

BASIS AND KINDS OF ASSISTANCE IN MLA LAW

Law on Mutual Legal Assistance in Criminal Matters (MLA law) was promulgated on 27 June 2020. The MLA law provides a wide basis to provide MLA and kinds of assistance as set forth in articles as follows:

Article 1 - Purpose

This Law defines mutual legal assistance in the criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offenses as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation.

Article 1 makes it clear that the purpose of the law is to enhance international cooperation between Cambodia and other states to effectively combat crime in relation to criminal matters, including proceeds of crime actions. This is consistent with Cambodia's obligation under Financial Action Task Force (FATF) criterion 37.1 to have a broad legal basis for mutual legal assistance.

Article 2 - Scope

This Law shall apply for:

- Legal assistance in the criminal matters to be provided to all Requesting **States** even if they do not have any agreement with the Kingdom of Cambodia;
- Seeking for legal assistance in the criminal matters from all **Requested States** even if they do not have any agreement with the Kingdom of Cambodia.

The scope of this Law shall not be applicable to mutual legal assistance in the criminal matters carried out in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia.

The internal procedure for executing the requests for mutual assistance as stipulated under this Law shall cover all cases of mutual legal assistance in the criminal matters including mutual legal assistance in the criminal matters implemented in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia, except other provisions specified under the treaty or convention, or any other laws of the Kingdom of Cambodia.

This Law shall not prevent the making or receiving of the requests related to the mutual legal assistance in the criminal matters or the cooperation between the Kingdom of Cambodia and a Foreign State through other lawful mean.

This Article makes it clear that all requests for mutual legal assistance received and made by Cambodia fall within the scope of the law, regardless of whether or not there is a mutual legal assistance treaty between Cambodia and the other state. This Article also makes it clear that the law does not restrict the power of Cambodian Implementing Authorities to make or receive requests for information or to cooperate with a foreign state

through other channels or in another manner outside of the law (e.g. the exchange of information between law enforcement authorities or financial intelligence units).

Article 3 - Definitions

1. *Legal Assistance* refers to mutual assistance in the criminal matters which includes the followings:
 - taking evidence or statements from witness;
 - searches and seizures;
 - providing evidence before a court;
 - providing information controlled by the Kingdom of Cambodia;
 - serving court documents;
 - transferring a detained person for giving evidence;
 - identifying a location of person;
 - identifying a location of property;
 - taking measures on a request related to freezing, seizure, or confiscation of property; and
 - confiscation of evidence materials from a financial institution.
2. *Investigation* refers to a research, prosecutorial investigation, and judicial investigation in a criminal case.
3. *Proceeds of crime* refer to any property obtained or received directly or indirectly, through the commission of a crime.
4. ***Property*** refers to:
 - All kinds of property, including movable or immovable property, tangible or intangible property, and legal documents or instruments that serve as an evidence of ownership or an interest in such property;
 - Property, including instruments and proceeds of money laundering, terrorist financing, and other serious offenses; and
 - Property, including substitute property of a natural person or legal person, which has its value equivalent to the property that is subjected to freezing, seizures, and confiscation.
5. ***Internal procedure*** refers to a procedure for implementing a request for mutual legal assistance in the criminal matters in the Kingdom of Cambodia.
6. ***Requested State*** refers to a Foreign State that has received a request for legal assistance in the criminal matters from the Kingdom of Cambodia.

7. **Requesting State** refers to a Foreign State that seeks legal assistance in the criminal matters from the Kingdom of Cambodia.
8. **Criminal matters** refers to:
 - a criminal offense; or
 - determination of proceeds of a crime, or an instrument of an offense, or terrorist's property;
 - an implementable confiscation decision; or
 - freezing or seizing the proceeds of crime, or an instrument of an offense, or terrorist's property
9. **Instrument of an offense** refers to property used in the commission of an offense or intended to be used in the commission of an offense.

This Article defines terms used in the law.

'Legal assistance' that may be provided under the law includes all the types of assistance that are available to Cambodian Implementing Authorities for domestic criminal matters. This supports Cambodia's compliance with FATF criterion 37.8.

'Criminal matter' is defined to include proceeds of crime actions (e.g. the freezing, seizure or forfeiture of property). The intended effect is that mutual legal assistance under the law may include proceeds of crime actions that may not otherwise be considered criminal matters.

'Property' is defined to include substitute property of equivalent value. The definitions of 'instrumentalities of crime' and 'proceeds of crime' therefore also capture substitute property of equivalent value. The intended effect is that proceeds of crime actions may be taken against substitute property of equivalent value.

These definitions support Cambodia's ability to execute mutual legal assistance requests for the identification, freezing, seizing and forfeiture of property, including substitute property of equivalent value, in accordance with FATF criterion 38.1.