alternative investigative activity is capable of producing similar evidence or if available would require disproportionate efforts.

It should be stressed that interception and electronic surveillance are available for the investigation and prosecution of all crimes disregarding their categories.

f) Search/seizure and/or confiscation of criminal assets

It should be highlighted that according to the legislation of Azerbaijan, the following assets can be subject to confiscation:

- Object and/or instrument used to commit the crime;

- Assets acquired as a result of commission of crime (all materials and intangible property, legal documents granting the right on property);
- Any profit gained from the assets acquired as a result of commission of crime or the assets equivalent to such profit (except monetary funds or other property and the profits received from them, which shall be returned to the legal owner).
- Property used or intended to be used for financing terrorism, armed groups or groups not prescribed by law, organized groups, or criminal associations (criminal organizations).

Such property provided shall be confiscated if the person who received the property knew or should have known that it was obtained through the criminal means.

Where the legal bases exist, Azerbaijan will cooperate with the foreign country concerning the confiscation of criminal assets in the following aspects:

- Search and/or seizure of assets;
- Confiscation of assets;
- Sharing of confiscated assets between the requesting country and Azerbaijan.

When search, seizure, or confiscation of assets is requested, the requesting state must demonstrate **that there are reasonable grounds to believe that the assets are linked to the criminal offense or alleged perpetrator** and that they are held by a specific individual/legal entity by the relevant time.

Together with the request of confiscation/search/seizure of criminal assets the following information should be included in the request:

- The title of the competent authority of the requesting country, as well as the title of the authority which is in charge of confiscation of the assets concerned;
- Title of the competent authority of Azerbaijan;
- The subject and purpose of the request;
- Factual circumstances of the case and their legal qualification;
- Excerpts of relevant legal provisions;
- Where necessary, characteristics of the person/s subject to criminal prosecution in the requesting country and/or of the person's for whom e MLA is requested;
- Information about the assets in respect of which the assistance is requested including the information of its location and connection of the particular person/s and/or crime with the assets concerned;
- Reasoning about the fact that criminal assets are located in Azerbaijan;
- The particular procedure Azerbaijani authorities are requested to follow;
- Indication that same measures can be conducted in the requesting country;
- Original or certified copy of order authorizing search, seizure/confiscation;

Furthermore, where the confiscation of criminal assets is requested, in addition to the aforementioned data, the following information should be provided to the central authority of Azerbaijan:

- The written statement issued by the competent authority of the requesting country, indicating that the order of confiscation is final and immediately enforceable;
- Information on to what extent is requested the execution of confiscation order;
- Information whether the third parties claimed any right in respect of the assets subject to confiscation.

Unless otherwise stipulated in the respective international treaty/agreement, the request for search, seizure, and confiscation shall not be executed where using such measure would be impossible by Azerbaijani authorities in the course of investigation of the same crime committed in Azerbaijan.

It should be highlighted that foreign court decisions on confiscation of items of national, historical, and cultural importance to Azerbaijan will not be executed.

What needs to be noted is that **preliminarily request** for search/seizure/confiscation/freezing of criminal assets before submitting the respective MLA request **is not accepted**. On the other hand, bank accounts and financial transactions **may be suspended** based on the official correspondence between the Financial Intelligence Units of the requesting country and Azerbaijan.

In view of enforcing the judgment unless otherwise provided by the respective international treaty/agreement, 50 % of the assets is returned to the requesting state while the remainder is transferred to the state budget of Azerbaijan.

g) Other measures

- **Real estate ownership and business registry records**

Real estate ownership, transaction records, and **business registry records** should be obtained from Azerbaijan through the MLA request.

- **Bank client information**

Any **bank client information** can only be obtained through a court warrant (therefore MLA is required).

- **Other information**

The government maintains a central **vehicle ownership database** and any information therein can be obtained either through police cooperation or MLA.

border crossing records may also be obtained most promptly through the police cooperation channels.

Furthermore, **turnover and tax records** may also be obtained through the MLA request.

Moreover, the official versions of **legislative acts of Azerbaijan** can be found on the following webpage of the State Registry of Legal Acts – www.e-qanun.az.

h) Grounds for refusal of legal assistance

Legislation of Azerbaijan stipulates in detail the basis for refusal of MLA. In particular, unless otherwise provided for by the respective international treaty/agreement, the request for assistance from a foreign country, including the request to confiscate the assets cannot be executed if:

- There are sufficient grounds to believe that the execution of MLA request will damage the **sovereignty, security, and other important interests** of Azerbaijan;
- Azerbaijan considers the crime in connection which the assistance is requested as a **political crime**;
- Assistance is requested for a crime **against military service**;
- The crime for which MLA is sought is not punishable under the law of **Azerbaijan**;
- There are sufficient grounds to believe that MLA request is submitted to persecute **a person for their race, nationality, religion, language, citizenship, political views, or gender**;
- Upon submission of a request for legal assistance for a crime being investigated or pending in court in Azerbaijan, and if there is no possibility of postponing the execution of this request;
- **The form and content of MLA request does not meet the requirements of the legislation of Azerbaijan.**

i) Limitations on use of evidence provided

Any evidence that Azerbaijan provides in response to MLA requests may only be used for the specific purpose/s stated in the request. If further use of evidence is required, the foreign country must seek the consent of the central authority of Azerbaijan in advance.

EXTRADITION

INTRODUCTION

Azerbaijan cooperates with foreign countries in the field of extradition based on multilateral or bilateral treaties. In the absence of a treaty, Azerbaijan may cooperate with the foreign state in the matters of extradition on the basis of the principle of reciprocity.

On the national level, extradition matters are regulated by the Constitution, *Law of the Republic of Azerbaijan on extradition of persons who have committed a crime of May 15, 2001*, as well as by the *Code of Criminal Procedure and Criminal Code of the Republic of Azerbaijan*. These legal acts, together with the respective international treaties, determine the scope, procedure and conditions for extradition between Azerbaijan and foreign states.

CENTRAL AUTHORITY – CONTACT INFORMATION

Depending on the legal mechanism facilitating cooperation in the field of extradition, there are two central authorities of Azerbaijan.

Generally, the Ministry of Justice of the Republic of Azerbaijan is the central authority for extradition, including where the mechanism for cooperation is the European Convention on Extradition. In particular, the International Cooperation Department at the Ministry is responsible for dealing with incoming and outgoing extradition requests. At the same time, PGO coordinates the process.

Contact information of MoJ:

Ministry of Justice of the Republic of Azerbaijan

International Cooperation Department

Address: Inshaatchilar avenue 1, AZ1073, Baku, Azerbaijan

Telephone: +994 12 430 01 67; +99412 539 14 78 E-mail: international@justice.gov.az.

In case the mechanism for extradition is the Minsk Convention or Chisinau Convention, the central authority of Azerbaijan is the Prosecutor General's Office of the Republic of Azerbaijan (hereinafter – PGO). Particularly, the International Relations Department is responsible for dealing with incoming and outgoing extradition requests.

Contact information of PGO:

Office of the Prosecutor General of the Republic of Azerbaijan

International Relations Department

Address: 7 Nigar Rəfibəyli, AZ1001, Baku, Azerbaijan

Telephone: +994 12 492 61 98

E-mail: e.alikhanov@prosecutor.gov.az a.ojaqverdiyev@prosecutor.gov.az;
a.zeynalabdiyeva@prosecutor.gov.az; international@prosecutor.gov.az ;

CHANNELS OF COMMUNICATION

- **Submission of the request**

Azerbaijan accepts formal correspondence, including extradition requests received either by post, through the diplomatic and/or Interpol channels.

In case of urgency, Azerbaijan also accepts extradition requests submitted electronically by e-mails mentioned above (see section II above). If the requesting country submits the documents in an electronic form, **the original documents (hard copy) should be provided at the earliest possible**. Depending on the applicable treaty/agreement the original documents should be submitted either through the Ministry of Foreign Affairs, MoJ or directly to the PGO.

The request should be in a written form on the official paper (with the respective coat of arms), dully signed by the authorized official and confirmed with a seal reflecting the national coat of arms. Electronic signatures are accepted.

If the document is submitted electronically, it should be possible to determine the authenticity of the document. In this regard, the electronic signature is not the only way to verify the authenticity of the electronic document, but . receipt from an established electronic transmission system, government-issued e-mail, etc. will suffice.

- **Language of the request**

Extradition requests and supporting documents should be translated into Azerbaijani language or with the consent of the respective central authority – either into one of the official languages of the Council of Europe or into one of the official languages of the United Nations.

In general, it is best that the extradition request and supporting documents be provided in Azerbaijani language. Since all the foreign language requests are translated before proceeding, submitting the

documents in an Azerbaijani translation will considerably shorten the consideration and decision-making process. In this respect, due regard must be given to the **quality of the translation**, which is vital for prompt and efficient proceedings.

As regards to the Minsk and Chisinau Conventions, the request and enclosed documents should be accompanied by their certified translation into Azerbaijani or Russian .

STEPS TO FOLLOW WHEN REQUESTING EXTRADITION FROM AZERBAIJAN

In the interests of efficiency and fruitfulness, it is recommended to follow the steps outlined below:

Step 1: IF NECESSARY, CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

After the arrest of a concerned person, the central authority of Azerbaijan notifies the central authority of the respective foreign country through direct, diplomatic or Interpol channels. In case any clarification is needed, the central authority of the foreign country is able to consult with the central authority of Azerbaijan.

Step 2: INDICATE THE COOPERATION INSTRUMENT

The treaty, convention facilitating cooperation should be identified and noted in the request. Where the extradition is requested on the basis of principle of reciprocity, this should be indicated in the request.

Step 3: INCLUDE ALL RELEVANT INFORMATION IN THE EXTRADITION REQUEST

The extradition request addressed to the central authority of Azerbaijan should always be submitted in writing and as a general rule should include the following information:

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request the contact person with whom Azerbaijani authorities may seek any clarification if needed.

- **The title of the central authority of Azerbaijan to which the request is addressed**

See the detailed information about the central authority of Azerbaijan and the principle of distribution of the requests among these authorities in section II above.

- **Identification characteristics of the person concerned**

The extradition request should include an accurate description of the person concerned. In particular, full name, patronymic, date and place of birth, nationality, place of residence, information about their appearance and any other information which will help to establish their identity.

- **Other information**

The following information should also be included in the extradition request:

- Brief information about the criminal case, statement of the offense for which extradition is requested, the time and place of its commission, its legal description and a reference to the relevant legal provisions, presented as accurately as possible;
- Where applicable, information about the type and/or amount of damage caused;
- Information about the maximum penalty set forth by the legislation of the requesting country that may be applied to the person concerned;
- Where applicable, the length of the custodial sentence imposed;
- Information about the limitation period for prosecution/enforcement of the judgment;
- In case the extradition is requested to enforce a judgment, information that the judgment subject to extradition is immediately enforceable;
- In case the extradition is requested in view of enforcing a judgment, information that the **proceedings were held and the judgment was rendered** in the presence of the person subject to extradition;
- Where the judgment subject to extradition was rendered *in absentia*, information justifying this or clear assurance that the person concerned will enjoy the right to retrial in case of their extradition and they will have the possibility to enjoy the defense's rights;
- Where the person concerned was sentenced to life imprisonment or in case the maximum term of penalty that may be imposed is life imprisonment, information that such sentence is reducible according to the legislation of the requesting country;
- Where the offense for which extradition is requested is punishable by death under the law of the requesting country, clear assurance that death penalty will not be applied in the present case.

It should be highlighted that in case the extradition is requested as a result of a judgment, Azerbaijani authorities will grant the request only if the custodial sentence imposed on the person concerned **is at least six months or a more severe penalty**.

- **Supporting documents**

The extradition request should be supported by the following documents:

- The original or an authenticated copy of the arrest or detention order or other having the same effect and issued following the procedure laid down in the law of the requesting country;
- Where the extradition is requested to enforce a judgment, the original or an authenticated copy of the enforceable judgment enforceable;
- A copy of the enactments stipulating criminal responsibility for the crimes subject to extradition, as well as other relevant provisions of law. Where this is not possible, a statement of the relevant law;
- Articles of the legislation of the requesting country, stipulating limitation period for prosecution/enforcement of the judgment;
- Where possible, the photo, fingerprints, and other means of identification of the person concerned.

EXTRADITION THROUGH THE SIMPLIFIED PROCEDURE

The legislation of Azerbaijan envisages the possibility of extradition through a simplified procedure **for countries which are parties to the Third Additional Protocol to the European Convention on Extradition of 1957**. Particularly, the simplified procedure can only be applied if the person subject to extradition consents to it before the judicial authority of Azerbaijan.

Generally, the person concerned expresses their position on the application of simplified extradition procedure within 10 days after arrest. If the person concerned expresses their consent in the manner and period explained above, the central authority of Azerbaijan notifies the respective foreign country immediately.

Where the extradition request is not submitted at the time of expressing the consent, the requesting foreign authority **is not required to submit an extradition request and supporting documents**. In that case, requesting authority is only required to submit the following information:

- Identification particular of the person concerned, including the information of their citizenship;
- Authority requesting the arrest of the person concerned;
- Information that the detention order or immediately enforceable judgment subject to extradition exist;
- Confirmation that the competent authorities of the requesting party are proceeding for an offense against the person concerned or they are wanted by said authorities for carrying out a sentence or detention;

- The nature and legal description of the offense, including the maximum penalty or the penalty imposed;
- A statement of the offense for which extradition is requested, the time and place of its commission, as well as the degree of involvement of the person concerned;
- Where possible, information about the consequences of the criminal act and where applicable, information about the type and/or amount of damage caused;
- In case the person concerned is wanted to serve the sentence imposed by the immediately enforceable judgment, information whether the judgment was executed in any part;
- Where the judgment subject to extradition was rendered *in absentia*, information justifying this or clear assurance that the person concerned will enjoy the right to retrial in case of his extradition and they will have the possibility to enjoy the defense's rights;
- Information about the limitation period for prosecution/enforcement of judgment and the information about the suspension/termination of such period.

If extradition through the simplified procedure is granted, the person sought should be surrendered to the competent authorities of the requesting country as soon as possible, and preferably within 10 days from the date of notification of the extradition decision.

NOTE: Azerbaijan **will not extradite its nationals**. Furthermore, the competent authority of a foreign state must notify the relevant central authority of Azerbaijan about **the results of the criminal prosecution of the extradited person**.

REQUEST FOR PROVISIONAL ARREST

If urgent, , the competent authorities of the requesting country may request the central authority of Azerbaijan to provisionally arrest the person sought. The following information should be included in such request:

- Information about the existence of the detention order or immediately enforceable judgment;
- Indication that the extradition request will be submitted additionally;
- Indication of the offense for which extradition will be requested;
- A statement of the offense for which extradition will be requested, and the time and place of its commission;
- Exact Identification of the person concerned and their characteristics.

If the basis for extradition is the European Convention on Extradition or the Chisinau Convention, the extradition request and supporting documents should be submitted to the central authority of Azerbaijan through the aforementioned means **within 40 days after arrest**.

Where the Minsk Convention is applied, the extradition request and supporting documents should be submitted **within 30 days after arrest**.

In case the request and documents are not provided within this timeframe, the person concerned **will be released from detention immediately**.

It should be underlined, that the person subject to extradition should be surrendered to the competent authorities of the requesting country **within 15 days** after making the final decision regarding the extradition. Unless the surrender takes place within 15 days, the person concerned will be released from detention.

Follow up procedure in respect of ICCM

The central authorities of Azerbaijan have implemented an internal database, which includes all relevant information related to MLA and extradition requests. In particular, information concerning the incoming and outgoing MLA and extradition requests, the employee in charge, status of implementation, etc. In addition, an electronic database is created in Anti-Corruption Directorate at the Prosecutor General of the Republic of Azerbaijan for the registration of incoming and outgoing MLA and extradition requests concerning money laundering and financing terrorism.

Furthermore, any follow-up documents can be sent by e-mail to: international@justice.gov.az or e.alikhanov@prosecutor.gov.az; a.ojaqverdiyev@prosecutor.gov.az; a.zeynalabdiyeva@prosecutor.gov.az; international@prosecutor.gov.az.

GEORGIA

MUTUAL LEGAL ASSISTANCE (MLA)

INTRODUCTION

Georgia provides legal assistance in criminal matters to foreign countries based on multilateral or bilateral treaties. In the absence of a treaty, MLA may be provided following the principle of reciprocity.

On the national level, MLA matters are regulated by the *International Cooperation in Criminal Matters Act of July 21, 2010*. The Act, together with the respective international treaties, determines the scope, procedure, and conditions for MLA between Georgia and foreign states.

- **Assistance based on the multilateral/bilateral treaty**

Georgia has concluded several bilateral agreements and joined multilateral treaties allowing effective legal cooperation with foreign states. In particular, Georgia is a Party to the European Convention on Mutual Assistance in Criminal Matters of 1959, its Additional Protocol of 1978 and second additional protocol of 2001, as well as the Minsk Convention.

Legal assistance can also be rendered under the United Nations Convention against Corruption of 2003, the United Nations Convention against Transnational Organized Crime of 2000, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime of 1990, and other multilateral instruments that allow mutual legal assistance in criminal matters.

- **Non-Treaty requests for assistance**

As previously mentioned, in the absence of a treaty, a foreign state can seek legal assistance from Georgia based on the principle of reciprocity. Particularly, Georgia will consider the execution of such request if the requesting state would comply with the Georgian request for the same legal assistance with the same terms and conditions.

In the view of this, Georgian legislation provides that in case the principle of reciprocity is applied, the terms for granting or refusing the request should be determined by the parties in advance.

It should also be stressed, that legal assistance cannot be provided based on reciprocity when ***request of extradition*** or ***enforcement of the judgment*** are concerned. Such requests can only be executed using multilateral/bilateral treaties to which Georgia is a party.

- **Double criminality requirement**

As a general rule, in regard with the MLA requests, double criminality requirement **is not an obligatory criteria**. On the other hand, where **coercive measures** are requested, including ***search, seizure, or***

confiscation of assets the request shall be executed only if the double criminality criteria, together with other conditions explained below, is met.

CENTRAL AUTHORITY – CONTACT INFORMATION

The Prosecutor’s Office of Georgia (hereinafter – POG) is the central authority responsible for MLA matters in Georgia. In particular, the Department of International Cooperation and Legal Affairs of the Office of the Prosecutor General of Georgia is dealing with incoming and outgoing MLA requests.

While according to some international treaties/sources Ministry of Justice of Georgia is also designated as a central authority, as a result of legislative changes in 2018, nowadays POG is the competent authority for dealing with MLA in criminal matters.

Contact information of POG:

The Office of the Prosecutor General of Georgia

Department of International Cooperation and Legal Affairs

24 Gorgasali Street, Tbilisi, 0114, Georgia

Telephone: +995 32 240 50 34 (English, Russian); +995 32 240 52 10 (English).

E-mail: mla@pog.gov.ge; international@pog.gov.ge; iberidze@pog.gov.ge;
gbaghdavadze@pog.gov.ge; ichilingarashvili@pog.gov.ge

NOTE: Ministry of Justice of Georgia is responsible for international cooperation **in civil law matters**, as well as, **where the transfer of sentenced persons is concerned** (contact information of the Ministry: Public International Law Department; E-mail: ksarajishvili@justice.gov.ge).

CHANNELS OF COMMUNICATION

- **Submission of the request**

Georgia accepts formal correspondence, including MLA requests received either by post, **electronically by e-mail**, and through the Interpol or diplomatic channels. Out of practicality, it is best if the requests addressed to Georgian central authority are provided in **electronic format**, as follows:

MLA requests, requests for the confiscation of criminal assets and all related formal communication can be submitted by e-mail to: mla@pog.gov.ge;

Queries related to MLA, extraditions, and confiscation of criminal assets should be sent to: international@pog.gov.ge.

Unless otherwise provided for by the respective international treaty/agreement or reciprocal conditions, in case the documents are submitted electronically, **Georgia does not require the submission of original documents (hard copy)**.

Where the document is submitted electronically, it should be possible to establish the authenticity of the document. In this regard, the electronic signature is not the only way to verify the authenticity of the electronic document, and a receipt from an established electronic transmission system, government e-mail, etc. will suffice.

When a request is transmitted electronically, Georgia requires it to be submitted through a government email account or another government-designated electronic submission system. Where sensitive information is involved, a request must be transmitted through a secure channel, which can be an Interpol-secure communication facility. The security requirement is commensurate to the degree of sensitivity.

Note: In the absence of a treaty, Georgia requires the transmission of documents **via diplomatic channels**.

- **Language of the request**

Request for legal assistance and annexed documents should be provided to Georgian central authority in Georgian, English, French or Russian.

In general, it is most desirable that the request for legal assistance and annexed documents be provided in Georgian. Since all the foreign language requests are translated before proceeding, submitting the documents in Georgian will considerably shorten the process of consideration and execution of the request. In this respect, due regard must be given to the **quality of the translation**, which is vital for prompt and efficient execution of the request.

Furthermore, the request and other documents may also be submitted in the language stipulated in the applicable treaty and/or agreed by the parties (e. g. for CoE treaties – English or Russian languages).

STEPS TO FOLLOW WHEN SEEKING LEGAL ASSISTANCE FROM GEORGIA

In the interests of efficiency and fruitfulness, it is recommended to follow the steps outlined below:

Step 1: CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

It is desirable to contact the central authority of Georgia before preparing and submitting the MLA request and consult the specifications in advance. Prior consultation is especially important in serious cases, and where the immediate execution of the request is decisive. It will ensure submission of complete and flawless requests. On the other hand, an incomplete request for legal assistance will not automatically be returned, but supplementary information may be requested.

Step 2: INDICATE THE COOPERATION INSTRUMENT FOR SEEKING THE ASSISTANCE

The treaty, convention or other instrument of cooperation according to which the assistance is sought should be indicated in the request. If no convention/treaty is applicable, it should be explicitly specified that the request is made employing the principle of reciprocity.

Step 3: INDICATE THE AUTHORITY CONDUCTING CRIMINAL PROCEEDINGS

In the MLA request, the authority conducting criminal proceedings needing assistance and the authority requesting MLA should be specified.

Step 4: INCLUDE ALL RELEVANT INFORMATION IN THE MLA REQUEST

The MLA request addressed to the Georgian central authority should always be submitted in writing and as a general rule should include the following information:

- **Title of the request**

The title of the request should be short and precise. To be clear and easily identifiable what kind of assistance is requested, the title should indicate the nature and range of activities.

- **Urgency and/or confidentiality**

Where applicable, the level of urgency and/or confidentiality should be noted, preferably, in the opening part of the request. It is recommended that the reasons for the urgency are indicated in the request, which will enable Georgian central authority to prioritize the request if necessary.

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request the contact person with whom Georgian authorities may seek any clarification if need be.

- **The title of the central authority of Georgia**

See the detailed information about the Georgian central authority in section II above.

- **Other information**

Requests for mutual assistance shall indicate as follows:

- The summary of the facts and the respective legal qualification;
- Applicable criminal law provision and, where necessary, extracts from other legislative acts;
- Assistance requested;
- The object of and the reason of the request;
- The identity and the nationality of the person concerned, and where necessary, the name and address of the person for whom assistance is requested;
- Other relevant information;
- Procedure to be followed:

- **Presence of the representatives of the requesting country and application of their legislation**

Where there are relevant legal grounds, the representatives of a requesting state may be present during the execution of a request for legal assistance with the **prior consent** of the Prosecutors Office of Georgia. The Prosecutors Office will grant the request if the presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting country and, therefore, likely to avoid the need for supplementary requests for assistance. In case the implementation of the request requires the presence of the representatives of the foreign state, the relevant justification regarding the purposes and benefits of their presence, as well as information on the officials (full name, position, contact info) should be noted in the request. Furthermore, upon confirmation, the Georgian central authority should be notified about the expected time of their arrival.

Unless otherwise provided for in international treaties/agreements or reciprocity, the legislation of the requesting foreign state may also be used if doing so does not contravene the fundamental principles of Georgian legislation.

Step 5: THE ASSISTANCE REQUESTED

The type and content of the assistance requested, and any particular requirements that must be met should be clearly and explicitly noted in the MLA request. Furthermore, depending on the type and nature of assistance sought, the following information should be provided:

a) Witness statements/testimony

- **Competent authority which should perform interrogation**

In case no special indication is made in the request, according to the well-established practice of Georgia, the witness or other person concerned will be interrogated by the prosecutor in the presence of a judge. Where the legislation of the requesting country stipulates a special procedure and requirements for hearing, clear and detailed information in connection with this matter should be provided in the request.

- **The information about the status of the person to be heard and rights and obligations he/she should be informed of**

Information about the status of the person in the proceedings to be heard is important since their rights are dependent on it. Therefore, ascertaining the status of the person to be heard also ensures that the questioning of the person conforms with the fundamental principles of Georgian law.

Furthermore, in case the requesting state wishes to observe specific formalities and procedures following the right to a fair trial (e. g. presence of the lawyer during the hearing, notifying the rights and obligations before hearing in a written form, hearing the witness under oath, consequences for remaining silent or providing false information, etc.) within the frame of execution of the request, it should be explicitly noted in the request. Since Georgian legislation permits it, the witness can be heard under oath.

- **Questions to be asked**

The questions which the requesting authorities want to ask the person concerned should be noted in the request. Considering the nature and specification of questioning, questions may not be exhaustive but indicative. Georgian authorities may broaden the hearing, number and content of the questions, where interests of justice and prevention of additional hearings so require.

b) Hearing by audio/video conference:

In addition to the information stipulated in Step 4 above, the request for the hearing by audio or video conference of a witness, expert, victim, or an accused located in the territory of Georgia should also include:

- The legal status of the person to be interrogated,;
- The reasons for which the person is unable to personally appear before the authority conducting the proceedings in the requesting country;
- The name of the authority and person(s) authorized to interrogate the witness, expert, victim, or accused through audio or video conference;
- Information about the location of the person concerned (if known);
- Indication that a person subject to criminal proceedings in the requesting country consents to be examined by audio/video conference;
- Indication that the witness, expert, or a victim is willing to take part in a hearing by audio conference;
- A proposed date and time for hearing.

c) Search and seizure

Considering that search and seizure intensively effect fundamental human rights, the legal and practical requirements for conducting these measures are stricter than for other MLA matters. It should be highlighted that Georgia will execute the request for ***search, seizure or freezing of assets only*** in case the following criteria is met:

- that the offense motivating the letters rogatory is punishable under both the law of the requesting party and the law of Georgia

It should be highlighted, that in view of ICCM, Georgia applies ***in abstracto*** interpretation of the double criminality principle. In particular, this requirement shall be deemed fulfilled, irrespective of where it is included but only if the offense for which assistance is sought is criminal under Georgia law.

- The offense for which MLA is requested, is an extraditable offense according to the Georgian legislation

According to Georgian legislation, extraditable offenses are those punishable under the laws of the requesting country and Georgia by deprivation of liberty or under a detention order for at least one year, or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting country, the punishment awarded must be for at least four months.

- The execution of the letters rogatory is consistent with Georgian legislation

It should be highlighted that execution of the request for search and seizure should not be infringing the fundamental principles of Georgian law. For instance, it should be conducted only where authorized by the Court or other entitled authority, etc.

- **Items to be searched and seized, their location**

The identification of the items that the requesting authority aim to search/seize should be noted in the request. If the list of items is too general, Georgian authorities will be unable to execute such requests since Georgian national law does not allow to perform search/seizure based on such information.

In addition, the exact characteristics of **home, office, or other premises** (other objects) to be searched should also be specified. The provided information should include the location and exact address of the place to be searched, the name of the owner of the premises, and the purpose of its use .

In case a **car search/seizure** is requested, the identity of its owner, plate and vehicle identification number (VIN), and other relevant information should be provided.

Where **body search** is requested, all available information about the person to be searched should be provided, including full information regarding their identity characteristics .

The aforementioned information is vital for Georgian authorities to obtain an order/authorization for search/seizure from Georgian court and to perform the request thoroughly and in a prompt manner.

- **Type of search and its purpose**

Considering that there are different search types? it should be distinctly mentioned in the request which one is to be conducted (e. g. home search, body search, car search, office search, etc.). It is also significant to identify the purpose of the search: whether it is requested in the interest of collecting evidence, seizure/confiscation, etc.

- **Submission of the order**

In case coercive measures are requested, including the search and seizure of bank information, information about bank transactions, freezing of a bank account, etc. but also where requested measures are related to computer data, **the original or duly certified copy of order issued by a court of the requesting state or respective decision of other competent authority has to be attached to the request.** If the provisions of the requesting state do not foresee a court order for such measures the

requesting authority has to indicate that the internal legal requirements for the measure sought are met according to the legislation of the requesting state.

d) Measures related to computer data

Procuring computer data is subject to specific regulations in Georgia. Therefore, depending on the subject matter, some issues need to be foreseen when seeking to request computer-related data from Georgia.

- **Preservation of data**

To enable Georgian authorities to preserve computer data the following information should be provided:

- The authority seeking the preservation;
- The offense subject of a criminal investigation or proceedings and a summary of the related facts;
- The computer data to be preserved and its relationship to the offense;
- The necessity of the preservation, including the reasoning of the risk of modification or loss of the data requested;
- Sufficient information to identify the data to be preserved and its location;
- Assurance that MLA will be requested in respect of the data concerned.

- **Search, seizure, or disclosure of data**

The nature of computer data makes it harder to identify the boundaries of search and seizure. Therefore, where search/seizure of the computer data is requested, the type of data and relevant period, and its justification must be noted in the request. The identification of the data concerned will prevent unreasonably broad searches and searching/seizing irrelevant data on one hand, and the state's unnecessary and unreasoned interference with fundamental human rights on the other. Thus, the following information should be indicated in the request:

- Exact identification of data and information about its location;
- Accurate identification of the person or premises to be searched;
- Reference to the previous request, in case one was submitted preliminarily.

- **Telephone/IP data**

Where the MLA request regards the telephone data, the following information should be submitted:

- Telephone number concerned and information of its owner;
- Information concerning the relevant period on which the data is requested.

In case the IP data is requested, the following information is to be provided:

- Indication of the IP address concerned;
- Timestamp of use;
- Name of the internet service provider.

For the production of electronic data, the requesting state needs to demonstrate that there is reasonable doubt to believe that that specific means of electronic communication is used to commit an offense and/or information capable of being evidence is transmitted/stored through/in that means.

e) Interception and electronic surveillance

Where the interception and electronic surveillance are concerned, the requesting state needs to demonstrate in a set of relevant facts the following:

- That there is reasonable doubt to believe that that specific means of electronic communication is used to commit an offense and/or information capable of being evidence is transmitted/stored through/in that means;
- That the interception or electronic surveillance requested is a last resort measure and no other alternative investigative activity can produce similar evidence or if available would require disproportionate efforts.

It should be stressed that interception and electronic surveillance are available only for the investigation and prosecution of all grave and serious crimes, as well as for certain types of minor crimes. Under Georgian law, the minimum penalty under the law of requesting state is not taken into account for this purpose.

f) Search and/or confiscation of criminal assets

It should be highlighted that according to Georgian legislation the following assets can be subject to confiscation:

- Object and/or instrument with which the crime was committed;
- Object aimed to be used to commit the crime;
- Assets acquired as a result of commission of crime (all materials and intangible property, legal documents granting the right on property);
- Any profit gained from the assets acquired as a result of commission of crime or the assets equivalent to such profit.

Where the respective legal basis exists, the Prosecutor's Office of Georgia will cooperate with the foreign country concerning the confiscation of criminal assets in the following aspects:

- Search/seizure of assets;
- Confiscation of assets;
- Sharing of confiscated assets between the requesting country and Georgia;
- Conducting **other measures** which will assist the authorities to identify and trace the assets subject to confiscation, including monitoring of bank accounts and collecting the banking information.

The request for **search and/or confiscation of criminal assets** should be accompanied by the **original or certified copy of the order** authorizing such measure, issued by the entitled authority of the requesting country.

When the search, seizure or freezing of assets is requested, the requesting state must demonstrate **there are reasonable grounds to believe that assets are linked to the criminal offense or alleged perpetrator** and that they are held by a specific individual/legal entity at the relevant time. In addition to this, Georgia also has value-based confiscation and extended confiscation for which the direct link between the proceeds and the criminal offense is not required.

Where there are reasonable grounds to believe that the assets subject to confiscation will be disguised, the competent authority of a foreign country **is entitled to preliminarily request the Georgian central authority to search and seize them before submitting the respective MLA request**. In that case, the requesting authority is obliged to justify the search and seizure before submitting the MLA request.

Together with the request of confiscation/seizure of criminal assets, the following information should be reflected in the request:

- The title of the competent authority of the requesting country, as well as the title of the authority which is in charge of confiscation of the assets concerned;
- Title of the competent authority of Georgia;
- The subject and purpose of the request;
- Factual circumstances of the case and their legal qualification;
- Excerpts of relevant legal provisions;
- Where necessary, identification of the person(s) for whom MLA is requested characteristics ;
- Information about the assets for which assistance is requested including the information of its location and connection of the particular person(s) and/or crime with the assets concerned;
- Reasoning about the fact that criminal assets are located in Georgia;
- The particular procedure Georgian authorities are requested to follow;
- Indication that same measures can be conducted in the requesting country;
- Original or certified copy of order authorizing search, seizure/confiscation;

- Information concerning the bank accounts in Georgia.

Furthermore, where the confiscation of criminal assets is requested, in addition to the aforementioned data, the following information should be provided to the Georgian central authority:

- The written statement issued by the competent authority of the requesting country, indicating that the order of confiscation is final and immediately enforceable;
- Information on to what extent the execution of confiscation order is requested;
- Information concerning the use of additional measures in the process of execution of the confiscation order;
- Information whether the third parties claimed any right in respect of the assets subject to confiscation.

Georgian legislation stipulates in detail the basis for refusal of execution of MLA requests concerning confiscation of assets. The bases outlined below are different from the general bases of refusal. In particular, unless otherwise provided by the respective international treaty/agreement, the request of a foreign country to confiscate the assets cannot be executed if:

- The assistance requested is not of an importance that would justify executing the request on Georgian territory;
- Where the requested measure causes interference with the fundamental human rights and the act in respect of which the assistance is requested does not constitute a crime under Georgian legislation;
- The statute of limitation for the crime for which assistance is requested is expired under Georgian legislation;
- The decision of confiscation was rendered *in absentia* by the competent authority of the requesting country and the person concerned was not provided with the minimal defense rights;
- Confiscation of the assets requested is not envisaged in the Georgian legislation;
- There are reasonable grounds to believe that as a result of executing the MLA request, the person will be subject to discrimination;
- The execution of the request contradicts the international obligations undertaken by Georgia.

Unless otherwise stipulated in the respective international treaty/agreement, the request for search, seizure and confiscation shall not be executed where using such measure would be impossible by Georgian authorities in the course of investigation of the same crime committed in Georgia.

g) Other measures

- **Availability of relevant information**

Real estate ownership and transaction records as well as basic business registry records are an open source information available at www.napr.gov.ge and **Georgia does not require either MLA or another formal cooperation request to obtain this information.**

- **Bank client information**

Georgia does not run a central registry of bank accounts. Any bank client information can only be obtained through a court warrant (therefore MLA is required). Georgian banks are required to retain paper documents for 6 years and electronic data for 15 years.

- **Other information**

The government maintains central vehicle ownership databases and any information thereof can be obtained either **through police cooperation or MLA.**

, this Border crossing information may also be obtained promptly through the police cooperation channels.

Furthermore, detailed **business registry records, turnover, and tax records** are also available through centralized government databases, but require a court warrant (therefore MLA) and appropriate grounds.

All **Georgian legislative acts** are accessible on the following webpage of the Legislative Herald of Georgia - matsne.gov.ge. Most of the acts are also available in English and Russian.

h) Grounds for refusal of legal assistance

According to Georgian legislation, legal assistance shall not be provided as follows:

- Where the execution of MLA may cause damage to the sovereignty, security, public order or other essential interests of Georgia;
- In case the execution of the request contravenes with Georgian legislation;
- If Georgia considers the crime for which legal assistance is requested a political or an associated offense.
- Where the execution of a request may cause damage to internationally recognized human rights and fundamental freedoms;
- If a crime, for which legal assistance is requested, constitutes a military offense that is not punishable under the criminal legislation of the requesting state, except where otherwise provided for in the international or individual agreements of Georgia or set forth by the reciprocal conditions;

- Where the execution of a request may lead to the violation of the *non bis in idem* principle;

i) Limitations on use of evidence provided

Any evidence that Georgia collects for the MLA request **may only be used for the purpose/s stated**. If further use of the evidence is required, the foreign country must seek consent from the Georgian central authority in advance.

EXTRADITION

INTRODUCTION

Georgia cooperates with foreign countries in the field of extradition **only** on the basis of multilateral or bilateral treaties. As previously mentioned, Georgia is unable to cooperate with a foreign state on the basis of the principle of reciprocity in the matters of **extradition** or **enforcement of the judgment**.

On a national level, extradition matters are regulated by the *International Cooperation in Criminal Matters Act of July 21, 2010*. The Act, together with the respective international treaties, determines the scope, procedure, and conditions for extradition between Georgia and foreign states.

CENTRAL AUTHORITY – CONTACT INFORMATION

The central authority of Georgia for extradition matters is the Prosecutor’s Office of Georgia. In particular, the Department of International Cooperation and Legal Affairs of the Office of the Prosecutor General of Georgia is responsible. While according to some international treaties/sources, the Ministry of Justice of Georgia is also designated as a central authority, as a result of legislative changes in 2018, the POG is the competent authority in the field of extradition. As a central authority, the POG is entitled to receive the extradition request submitted by foreign countries and to send the same requests to foreign states when Georgian authorities are requesting extradition.

Contact information of POG:

The Office of the Prosecutor General of Georgia

Department of International Cooperation and Legal Affairs

Address: 24 Gorgasali Street, Tbilisi, 0114, Georgia

Telephone: +995 32 240 53 56 (English); +995 32 240 53 14 (English, Russian); +995 32 240 55 19 (English, Russian); +995 32 240 50 34 (English, Russian)

E-mail: extraditions@pog.gov.ge; international@pog.gov.ge; ttsindeliani@pog.gov.ge;
nzazunashvili@pog.gov.ge; djinjolia@pog.gov.ge; gbaghdavadze@pog.gov.ge;
ichilingarashvili@pog.gov.ge

CHANNELS OF COMMUNICATION

- **Submission of the request**

Georgia accepts formal correspondence, including extradition requests received either by post, **electronically by e-mail**, through Interpol or diplomatic channels. Out of practicality, requests addressed to Georgian central authority should be provided in an **electronic format**, as follows:

- An extradition request and any follow-up documents can be sent by e-mail to: extraditions@pog.gov.ge;
- Queries related to extraditions should be sent to: international@pog.gov.ge.

Unless otherwise provided for by the respective international treaty/agreement, Georgia does not require submission of original documents (hard copy) if the documents are submitted electronically.

What needs to be noted is that if the document is submitted electronically, it should be possible to **determine its authenticity**. In this regard, the electronic signature is not the only way to verify the authenticity of the electronic document and a receipt from an established electronic transmission system, government-issued e-mail, etc will suffice.

- **Language of the request**

Request for legal assistance and annexed documents should be provided to the Georgian central authority in Georgian, English, or Russian.

In general, it is best that extradition request and annexed documents be provided in Georgian. Since all the foreign language requests are translated before proceeding, submitting the documents in Georgian translation will considerably shorten the process of consideration and execution of the request. In this respect, due regard must be given to the quality of the translation, which is vital for prompt and efficient consideration.

Furthermore, the request and other documents may also be submitted in the language stipulated in the applicable treaty and/or agreed by the parties (e. g. for CoE treaties – English or Russian).

STEPS TO FOLLOW WHEN REQUESTING EXTRADITION FROM GEORGIA

In the interests of efficiency and fruitfulness, it is recommended to follow the steps outlined below:

Step 1: IF NECESSARY, CONSULT WITH THE CENTRAL AUTHORITY BEFORE SUBMITTING THE REQUEST

After the arrest of a person concerned, the Georgian central authority notifies the central authority of the respective foreign country through direct, diplomatic or Interpol channels. In case any clarification is needed, the central authority of the foreign country can consult with the Georgian central authority.

Step 2: INDICATE THE COOPERATION INSTRUMENT

The treaty, convention or other avenue of cooperation should be identified and noted in the request.

In case more than one treaty/convention is relevant for Georgia and the foreign country concerned, it should be ascertained which one is applicable and the request should be prepared and submitted respectively.

Step 3: INCLUDE ALL RELEVANT INFORMATION IN THE EXTRADITION REQUEST

The extradition request addressed to the Georgian central authority should always be submitted in writing and as a general rule should include the following information:

- **The title and contact information of the requesting authority**

The exact name, address and contact information of the requesting authority must be noted in the request. Furthermore, the requesting authority should indicate in the request the identity and direct contact information of a contact person with whom Georgian authorities may seek any clarification if needed.

- **The title of the central authority of Georgia**

See the detailed information about the Georgian central authority in section II above.

- **Identification characteristics of the person concerned**

The extradition request should include an accurate description of the person concerned. In particular, a full name, date and place of birth, nationality, and any other information which will help to establish their identity.

- **Other information**

The following information should also be included in the extradition request:

- A statement of the offense for which extradition is requested, the time and place of its commission, its legal descriptions, and a reference to the relevant legal provisions, accurately presented;
- Information that the offense concerned is an extraditable offense under the legislation of the requesting country;
- Where applicable, the length of the custodial sentence imposed;
- Information about the limitation period for prosecution/enforcement of the judgment;
- If extradition is requested to enforce a judgment, information that it is immediately enforceable;
- In case the extradition is requested to enforce the judgment, information that the **proceedings were held and the judgment was rendered** in the presence of the person subject to extradition;
- Where the judgment subject to extradition was rendered *in absentia*, information justifying this or clear assurance that the person concerned will enjoy the right to retrial in case of their extradition and they will have the possibility to enjoy the defense's rights;

- Where the offense for which extradition is requested is punishable by death under the law of the requesting country, clear assurance that the death penalty will not be applied in the present case.

- **Supporting documents**

The extradition request should be supported by the following documents:

- The original or an authenticated copy of the arrest or detention order or other order having the same effect and issued following the procedure laid down in the law of the requesting country;
- Where the extradition is requested to enforce the judgment, the original or an authenticated copy of the judgment is immediately enforceable;
- A copy of the enactments stipulating criminal responsibility for the crimes subject to extradition, as, well as other relevant provisions of law. Where this is not possible, a statement of the relevant law;
- Articles of law stipulating the limitation period for prosecution/enforcement of the judgment;
- Where possible, the photo, fingerprints, and other means of identification of the person concerned.

EXTRADITION THROUGH THE SIMPLIFIED PROCEDURE

Georgian legislation envisages the possibility of extradition through the simplified procedure. Particularly, the simplified procedure can only be applied if the person subject to extradition consents to it before a judge.

Generally, the person concerned expresses their position on an application of a simplified extradition procedure within a week after arrest. In case the person concerned expresses their consent in the manner and period explained above, the Georgian central authority notifies the respective foreign country immediately.

Where the extradition request and supporting documents are not submitted at the time of expressing the consent, the requesting foreign authority **is not required to submit an extradition request and supporting documents**. In that case, the requesting authority is only required to submit the following information:

- Identification of the person concerned, including the information of their citizenship;
- Authority requesting the arrest of the person concerned;
- Information that the detention order or immediately enforceable judgment subject to extradition exists;

- Indication that the person concerned is wanted for their extradition;
- Disposition and legal description of the offense;
- A statement of the offense for which extradition is requested, the time and place of its commission, as well as the degree of involvement of the person concerned in committing these acts;
- Where possible, information about the consequences of the criminal act;
- Information about the maximum period of custodial sentence, which may be imposed on the person concerned, if extradited, or the sentence imposed on the person concerned by the immediately enforceable judgment;
- In case the person concerned is wanted to serve the sentence imposed by the immediately enforceable judgment, information whether the judgment was executed in any part;
- Where the judgment subject to extradition was rendered *in absentia*, information justifying this or clear assurance that the person concerned will enjoy the right to retrial in case of his extradition and he/she will have the possibility to enjoy the defense's rights;
- Information about the limitation period for prosecution/enforcement of judgment and the information about the suspension/termination of such period.

It should be highlighted that in case the extradition through the simplified procedure is granted, the person sought should be surrendered to the competent authorities of the requesting country at the earliest but **not later than 10 business days** after notification of the final decision to the competent authorities of the requesting country.

NOTE: Georgia will not extradite its nationals.

REQUEST FOR PROVISIONAL ARREST

If urgent, the competent authorities of the requesting country may request the Georgian central authority to provisionally arrest the person sought. The following information should be included in such request:

- Information about the existence of the detention order or immediately enforceable judgment;
- Indication that the extradition request will be submitted additionally;
- Indication of the offense, for which extradition will be requested;
- A statement of the offense for which extradition will be requested, the time and place of its commission;
- Accurate Identification of characteristics of the person concerned;

Please note that the extradition request and supporting documents should be submitted to the Georgian central authority through the means stated above **within 40 days of the arrest**.

Where the Minsk Convention is applied, the extradition request and supporting documents should be submitted **within 30 days after arrest**.

In case the request and documents are not provided within this timeframe, the person concerned **will be released from detention immediately**.

Follow up procedure in respect of ICCM

The central authority of Georgia has implemented a specialised electronic case management system that allows disseminating information and assignments, and tracking the implementation of MLA cases. While the international cooperation case management system is centrally operated, it is interoperable with the all-national electronic document exchange system; all documents are sent or received from and to other government agencies electronically.

Furthermore, all the documents received from foreign countries, including MLA and extradition requests are registered in an electronic case management system, which allows the central authority to better monitor the status of the request, its implementation, and execution process. Pending requests are periodically reviewed to better monitor their execution processes.

As it was stated above, any follow-up documents can be sent by e-mail to: extraditions@pog.gov.ge and mla@pog.gov.ge, accordingly.

