



United Nations Office on Drugs and Crime

ASSET RECOVERY MLA REQUEST NEXUS
KEY POINTS

- *Identification of the unlawful act under investigation and assets sought to be restrained (recovered) in consequence;*
- *the individual(s) identified as being subject to the investigation and having an interest in the monies (or assets) whether or not through corporate vehicles and*
- *the grounds for believing that the monies/assets are not only located in the requested jurisdiction, but also connected to (i) and (ii).*

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Introduction

- The Mutual Legal Assistance Request Writer Tool (MLA Tool) has been developed by UNODC to assist States to draft requests with a view to facilitate and strengthen international cooperation.
- Requires virtually no prior knowledge or experience with drafting mutual legal assistance requests
- Helps to avoid incomplete requests for mutual legal assistance and therefore minimizes the risk of delay or refusal.
- Is easily adjustable to any country's substantive and procedural law
- Enables the user to retrieve key information on treaties and national legislation
- Features an integrated case-management tracking system for incoming and outgoing requests
- The current version is available in several languages including English, French, Spanish and Russian and can be accessed at:
 - <http://www.unodc.org/mla/introduction.html>

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Summary of updates and to be added to the MLA Writer Tool with regard to asset recovery

- Information related to the membership of the requested country in specific focal points networks (for example, CAMDEN, Egmont Group, Interpol, EJM, IberRed);
- Minimum requirements to MLA and asset recovery process by countries and links to that information in the Tool;
- Reformulation of the wording of "criminal offence" by using language such as "unlawful/illicit conduct" in order to make the Tool flexible when addressing civil or administrative proceedings;
- References in the Tool to regional and sub regional instruments containing MLA provisions;
- Making the Tool's "non treaty" legal assistance basis features better accessible and more user-friendly;

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Summary of updates and to be added to the MLA Writer Tool with regard to asset recovery

- Inclusion of a feature that would allow the Tool to simultaneously choose as a legal basis of the request several treaties and both the treaties and the principle of reciprocity;
- Regrouping of the types of asset recovery assistance in a chronological order of the asset recovery process;
- Creation of a menu for assistance on asset recovery with five separate steps under which the relevant types of assistance are to be listed;
- Defining of step five of the asset recovery process, "Return and Disposal of Assets," based on the language of article 57 of the UNCAC.

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Steps of the asset recovery process

- Asset recovery: Step 1 – preliminary enquiries to enable the identification, tracing and determination of location of assets
Request this assistance where it is suspected but not known whether assets are actually located in the Requesting State, there is some general/unspecific information about assets in the country but not enough to apply for a restraining order (informal inquiries should be considered before making MLA request for this assistance).
- Asset recovery: Step 2 – formal enquiries to identify / locate assets (coercive measures including search, freezing or seizure, production orders etc)
Request this assistance once assets – or value of benefits equivalent to them – have/has been identified, it may be necessary to undertake more formal enquiries to ascertain extent of assets which would likely require coercive measures (i.e. amount in bank accounts, equity in property).

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Steps of the asset recovery process

- Asset recovery: Step 3a – enforce a restraining order made in the Requesting State

Request this assistance where the domestic legal system of the requested State permits its competent authorities to enforce a restraining order issued by a court or competent authority of your country that provides a reasonable ground for the requested State to believe that there are sufficient grounds for taking such actions and that the assets – or value of benefits equivalent to them – would eventually be subject to an order of confiscation.

- Asset recovery: Step 3b – request action by the Requested State to restrain assets or value of benefits equivalent to them

Request this assistance where the domestic legal system of the requested State requires the submission of a request to its competent authorities to obtain a domestic restraining order, to which, if granted, the requested State would be required to give effect.

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Steps of the asset recovery process

- Asset recovery: Step 4a – enforce a confiscation order made in the Requesting State

Request this assistance where the domestic legal system of the requested State permits its competent authorities to enforce a confiscation order issued by a court of the requesting State that provides a reasonable ground for the requested State to believe that there are sufficient grounds for ordering the confiscation of the assets (or value of benefits equivalent to them).

- Asset recovery: Step 4b – seek confiscation order for the assets – or value of benefits equivalent to them – in the Requested State

Request this assistance where the domestic legal system of the requested State requires the submission of a request to its competent authorities to obtain a confiscation order, to which, if granted, the requested State would be required to give effect.

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Steps of the asset recovery process

- Asset recovery: Step 5 – return and disposal of assets
Request this assistance where assets – or value of benefits equivalent to them – confiscated by the requested State need to be disposed of, including by return to their legitimate owners, pursuant to article 57 of the United Nations Convention against Corruption (UNCAC).
- Asset recovery: any other assistance
Submission of a request for any other assistance not defined above, including:
 - Assistance in civil recovery cases (article 53(a) of the UNCAC);
 - [In conjunction with the above assistance] cooperation in investigations of and proceedings in civil and administrative matters relating to corruption (article 43, paragraph 1, of the UNCAC);
 - Assistance in cases of non-conviction-based confiscation (article 54, para. 1(c) of the UNCAC);
 - Assistance for account monitoring orders (article 52, para 1 of the UNCAC).

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For further information:

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THANK YOU FOR YOUR ATTENTION

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