



OECD Africa Academy for Tax and Financial Crime Investigation



**Bribery and Corruption Investigations (Specialty) Pilot Programme**  
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# International Mutual Assistance

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# Mutual Administrative Assistance



# Mutual Administrative Assistance

*“police to police or prosecutor to prosecutor...‘informal assistance’, as it does not involve the issuing of the formal letter of request that forms the basis of a mutual legal assistance request...used when making evidence-gathering requests to a state where no coercive power...it does not mean that the form of the evidence obtained is informal or non-evidential”*

Council of Europe

# Overseas Intelligence Requests

A number of international avenues exist to facilitate the exchange of information on an intelligence only basis, the most common are:

- ▶ The Egmont Group of Financial Intelligence Units
- ▶ Inter-Agency Asset Recovery Networks
- ▶ Overseas law enforcement liaison officers
- ▶ International law enforcement networks



# Egmont Group

The Egmont Group is a platform for the secure exchange expertise and financial intelligence to combat money laundering and terrorist financing.

It presently has 170 member financial intelligence units.

- ▶ Information can be obtained from other FIUs on request or shared spontaneously
- ▶ Can only be accessed through the FIC
- ▶ Information is provided on an intelligence only basis meaning that it cannot be used as evidence

# Inter-Agency Asset Recovery Networks



**A R I N W A**

Asset Recovery Inter-Agency Network for West Africa

Réseau Inter-agence de recouvrement des avoirs pour l'Afrique de l'Ouest

Rede Inter-serviços de Recuperação de Bens para a África Ocidental



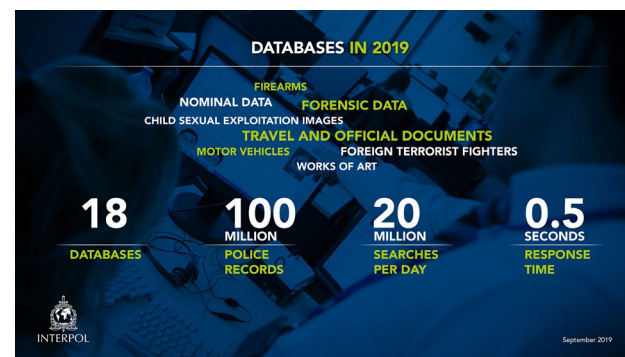
# International law enforcement networks

## International Liaison Officers



INTERPOL

Command and Coordination Centre



# Mutual Legal Assistance





## MLA - what is it?

*“a process by which States seek and provide assistance in gathering evidence for use in criminal cases”*

UNODC

*“sometimes known as ‘judicial assistance’ is the formal way in which states request and provide assistance in obtaining evidence located in one state to assist in criminal investigations or proceedings in another state”*

Council of Europe

# Terminology

## “Subject”

*Person or body who is the subject of the investigation or prosecution (otherwise, suspect or defendant)*

## “Requested State”

*State who receives the request from another*

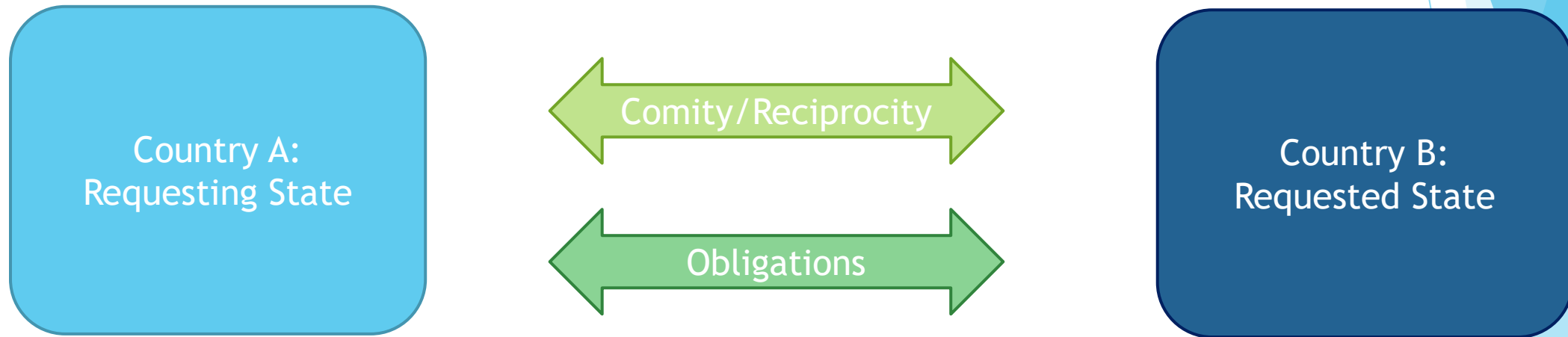
## “Requesting State”

*State making the request for assistance*

## “Commission Rogatoire”, “Commission Rogatory” or “Letter of Request”

Other names for a Mutual Legal Assistance Request. Sometimes used to denote that the request is made without a treaty on the basis of reciprocity and comity.

## MLA - Why is it necessary?



Fundamentals of International  
Law:  
Sovereignty and Jurisdiction



# International Basis for MLA

- ▶ Comity and Reciprocity
- ▶ Bilateral Treaties
- ▶ Multilateral Treaties
  - ▶ UN Convention Against Corruption
  - ▶ UN Convention Against Transnational Organised Crime



# MLA - What can it do?

**“States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings...”**

UN Convention against Transnational Organised Crime (2000 - Palermo), Art. 18(1)

UN Convention against Corruption (2003 - New York), Art. 46(1)

**“Taking evidence or statements from persons”**

**“Examining objects and sites”**

**“Providing information, evidentiary items and expert evaluations”**

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

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

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

**“Executing searches and seizures, and freezing”**

**“Effecting service of judicial documents”**

**“Facilitating the voluntary appearance of persons in the requesting State Party”**

UN Convention against Transnational Organised Crime (2000 – Palermo), Art. 18(3)

UN Convention against Corruption (2003 – New York), Art. 46(3)

# Writing an MLA Request

## UNODC MLA REQUEST WRITER TOOL



[https://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf)

# Basic Structure

Use the following headings for your request:

- ▶ Introduction
- ▶ Legal Basis of Request
- ▶ Purpose and Subject of the Request
- ▶ Summary of Facts
- ▶ Details of Assistance Requested
- ▶ Format of Evidence Provided
- ▶ Undertakings/Assurances
- ▶ Reciprocity
- ▶ Transmission and Contact Details
- ▶ Appendices

# Legal Basis of the Request

International Law Basis NOT domestic law

Which treaty or treaties do you rely on?

Is the requested state a signatory to the treaty?

[https://treaties.un.org/Pages/Index.aspx?clang=\\_en](https://treaties.un.org/Pages/Index.aspx?clang=_en)

If there are no treaties, are you inviting the requested state to respond on the basis of reciprocity?



# Summary of Facts

## Tell the story of the criminality

- ▶ Give a full summary of the relevant facts in chronological order
- ▶ Show a clear nexus to the assistance requested
- ▶ Avoid jargon!
- ▶ Watch your grammar and use sub-headings if needed.
- ▶ What is the value of the information you are requesting to the investigation/prosecution?



# Summary of Facts

1. On 26<sup>th</sup> August 2021, an investigation into NAVE and his State Owned Enterprise employer, QUEIN of Herts, in relation to theft and corruption. QUEIN are a state owned tart manufacturer and NAVE is the finance director.
2. The investigation commenced when another employee, Mr King, called investigators regarding an alleged discrepancy between the standard wholesale price paid for QUIEN tarts and the discounted amount that NAVE was selling them for.
3. An investigation revealed that NAVE had authorised the sale of QUIEN tarts at an undervalue.
4. The investigators recovered business records from QUEIN and obtained copies of NAVE's bank accounts during the period of the sales. Analysis revealed that NAVE had received payments into his account totalling £1m as consultancy payments from a rival manufacturer.

1. On 26<sup>th</sup> August 2021, an investigation commenced into NAVE and his SOE employer, QUEIN of Herts, in relation to theft and corruption. QUEIN are a state owned tart manufacturer and NAVE is the finance director.
2. The business records for QUIEN showed that tarts were being sold at an undervalue in contracts negotiated by NAVE.
3. NAVE's bank account showed that during the same period he received £1m from a rival manufacturer as consultancy fees.
4. The investigation was commenced following allegations by a fellow QUIEN employee, Mr King.



# Assistance Requested

Points to consider:

- ▶ Assistance should be specific and clear – no fishing
- ▶ Assistance requested should be justified by the facts given above and the relevance of them to your case should already be obvious
- ▶ Use a description of your request which can be easily translated. Avoid jargon!



i.e. “A statement in writing from an official of Nedbank Bank producing banking material for account number 98748742129 held in the name of Helena Groot-Kaas (nee Smit; date of birth, 6 May 1966; SA passport number NK74210902), including but no limited to:

a) Account opening documents and due diligence records, including identification documents for the account holder;....”

# Drafting Deficiencies

Some of the common deficiencies in MLA drafting are as follows:

The request is not specific enough

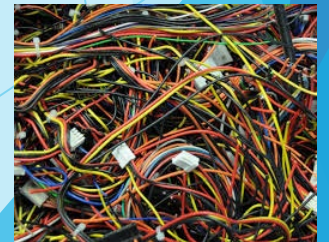
The request does not contain sufficient information or is unclear

The request does not cite the international law basis



The request has not been translated (or not properly translated)

The request fails to show a clear nexus between the investigation and the assistance requested in the other jurisdiction





# Grounds for Refusal

The following are grounds upon which States may refuse to assist:

Lack of Dual Criminality

Contrary to the legal system or laws of the Requested State

Prejudice to Sovereignty, security, public order or other essential interests

Human rights considerations or severity of punishment

Political Offences

Double jeopardy

Fiscal Offences and Banking Secrecy

# Exercise

Using the case study, the timelines and the analysis you drafted earlier, draft a case summary.

Your summary **must not copy** what has been written already in the case study that was given to you.

It must tell the story of the crime chronologically from the point of view of the criminal as they saw it (not the investigator).

Identify one enquiry that you need to make overseas and draft a paragraph to request that information.

This would form the basis of the MLA request.

# Case Summary

## Summary of Facts

An investigation has commenced into potential bribery offences committed by David Groot-Kaas and Fulton Noir. Both are public officials with responsibility for the procurement processes at Good Hope Hospital in South Africa.

On 14 February 2020, Good Hope Hospital invited tenders for procurement of medical supplies. The tender was awarded to Azur Medical Supplies on 12 May 2020. In compliance with the contract, Good Hope Hospital paid Azur Medical Supplies R500 000 000 between June and August 2020. However, the goods supplied by Azur Medical under the contract were found to be defective. It was subsequently discovered that proper procurement processes were not followed as authorised payment limits were breached, there were unauthorised derivations from the tender process, and unjustified exclusion of panel suppliers.

Just before the tender was awarded, a UK company called Win Big Ltd was incorporated. Fulton Noir's sister-in-law, Kristal Gris, was the director and sole shareholder of the company. She is also the sole signatory of the account.

Shortly after receiving money from Good Hope Hospital, Azur Medical Supplies, paid R20 000 000 to Win Big Ltd under the reference "Consultancy Fees".

# Case Summary

It is believed that the funds transferred to Win Big Ltd were used for the benefit of David Groot-Kaas and Fulton Noir. On 29 September 2020, the wives of Groot-Kaas and Noir received R2 200 000 each from the Win Big account. Both have purchased new houses and vehicles.

Win Big Ltd has made a number of payments to companies in Africa including Swartz & Co in Mauritius. A payment of R5 000 000 was made from Win Big to Swartz & Co on 28 August 2020 with the reference “Winward View”.

## Assistance Requested

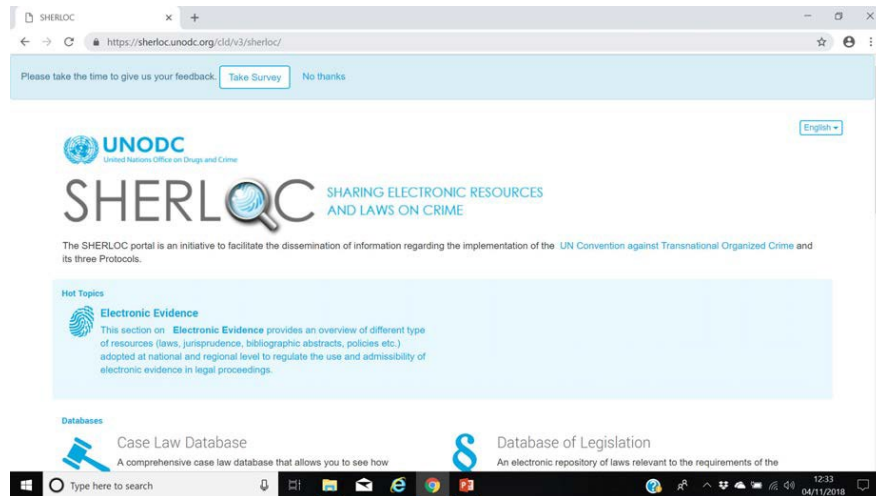
1. A statement in writing from an appropriate officer at Swartz & Co regarding the payment received from Win Big on 28 August 2020 in relation to ‘Winward View’. The statement should include but not be limited to:
  - (a) the reason for the payment including the nature of any services, connected assets or persons
  - (b) the identity of the client or customer who arranged to make the payment
  - (c) any details regarding the client or customer including copies of identification documentation, proof of address or other documentation provided in support of the transaction



# Useful Links

## UN Sharing Electronic Resources and Laws on Crime

<https://sherloc.unodc.org>

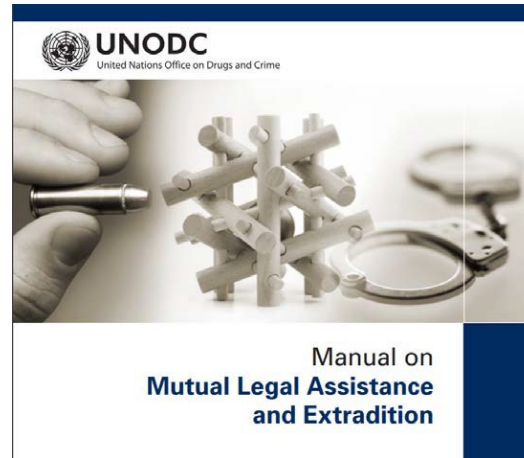


## European Judicial Network Atlas

<https://www.ejn-crimjust.europa.eu/ejn/AtlasChooseCountry.aspx>



# Useful Guidance



[https://www.unodc.org/documents/organized-crime/Publications/Mutual\\_Legal\\_Assistance\\_Ebook\\_E.pdf](https://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf)

**Any Questions?**