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MODEL LAW
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

EXPLANATORY NOTE

This document is a guide or a set of non-binding guidelines, which have been made available to the Member States, so that they may make use of it pursuant to their domestic provisions

**MODEL LAW
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

**CHAPTER I
Scope of Assistance**

Mutual assistance provided under the provisions of the instant law may be requested for any of the following purposes:

- I. Summons of witnesses, persons under investigation, and experts;
- II. To hear testimony or take statements from persons;
- III. Notification of procedural acts;
- IV. To deliver the originals or certified copies of documents and court records;
- V. To provide information and evidence, and perform forensic tests;
- VI. Location and identification, *inter alia*, of persons, property, and instruments for evidentiary purposes;
- VII. To seize, attach, and confiscate property;
- VIII. To examine objects, persons, and places;
- IX. To facilitate the voluntary appearance of persons in the requesting State, in order provide statements or cooperate with enquiries;
- X. To identify, seize, attach, and confiscate criminal proceeds;
- XI. To seek any other form of assistance in accordance with the domestic law of the requested State.

**CHAPTER II
General Provisions**

1. Unless otherwise provided in an international treaty or convention, the instant law shall govern all legal assistance procedures in criminal matters.
2. The assistance governed by the instant law is founded on the principle of reciprocity among States.

Unless stipulated in a treaty or convention, the requesting State shall expressly include a statement with respect to its offer of reciprocity in cases of this nature.

3. A single Central Authority shall be designated to take charge of processing requests for assistance in criminal matters and act as a clearinghouse for information thereon. This fact shall be notified to other states.

4. The endeavor shall always be made to ensure direct transmission of requests and communications among Central Authorities.
5. Documents transmitted through diplomatic channels or through the Central Authorities designated for that purpose shall not require certification.
6. Assistance shall be provided even if the deed that gives rise to it is not a criminal act in the requested State.

Without prejudice to the foregoing, the requested State, in the absence of double criminality, may decline to furnish the assistance requested should said assistance consist of house searches, body searches, interception of correspondence, wiretapping, or seizure and confiscation of property.

For the purposes of determining double criminality, States shall give consideration not to the name of the crime but to its classification.

7. In the event that execution of a request might hinder or delay a criminal investigation underway in the requested State, the order may be given to postpone said execution or to proceed with it under certain conditions. Either circumstance shall be brought immediately to the attention of the requesting State.
8. The conditions and the manner in which the request is carried out shall be governed by the domestic law of the requested State.

The request may be carried out in the conditions and manner required by the requesting State, provided that said conditions and manner do not violate guarantees and rights recognized in the domestic law of the requested State.

If the requesting State requires the request to be carried out in a particular way it shall indicate as much.

9. Any person who, in any capacity, appears in response to a summons in the requesting State may not, without the approval of the requested State, be indicted or prosecuted for a crime committed prior to receipt of the assistance request.

Such approval shall be unnecessary if the appearing party, in the presence of legal counsel, freely and expressly waives that immunity before a diplomatic or consular official of the requested State.

Said approval shall also be unnecessary should the aforesaid person fail, despite having the possibility to do so, to depart the territory of the requesting state of their own free will within 30 consecutive days counted from the moment they fulfill the purpose for which they were summoned, or if they voluntarily return after having left it.

10. In light of its nature, all assistance requested in connection with the matters governed hereby shall be processed as a matter of urgency.

Should the requesting State ask that the assistance be provided within a certain time or simply that it be treated as a matter of the utmost urgency, it shall expressly state as much in the request and indicate the grounds for that petition.

For the purposes of the foregoing, relevant grounds include the fact that there are one or more persons in detention for the offence under investigation; that the evidence that is the subject of the request could be lost or destroyed due to some circumstance; that the statute of limitations is about to run on the case, or that the oral proceeding is soon to commence.

11. Without prejudice to the confidentiality with which all information transmitted under the request shall be treated, should the requesting State wish both the request for assistance and its reply to remain confidential, it shall stipulate as much in the request.

Furthermore, the requesting State shall not use the information or evidence obtained under a request, or any other information arising therefrom, for any purposes other than those specifically stated in the request. The requesting State shall seek the express consent of the requested State should it need to use such information or evidence for other purposes.

12. Regular expenses incurred by the execution of the request for assistance shall be defrayed by the requested State.

Any special expenses shall be borne by the requesting state.

13. Should the requesting state deem it necessary for officials from its country to be present when the requested measures are carried out, it shall seek the necessary approval from the requested State, explain the reasons for such a petition, and furnish the particulars of the officials concerned.

On giving its approval, subject to conformity with its domestic law, the requested State shall notify the requesting state of the powers that the foreign officials shall have during the execution of the requested measures.

The actions of the aforesaid officials shall be supervised by the authorities of the requested State at all times and shall abide by its domestic law.

14. Subject to the terms and conditions contained in the instant Law, the greatest possible cooperation shall be afforded to International Agencies and Tribunals recognized by the requested State

15. All requests for assistance shall be drafted in writing. Without prejudice to the foregoing, States shall endeavor to ensure that their domestic systems progressively make way for the adoption of new technologies, especially electronic mechanisms for the official transmission of data.

Whenever the urgency of a case so warrants, a request for assistance may be transmitted in advance by fax or electronic mail from one Central Authority to another, and shall be subject to formalization within the following 10 days

16. Requests for assistance shall be drafted in the language of the requesting State and accompanied by a translation in the language of the requested State.

CHAPTER III
Denial of Assistance

The requested State may refuse assistance requested by another State, and shall promptly inform it of its decision, providing a clear explanation of the cause for its refusal

It shall also indicate if anything can be done to remedy the above situation and the steps required to do so.

The following shall be grounds for refusal of a request for assistance in criminal matters:

D1- When the request is founded on the investigation of an act that, based on the circumstances included in the request, may be classed as a political crime or an offense related thereto.

For these purposes, the following shall not be considered political crimes:

D1.1- War crimes, crimes against humanity, genocide, and other crimes against international law;

D1.2- Acts of terrorism;

D1.3- Acts against the life, physical integrity, or liberty of a head of state or government, or of a member of their family;

D1.4- Acts against the life, physical integrity, or liberty of diplomatic staff or other internationally protected persons;

D1.5- Crimes against the safety of civil or commercial aviation or maritime navigation.

D2- When the circumstances included in the request suggest that one or more persons are being persecuted on account of their race, religion, nationality, gender, or political views.

D3- When the request suggests that the person under investigation has already been convicted for the same act in the requested State. The foregoing is without prejudice to any treaty-based exceptions to this principle.

D4- When the request is founded on the investigation of an act that, based on the circumstances included in the request, may be classed as a military crime or an offense related thereto.

D5- When the request has been issued at the request of an ad hoc tribunal.

D6- When compliance with the request could seriously prejudice the basic interests of the requested State.

Neither invocation of bank secrecy nor the fact that the offense is a tax crime are grounds to refuse a request for assistance.

CHAPTER IV Formal Requirements

Requests for assistance in criminal matters submitted under the instant law shall, as a minimum, contain the following:

- A. The identity of the authority making the request, including postal and electronic mail address, as well as telephone and fax numbers. The name of the official who will act as contact point shall also be provided.
- B. Description of the act under investigation, including the circumstances as to time, place, and manner of commission. The status of the proceeding shall also be indicated.
- C. The identity, if determined, of the person under investigation and of the victim. In the event that the former are minors under the age of 18 this requirement may be dispensed with, unless it is essential for execution of the measure.
- D. Classification of the act giving rise to the request as well as a transcription or certified copy of the breached provision.
- E. A clear and detailed description of the measures requested, including all necessary information to enable them to be executed in a satisfactory manner and showing what bearing those measures have on the investigation.
- F. As appropriate, particulars of the officials whose presence is sought at the execution of the request.

CHAPTER V Specific Purposes

- I. *Requests to summon witnesses, persons under investigation, or experts to appear in the requesting State*

If the request consists of the summons of a witness, person under investigation, or expert to appear before an authority in the requesting State, it must be received in the requested State at least 45 days before the date set for the hearing.

If no hearing date has been set, the person may be summoned to appear in the requesting State within a given time, not to exceed 30 days counted from notification by the requested State

The exact address of the person to be summoned shall be provided; if the address is not known that fact shall be mentioned and its verification requested. In the event of the latter, the request must be received at the least 60 days before the date set for the hearing.

The requesting State shall give an express undertaking in its request to defray the travel costs of the person sought.

- II. *Requests for the appearance in the requesting State of persons deprived of liberty in the requested State*

If the request is for the transfer of a person who is deprived of liberty by order of the authorities of the requested State, in order that they might appear before an authority in the requesting State,

that transfer shall only be approved if the person, in presence of legal counsel, gives their free and express consent and if the requesting State gives an undertaking to return the person once the measure has been executed.

In the course of execution of the requested measure, the requested person shall remain in the custody of the requesting State, which shall provide adequate accommodation for the individual and make all the necessary arrangements for their return once the proceeding concludes.

The requesting State is forbidden, without express written consent to the contrary from the appearing party, to conduct any proceeding not included in its request.

III. Requests to take the statement of a witness in the requested State

If the request is for the taking of a statement from a witness in the requested State, a list of the questions to be asked shall be furnished together with an indication as to the order in which they should be put.

The exact address of the person whose statement is sought shall be provided; if the address is not known that fact shall be mentioned and its verification requested, to which end the requesting State shall furnish all the necessary information or references.

Any person who has been served and who fails, without a plausible excuse, to present themselves before the appropriate authority of the requested State, may be taken by government agents to the offices of the place where his statement shall be taken. The person shall be warned of the foregoing clause upon being served.

IV. Requests to take the statement in the requested State of a person under investigation in the requesting State

If the request is for the taking of a statement in the requested State from a person under investigation in the requesting State, bearing in mind the special nature of the foregoing, that person shall be informed of the charges against them, the crime allegedly committed, and the evidence against them

With respect to all other considerations, the conditions set forth in the preceding articles shall apply.

V. Requests to obtain objects and/or documents

If the request is for the conveyance of documents in the possession of government agencies in the requested State, the latter shall forward copies thereof.

If original documents are sought, the requesting State shall furnish grounds for that request and return the originals once they have served the purpose for which they were requested.

Should it deem it appropriate, the State that supplies the information may request that it be treated confidentially.

Should the objects and/or documents be in the possession of physical or legal persons alien to the investigation, they may be ordered to surrender them with the warning that failure to do so would lead to their compulsory attachment.

VI. Requests for transmission of bank account information

If the request is for the provision of bank account information, as much information as is available shall be furnished on the account in question, such as: the banking or financial entity in which the account is held, the account number, the account holders and their particulars, details as to the period in time on which the search should center, and any other information that might be useful to ensure the reliability of the information.

Non-possession of information on the account shall not prevent assistance from being provided. In such circumstances, the requesting State shall furnish the reasons that lead it to presume the existence of the account in an entity in the requested country.

In either case, an explanation shall be provided as to the importance of the bank information for the case and its bearing on the facts under investigation.

VII. Requests for house searches, body searches, interception of correspondence, and wiretapping

If the measures requested consist of house or body searches, and seizure of objects or documents, the requesting State shall specify the exact address of the premises or complete identity particulars of the person to be searched, as well as the materials to be seized, and the bearing of the latter on the investigation.

When the interception of correspondence or wiretapping is requested, the request shall include a detailed description of the item dispatched and the telephone number, including all information available thereon, as well as what contribution they could make to the clarification of the crime.

VIII. Requests for seizure, attachment, and confiscation of any object

If the request is for the seizure, attachment, and/or confiscation of criminal proceeds or of property, equipment and instruments used or intended for use in the commission of a crime, the request shall include an explanation of the connection between these objects and the crime under investigation, a detailed description of said objects -including their estimated value-, and specific information on their whereabouts or, failing that, the reasons to believe that they are in the requested State.

For the purposes of confiscation of property, the requesting state shall provide, furthermore, a certified copy of the order issued by its appropriate authorities.

The provisions of the instant article shall not be interpreted to the detriment of the rights of good-faith third parties

IX. Requests that entail use of new technologies

Any of the assistance measures listed in Chapter I of the instant law may be carried out using new technologies, provided that they are compatible with the measure requested and the domestic law of the requested State.

Requests shall include justification of the need and/or appropriateness of the foregoing, together with the relevant technical data.

If the requested State lacks such technology, it shall notify the requesting State of that fact and suggest an alternative way by which the request might be met.

X. Use of Videoconferences

The requesting State may ask that statements sought from persons in the requested State be taken by videoconference or similar technology.

The requested State may also suggest the use of the foregoing, should it believe it appropriate in the light of the circumstances of the case.

For the purposes of the foregoing, the person whose testimony is sought shall be notified of the date and place at which they are to provide the statement, as well as the manner in which it is to be taken.

Before the hearing commences the authorities of the requested State shall indicate which persons are authorized to intervene and/or ask questions.

The costs of videoconferences or of any other similar form of data transfer used for these purposes shall be borne by the requesting State.