

REQUESTING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS FROM JAPAN

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1. BASIS FOR COOPERATION

In Japan, the legislative basis for providing Mutual Legal Assistance (MLA) is bilateral or multilateral treaties, or the principle of reciprocity based on the international comity.

The main domestic legislative basis for providing MLA on obtaining evidence is the [Act on International Assistance in Investigation and Other Related Matters of 1980](#) (the AIAI).


Japan is also a party to a number of multilateral conventions and bilateral treaties, such as:

- [The Council of Europe Convention on Cybercrime](#) (2001) – also known as the Budapest Convention¹;
- [The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#) (1988);
- [The United Nations Convention against Transnational Organized Crime](#) (2000);
- [The Organisation for Economic Co-operation and Development \(OECD\) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (1997);
- [Treaty between Japan and the United States of America on mutual legal assistance in criminal matters](#) (2003).

¹ Japan is also a state signatory to the [Second Additional Protocol to the Convention on Cybercrime on enhanced co-operation and disclosure of electronic evidence](#) (CETS No. 224), though it has

EU authorities can submit MLA requests to Japan on the basis of the [Agreement between the European Union and Japan on mutual legal assistance in criminal matters](#) (2009), further referred as “EU-Japan MLA agreement”.

For non-EU Member States, in case there is no treaty or convention in place, requests may be executed on the basis of reciprocity, pursuant to the requirements stipulated by the AIAI.



Additional Resources Regarding Legal Basis

For more information on other legal acts and treaties governing the MLA in criminal matters, visit the website of the Japanese Ministry of Justice: <http://www.moj.go.jp/ENGLISH/information/lia/i0002.html>

2. SCOPE OF ASSISTANCE

The legal basis further determines the scope of assistance available under the MLA process. For instance, according to the EU-Japan MLA agreement², the available assistance includes:

- Taking testimony or statements;
- Enabling the hearing by videoconference;
- Obtaining items, including through the execution of search and seizure;
- Obtaining records, documents or reports of bank accounts;
- Examining persons, items or places;
- Locating or identifying persons, items or places;
- Providing items in the possession of the legislative, administrative or judicial

not yet been concluded. A review of this Protocol is available on the [SIRIUS](#) platform.

² Article 3, the [Agreement between the European Union and Japan on mutual legal assistance in criminal matters](#) (2009).

authorities of the requested State as well as the local authorities thereof;

- Serving documents and informing a person of an invitation to appear in the requesting State;
- Temporary transfer of a person in custody for testimony or other evidentiary purposes;
- Assisting in proceedings related to freezing or seizure and confiscation of proceeds or instrumentalities; and
- Any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan.



What Data Can Be Requested?

MLA process would allow preservation and production of all types of stored data - subscriber data, traffic data and content data - as well as real-time collection of traffic data and content data in accordance with the laws of Japan.

3. REQUIREMENTS FOR REQUESTS



Prior Consultations

Before initiating the MLA request, prior informal consultation with Japanese authorities is strongly recommended. The contact details are available in the ANNEX I [Description](#).

A- GENERAL REQUIREMENTS

i- EU-JAPAN MLA AGREEMENT

According to the EU-Japan MLA agreement, the request and any document attached shall:

- Be sent by the Central Authority of an EU Member State to the Japanese Central Authority (see chapter 5. CENTRAL AUTHORITY)³;
- Be attested by the signature or seal of a competent authority or the Central Authority of the requesting State⁴;
- Be **translated into Japanese**. In urgent cases, requests and attached documents are accepted in English. However, Japan

³ Ibid., Article 5.

⁴ Ibid., Article 7.

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reserves the right, in any specific urgent case, to require translation into Japanese with regard to the request from the requesting State which does not accept translation into English.⁵

Please note that Japanese authorities require to indicate the **legal basis** to request MLA. The chosen legal basis will further determine requirements for seeking assistance.

ii- BUDAPEST CONVENTION ON CYBERCRIME

States Parties to the Budapest Convention on Cybercrime can make use of the expedited preservation of data (on the basis of Articles 16 “Expedited preservation of stored computer data”, 17 “Expedited preservation and partial disclosure of traffic data”, 29 “Expedited preservation of stored computer data”, 30 “Expedited disclosure of preserved traffic data” and 35 “24/7 Network” of this convention).



Declaration on Article 29

Please note that in relation to Article 29 (Expedited preservation of stored computer data) of the Budapest Convention on Cybercrime, Japan has deposited a declaration stating that it “reserves the right to refuse the request for preservation under Article 29 in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.”

For preservation requests on the basis of Article 29, 30 and 35, Japan has designated the following **24/7 Network point of contact**:

The International Investigative Operations Division
Organized Crime Department
National Police Agency
2-1-2, Kasumigaseki
Chiyoda-ku
Tokyo 100-8974, Japan
E-mail: kokusou@npa.go.jp

In the absence of other bilateral or multilateral treaties, MLA request can be issued on the basis of Article 27 “Procedures pertaining to mutual assistance requests in the absence of applicable

⁵ Ibid., Article 9.

international agreements” of the Budapest Convention on Cybercrime (provided that the requesting country is also a state Party to this convention).



Template For Requesting Subscriber Information

The MLA template for requesting subscriber information on the basis of the Budapest Convention on Cybercrime is available at: <https://rm.coe.int/t-cy-2018-10-template-article31-mla-subscriber-v15-final/16808c4955>

B- SPECIFIC REQUIREMENTS

According to the EU-Japan MLA agreement⁶, an MLA request to Japan shall include:

- The name of the competent authority conducting the investigation, prosecution or other proceeding, including judicial proceeding;
 - The facts pertaining to the subject of the investigation, prosecution or other proceeding, including judicial proceeding;
 - The nature and stage of the investigation, prosecution or other proceeding, including judicial proceeding;
 - The text or a statement of the relevant laws, including applicable penalties, of the requesting State;
 - A description of the assistance requested and its purpose:
- I. To the extent possible and relevant⁷:
 - i. information on the identity and location of any person from whom testimony, statements or items are sought;
 - ii. a list of questions to be asked to the person from whom testimony or statements are sought;
 - iii. a precise description of persons or places to be searched and of items to be sought;
 - iv. a reasoning why the requesting State considers that the requested records, documents or reports of bank accounts are relevant and necessary for the purpose of the investigation into the

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- offence, and other information that may facilitate the execution of the request;
- v. information regarding persons, items or places to be examined;
- vi. information regarding persons, items or places to be located or identified;
- vii. information on the identity and location of a person to be served with a document or informed of an invitation, that person's relationship to the proceeding, and the manner in which service is to be made;
- viii. information on the allowances and expenses to which a person whose appearance is sought before the competent authority of the requesting State will be entitled;
- ix. a precise description of proceeds or instrumentalities, the location thereof, and the identity of the owner thereof;
- II. To the extent necessary⁸:
 - i. a description of any particular manner or procedure to be followed in executing the request;
 - ii. a description of the reasons for confidentiality concerning the request;
 - iii. any other information that could facilitate the execution of the request.



MLA Request Process To Japan

Additional information on the process of preparation of MLA request is available in the ANNEX I.

4. GROUNDS FOR REFUSAL

Under the EU-Japan MLA agreement⁹, Japan **may** refuse the MLA request when it considers that:

- A request concerns a **political offence** or an offence connected with a political offence;
- The execution of a request is likely to prejudice its **sovereignty, security, ordre public or other essential interests** (including death punishment);
- There are well-founded reasons to suppose that the request for assistance

⁶ Ibid., Article 8(3).

⁷ Ibid., Article 8(4).

⁸ Ibid., Article 8(5).

⁹ Ibid., Article 11.

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has been made with a view to prosecuting or punishing a person by reason of **race, religion, nationality, ethnic origin, political opinions or sex**, or that such person's position may be prejudiced for any of those reasons;

- A request does not meet the ***ne bis in idem***/ **double jeopardy** criteria (the person, who is subject to criminal investigations, prosecutions or other proceedings, for which the assistance is requested, in the requesting State, has already been finally convicted or acquitted for the same facts in a Member State or Japan); or
- A request does not conform to the requirements of the Agreement itself;
- A request does not meet the **dual criminality** criteria (the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of Japan).

According to the Article 11 (3) of the EU-Japan MLA agreement, assistance shall not be refused on the ground of banksecrecy.

5. CENTRAL AUTHORITY

The Minister of Justice or the person designated by him/her acts as the Japanese Central Authority for Mutual assistance.

Original hard copies of MLA requests must be sent to:

International Affairs Division
Criminal Affairs Bureau
Ministry of Justice
1-1-1, Kasumigaseki
Chiyoda-ku
Tokyo 100-8977, Japan
Tel: +81-3-3592-7049
Fax: +81-3-3592-7063
E-mail: cabiad@i.moj.go.jp



Additional Resources Regarding MLA Process Towards Japan

For more information on the MLA process towards Japanese authorities, visit: https://www.moj.go.jp/ENGLISH/m_keiji09_00010.html

Further, SIRIUS Specific Guidelines on Japanese online service provider *Line* is available on the [SIRIUS platform](#).

6. LIMITATIONS ON USE OF PROVIDED EVIDENCE

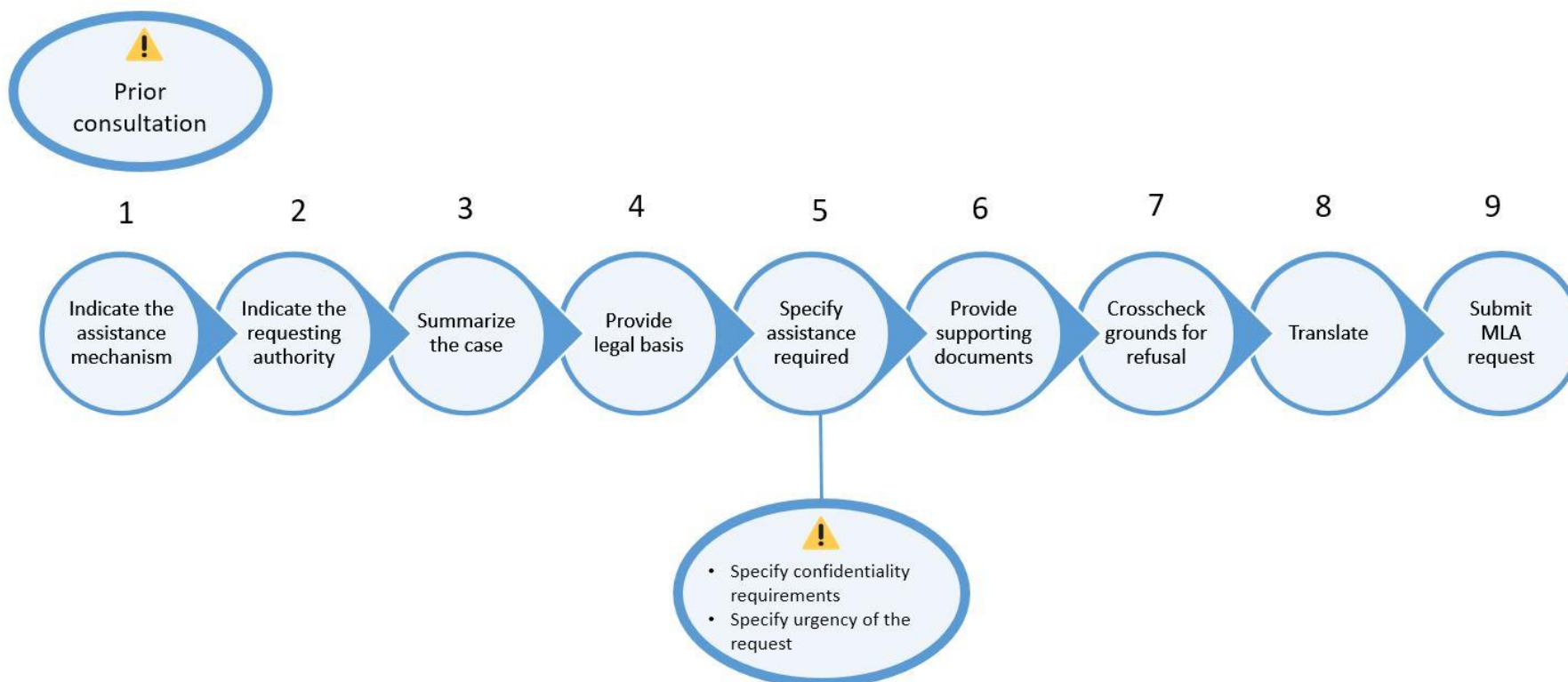
Please note that any evidence which Japanese authorities provide in response to MLA request may only be used for the specific purpose stated in the request. If further use of the evidence is required, a requesting State must first seek consent of the Japanese authorities.¹⁰

¹⁰ Ibid., Article 13(1).

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ANNEX I

MLA REQUEST PROCESS TO JAPAN – A FLOWCHART



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DESCRIPTION



Prior Consultation

Before initiating the MLA request, prior informal consultation with Japanese authorities is strongly recommended, as indicated below:

- a) **French, German, UK and US** authorities should contact the **legal attaché** in the Japanese Embassy in respective country (in French, German, English or Japanese);
- b) The authorities of **EU Member States not listed above** should contact the **legal attaché** in Japanese Permanent Representative to EU in Brussels (in English or Japanese).
- c) Other countries with no treaty with Japan should contact the Ministry of Foreign Affairs in their respective countries.
- d) Other countries having a treaty on MLA with Japan should contact the Japanese Central Authority (in English or Japanese):

International Affairs Division
Criminal Affairs Bureau
Ministry of Justice
1-1-1, Kasumigaseki
Chiyoda-ku
Tokyo 100-8977, Japan
Tel: +81-3-3592-7049
Fax: +81-3-3592-7063
E-mail: cabiad@i.moj.go.jp

- e) For consultation on parallel investigation, contact Japan Prosecutors Unit on Emerging Crimes (JPEC), (in English or Japanese).

Japan Prosecutors Unit on Emerging Crimes
Criminal Affairs Department
Supreme Public Prosecutors Office
1-1-1, Kasumigaseki
Chiyoda-ku
Tokyo 100-0013, Japan
E-mail: 01-ipecc.sppo-unit21006@ppo.moj.go.jp

1. Indication of the mechanism to seek assistance

Indicate the treaty, convention or any other avenue of cooperation referred to as legal basis when seeking the assistance from Japan. N.B. verify if grounds for refusal are not applied.

2. Indication of the Authority submitting the MLA request

Indicate the name of the authority that makes the MLA request, and the point of contact, including contact information (preferably e-mail address).

3. Summary of the case

Provide a detailed outline of the case under investigation or prosecution, including: a) the name and other facts to identify the suspect or defendant (to the extent known); b) the nature and the stage of the investigation or prosecution for which the assistance is sought; c) other facts that constitute the alleged offense (especially important for examining dual criminality) and d) the relevance and necessity of the assistance.

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4. Legal basis

Specify the name of the offense and facts that constitute it.



Also, provide a copy of the applicable legal provisions.

5. Specify assistance being sought

Specify what exactly is requested as assistance, and any particular requirements that must be met (e.g. certification/authentication needs). At this stage, requesting authority should specify a) whether the fact of making a request and the contents thereof should be kept confidential, providing justification; b) whether the request is urgent or identify a deadline for execution, providing justification.



In addition, if relevant:

- Specify if the fact of making a request and the contents thereof should be kept confidential as well as the need and reasons for confidentiality;
- Identify any urgency/deadline for the execution of the request, providing a reason for the time constraints (e.g. pending court proceeding/time-sensitive investigations, etc.).

6. Provide supporting documents/evidence

Provide relevant materials that clarify the underlying facts and show the necessity of the assistance (e.g. the court order).

7. Crosscheck grounds for refusal

Crosscheck if any of the refusal grounds under the applicable MLA treaty or other treaties are not applied.

8. Translate the request

Attach Japanese translations for all the documents.

N.B. In urgent cases, MLA request in English may be accepted in accordance with the applicable MLA treaty. In this case, the basis of urgency shall be clearly stated in the request.

9. Submit MLA request

Once all the above-mentioned steps are completed, the hard copy of request should be sent via post to the Japanese Central Authority for execution, to the address indicated in Section [5. CENTRAL AUTHORITY](#).