



Mutual legal assistance between countries to facilitate cooperation for taxing the HNIs

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Leading questions?

- Have you ever participated in mutual legal assistance procedures?
- Is there any major difference between MLA and mutual administrative assistance in tax matters?
- What mechanisms can be put in place to facilitate better coordination among different government agencies participating in MLA?

UNCAC and UNCATOC

Art. 46 (UNCAC)

1. States Parties shall afford one another the widest measure of mutual legal assistance in **investigations, prosecutions and judicial proceedings** in relation to the offences covered by this Convention.

Art. 18 (UNCATOC)

1. States Parties shall afford one another the widest measure of mutual legal assistance in **investigations, prosecutions and judicial proceedings** in relation to the offences covered by this Convention as provided for in article 3 and shall **reciprocally extend** to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), **is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party** and that the offence involves an organized criminal group

For what purposes?

Taking evidence or statements from persons

Effecting service of judicial documents

Executing searches and seizures, and freezing

Examining objects and sites

Providing information, evidentiary items and expert evaluations

Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records

Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes

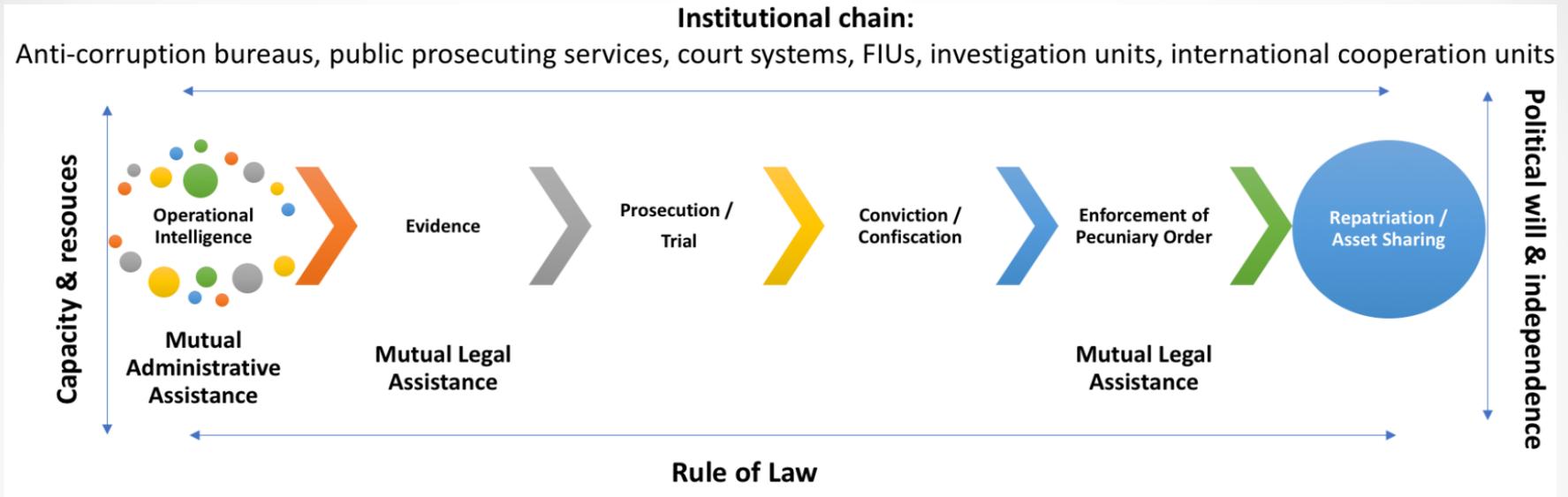
Facilitating the voluntary appearance of persons in the requesting State Party

Any other type of assistance that is not contrary to the domestic law of the requested State Party

Identifying, freezing and tracing proceeds of crime

The recovery of assets

Procedural matters



Source: ICAR, 2017 in https://baselgovernance.org/sites/default/files/2019-05/WP29_AssetRecovery_SDGs.pdf

Mutual Legal Assistance

- UNCAC-UNCATOC
- Specific treaties
- Domestic legislation
- Comity - reciprocity
- Ad-hoc basis

Procedural matters: when is it applicable

Mutual assistance is afforded in proceedings initiated before administrative authorities for **crimes punishable under the legislation** of the requesting or the requested State in such cases where a decision of the administrative authority may be the grounds for instituting criminal proceedings.

Under the principle of dual criminality, is necessary that the act giving rise to the request for assistance constitutes a **crime domestically**.

Any type of procedural action could be executed, upon request, provided that **such action would be authorized in a similar domestic case**.

Most requested forms of assistance included **effecting service or judicial documents**, taking **evidence** from witnesses, **producing official documents** from public agencies and **executing searches and seizures** in relation to business, **bank and Internet records** (limited action on providing tax information)

Procedural matters: what are the roles of different agencies

Police: The Federal Criminal Police (BKA) is responsible for international cooperation and hosts the national central bureau of Interpol and the German Asset Recovery Office. Since 1997, special units for asset recovery have been installed, employing about 670 asset recovery specialists by 2018. Responsibility: **Ministry of the Interior.**

Customs: The Central Customs Authority, the “Zollkriminalamt” and the eight regional “Zollfahndungsämter” are responsible for investigating serious and organized crime around federal taxes and customs issues as well as international cooperation in that field. Responsibility: **Ministry of Finance.**

Financial Intelligence Unit (FIU): The FIU is the central office responsible for receiving, collecting and evaluating suspicious financial transaction reports related to money laundering and terrorist financing. As an administrative body, can **exchange information** with its international partners and **collate data** from various sources as a base for money-laundering investigations by the other investigative bodies.

Tax agencies: The Federal Central Tax Office (BZSt) is responsible for central, national and international tax issues, including international administrative assistance. The primary responsibility for taxation lies at the state-level where investigative tasks are organized in different structures. Responsibility: **Ministry of Finance.**

Bank oversight Agency (BaFin). BaFin is responsible for oversight of anti-money laundering efforts of all financial institutions in Germany, including the group-wide implementation of anti-money laundering policies in foreign branches of German banks. BaFin also administers the bank account register. Responsibility: **Ministry of Finance.**

Prosecutors in Germany are responsible for overseeing investigations but do little investigating themselves. The federal prosecutors are responsible only for terrorism, war crimes and other issues that affect the integrity of the state. Responsibility: **Ministry of Justice.**

Courts: There are primarily three kinds of courts that play a role in asset recovery in Germany: criminal, civil and administrative. Asset recovery is usually related to criminal cases, but local administrative courts can also issue asset freezes on behalf of the FIU and are responsible for the real estate and company registers. Responsibility: **Ministry of Justice.**

Institutions involved in Mutual Legal Assistance: most mutual assistance requests from developing countries arrive in Germany via the **diplomatic channel through the Federal Foreign Office** and are forwarded to the Federal Office of Justice, which analyzes and distributes them to the prosecutors in charge.

Procedural matters: what are the roles of international agencies

Police cooperation and networks of central authorities for mutual legal assistance and authorities responsible for criminal cooperation matters:

IberRed: a network composed of central authorities and contact points of head ministries from the Ibero-American community on issue of MLA in civil and criminal matters.

Eurojust: European Union Agency for Criminal Justice Cooperation, is a unique hub based in The Hague, the Netherlands, where national judicial authorities work closely together to fight serious organised cross-border crime.

INTERPOL: the International Criminal Police Organization is inter-governmental organization composed of 194 member countries, with the objective of sharing and accessing data on crimes and criminals.

Association of Southeast Asian Nations Chiefs of Police: Network constituted by Chiefs of ASEAN Police to facilitate and coordinate cross-border cooperation on intelligence and information sharing and exchange; coordinate joint operations and activities involving criminal investigations, training, capacity building and technical support and forensic science, among others.

Procedural matters: Spontaneous transmission of information

Purpose: assist foreign counterparts in obtaining information that could be helpful for conducting the preliminary stage of criminal proceedings.

Information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings.

Does not limit inquiries and criminal proceedings in the State of the competent authorities providing the information.

The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use.

The information should be kept confidential and not disclose, if not exculpatory evidence can be registered.

Mutual legal assistance cannot be refused on the ground of bank secrecy as it is a self-executing provision and can be directly applied by the competent national authorities.

Procedural matters: Grounds of refusal of a mutual legal assistance request

National or public interest:

- States have the discretion to refuse mutual legal assistance in certain cases but that the underlying premise is to provide assistance to the fullest extent and only refuse a request in good faith and within a limited category of permitted exceptions

Severity of punishment, human rights and *double jeopardy*:

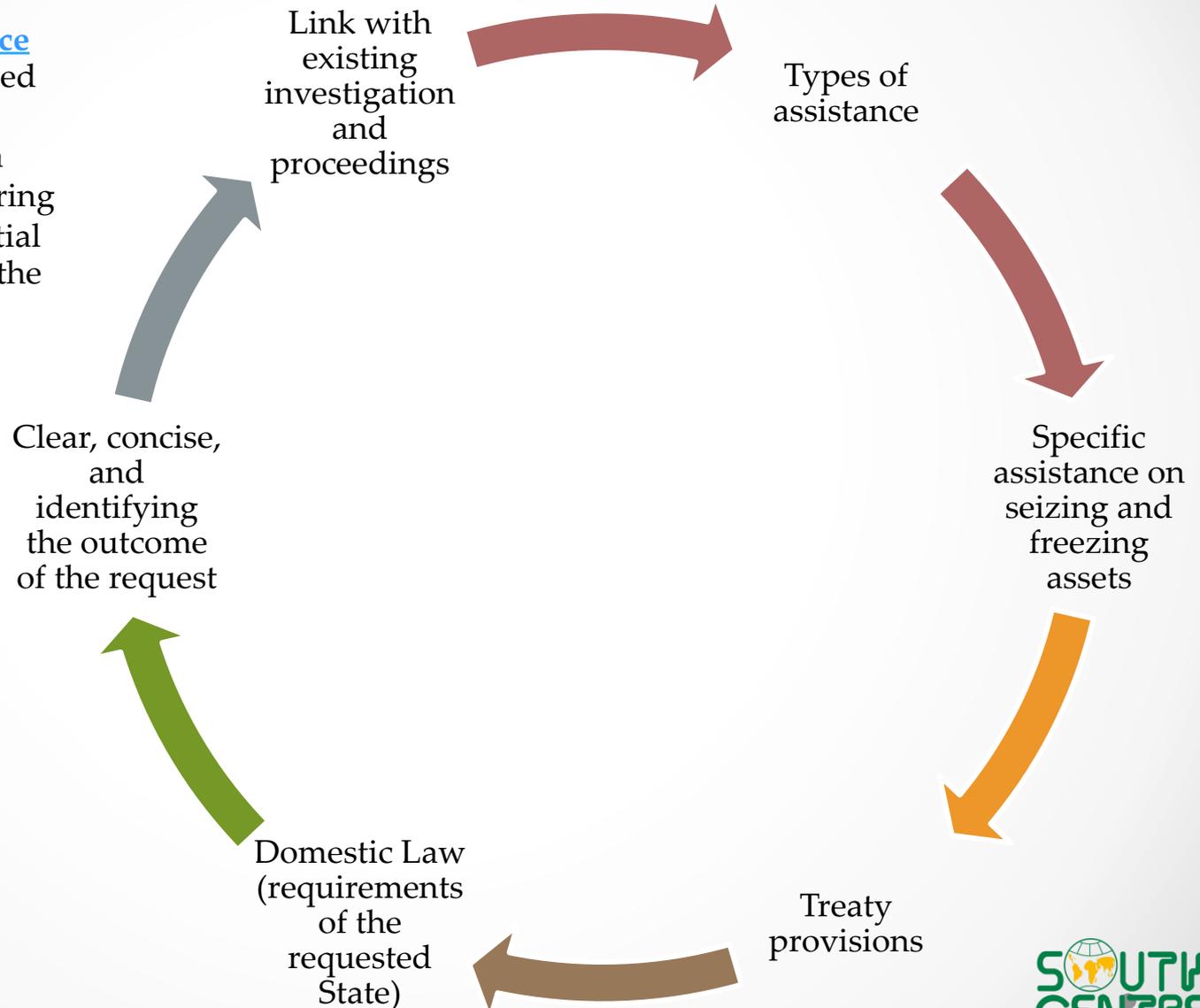
- Refusal of mutual legal assistance in cases in which the investigation may lead to charges that may result in the imposition of the death penalty or cruel, inhuman, degrading punishment or torture, avoid double punishment for the same offence or might violate human rights.

Bank secrecy:

- Situations in which a State is insistent on maintaining bank secrecy even in the face of limiting is application. If a requesting State anticipates or actually is faced with a scenario of this type, it is advisable to look carefully at what is being requested and for what purpose.

Drafting a MLA request

[The Mutual Legal Assistance Request Writer Tool](#) prepared by expert practitioners for practitioners and provides a step-by-step guide in preparing requests for avoiding potential postponement or refusal of the request



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