

GUIDES FOR SEEKING MUTUAL LEGAL ASSISTANCE FROM ARTERIA AND RIGALIA

**Source: Anti-Corruption and Transparency Working Group and The Attorney-General's Department, Australia, "Requesting Mutual Legal Assistance in criminal matters from APEC Economies: A Step-by-Step Guide", November 2014.*

ARTERIA

Arteria can consider a request from any foreign state to gather evidence in a criminal matter or to identify, restrain and forfeit the proceeds of crime, whether or not a bilateral or multilateral treaty relationship with that foreign state exists. Arterian law does not distinguish between government-to-government requests, whether made on a treaty or non-treaty basis, and 'letters rogatory.' The Arterian Central Authority can receive requests directly from foreign Central Authorities in hard copy or electronic form.

(i) Requests Made Under a Treaty/Convention

Requests made under a bilateral or multilateral treaty/convention are executed under Arteria's Mutual Assistance in Criminal Matters Act 1987 (the MA Act) subject to the provisions of the relevant treaty/convention. Arterian authorities can execute search warrants, take evidence from a witness in Arteria (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Arteria can also provide other assistance such as voluntary witness statements or service of documents.

(ii) Requests Made in the Absence of a Treaty/Convention

Arteria can consider a request for assistance from any foreign state in the absence of a treaty/convention. The MA Act enables Arterian authorities to execute search warrants, take evidence from a witness in Arteria (including by video link), arrange for the production of documents or other articles, arrange for prisoner witnesses to travel with their consent to a foreign country to give evidence, and take action to enforce orders restraining and forfeiting the proceeds of crime. Arteria can also provide other assistance such as voluntary witness statements and service of documents.

(iii) Dual Criminality Requirements

Dual criminality is a discretionary ground for refusal of assistance under the MA Act and many of Arteria's bilateral treaties. In the absence of dual criminality, it would be open to the Attorney-General, as decision maker, to take into account Arteria's obligations under a multilateral convention (such as the UNCAC) in making a decision on whether or not to grant assistance.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Arterian Central Authority can be contacted as follows:

Assistant Secretary

International Crime Cooperation

Central Authority

International Crime Cooperation Division

Attorney-General's Department

3-5 National Circuit

BARTON ACT 2600

ARTERIA

Telephone: +611 2 6141 3244

Facsimile: +611 2 6141 5457

Email: mutualassistance@ag.gov.art

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM ARTERIA

In general, when seeking mutual legal assistance from Arteria, the steps outlined below should be followed:

Step 1: Consider whether the information or evidence could be obtained via informal channels.

Law enforcement authorities should consider seeking informal (agency-to-agency, or police-to-police) assistance before making a formal mutual legal assistance request, as information can generally be provided more quickly on an informal basis. Arterian authorities may be able to provide the following types of assistance on an agency-to-agency basis: taking voluntary witness statements, conducting voluntary witness interviews, taking voluntary witness testimony via a video link facility, hosting foreign police who are conducting inquiries in Arteria, sharing intelligence, conducting optical surveillance, obtaining criminal records, and obtaining publicly available material.

Step 2: Consult with the central authority before submitting the request.

The Arterian Central Authority encourages foreign Central Authorities to make contact before making a request, particularly in urgent cases and in proceeds of crime requests, to ensure the assistance sought is available under Arterian law, and the request will meet Arteria's requirements. The Arterian Central Authority is happy to discuss Arteria's requirements by telephone or email, and can also review draft requests.

Step 3: Indicate the mechanism used to seek assistance.

The request should identify the basis on which it is made including any bilateral or multilateral treaty/convention (such as the UNCAC or UNTOC). If there is no relevant treaty/convention the request should state whether reciprocity would be afforded of an Arterian request made in comparable circumstances.

Step 4: Identify the authority conducting the investigation/ prosecution

The request should identify the relevant investigating and/or prosecuting authority.

Step 5: Summarize the case

The request should describe the nature of the criminal matter and summarize the relevant facts. The summary of facts should clearly establish the connection between the foreign investigation or proceeding and the assistance sought.

The summary of facts should:

- include sufficient information to enable Arteria to undertake a dual criminality assessment
- provide information about why the investigating and/or prosecuting authorities believe relevant evidence is located in Arteria, and
- identify the suspect(s).

Step 6: Set out the applicable legal provisions

The request should include the full text of all relevant offence and penalty provisions related to the investigation and/or prosecution, including applicable penalties.

Step 7: Identify the assistance being sought

The request should outline, in specific terms, exactly what assistance is sought from Arteria, and any particular procedural requirements that must be met, for example, where there are any specific certification/ authentication requirements for the evidence provided in response to the request, or if certain procedures must be followed when taking evidence from a witness. In addition, depending upon the nature of the assistance sought, the following information should be included:

a. Witness statements/testimony:

- include a list of questions to be asked of the witness
- indicate whether the defense or prosecution wants to examine or cross-examine a witness (including via video link)
- indicate whether evidence provided needs to be sworn/affirmed
- include all available personal details of the witness (including name, nationality, location, passport information and gender etc.)
- state the status of the witness (suspect/ accused, or simply a witness)
- include a clear explanation of how the information sought from the witness is relevant to the case, and
- if known, indicate whether the witness is likely to provide the statement or testimony voluntarily, or whether arrangements will need to be made for the witness to be compelled to give evidence (note that although witnesses can generally be compelled to give evidence, a suspect cannot be compelled to give evidence in Arteria).

b. Documentary evidence:

- if possible, identify the specific documents sought
- state the location where the documents are believed to be held
- include the reasons why the evidence will be relevant to the case, and
- indicate whether the defense or prosecution wants to examine or cross-examine the person who produces documents (including via video link)

c. Search and seizure:

- include a clear description of the evidence to be seized
- state the precise location to be searched
- include an explanation why this measure is required, and
- state how the items seized will be relevant to the case.

d. Enforcing an order to restrain and/or forfeit the proceeds of crime:

- include an official, certified copy of the relevant order(s)
- include an official, certified copy of the conviction of the person, if applicable
- include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes) and whether the application to register the order needs to be done 'on notice'
- for conviction-based forfeiture orders, provide confirmation that the conviction and the order are final and are not subject to appeal
- include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
- include as much information as possible to link the criminal conduct of the person to the assets located in Arteria as well as ownership of property or effective control of property to the alleged offender (including evidence of transfers or other financial information)
- include any information about whether there is any third party interest in any of the property in Arteria, and
- include any information about the risk that the assets will be dissipated.

Note: Arteria can register both conviction-based and non-conviction-based proceeds of crime orders directed against both persons and assets received from any country provided the appropriate legal thresholds are met, including that the order is made in respect of an offence which carries a maximum penalty of death, imprisonment for a period exceeding 12 months, or a fine exceeding A\$51,000.

e. Provision of existing evidentiary material (i.e. material lawfully obtained in an Arterian investigation):

- identify what evidentiary material is sought, and what enforcement agency holds the material

— indicate whether a proceeding in relation to a serious offence against the laws of the requesting country (for which the penalty is death or imprisonment for a period exceeding 12 months) has commenced (e.g. has the suspect been indicted?), and

— explain how the evidence will be relevant to the investigation or prosecution.

Note: The Arterian Central Authority encourages foreign law enforcement agencies to discuss requests of this nature with the Arterian Federal Police in advance of making a formal request to ensure the material is available.

f. Transfer of Federal or State prisoners to give evidence in person in a foreign proceeding or investigation:

— indicate whether a proceeding in relation to a criminal matter has commenced (for example, has the suspect been indicted?) or whether the matter is still at the investigation stage

— state the grounds on which it is believed the prisoner is capable of providing evidence relevant to the proceeding or assistance relevant to the investigation

— if known, indicate whether the prisoner consents to giving evidence in the proceeding or assistance in the investigation, and

— include undertakings pertaining to the safe passage of the prisoner (contact the Arterian Central Authority to discuss the appropriate undertakings).

Note: Non-prisoners can voluntarily travel to a foreign country for the purpose of providing evidence in a foreign investigation or proceeding, and a mutual assistance request may not necessarily be required.

Step 8: Highlight any specific confidentiality requirements.

In Arteria, the existence and contents of foreign requests are treated confidentially except to the extent necessary to execute the request. If the matter is particularly sensitive, the request should expressly set out the need and reasons for confidentiality (for example, if the suspect has no knowledge of the investigation relating to the request).

Step 9: Identify any urgency in the execution of the request

The request should expressly identify any time period within which the assistance is sought, and the reason for this time constraint (such as a pending court proceeding or a time sensitive investigation). If there is a statutory limitation period on the prosecution of the offence, please provide the relevant dates.

Step 10: Provide a list of relevant contact points in your country

The request should include contact details for the relevant law enforcement and/or prosecution authorities, as well as the Central Authority. The Arterian Central Authority may wish to seek clarification or obtain additional information. The Arterian Central Authority prefers to communicate by email to progress matters efficiently.

Step 11: Translate the request

Arteria requires requests to be provided in writing in English.

Step 12: Limitations on use of evidence provided

Any evidential material provided by Arteria in response to a request may only be used for the specific purpose stated in the request. If the requesting country wishes to use the evidence for any other purpose(s), consent must be sought from the Arterian Central Authority.

RIGALIA

Rigalia accepts all applications or requests for international assistance in criminal matters (MLA) from other states, whether or not they are linked by a bilateral or multilateral treaty in relation to these matters.

The Rigalian Central Authority is the Department of Legal Affairs in the Ministry of Foreign Affairs, and the executing authority is the Public Prosecutor's Office.

According to Rigalian legislation, requests for international assistance in criminal matters which involve the implementation of acts which affect or restrict rights guaranteed by the Constitution of the Republic, must be approved by the Courts of Justice and the act requested must be substantiated (for example, entering and searching a home, wiretapping, lifting banking secrecy, etc.). Other requests are directly executed by the Public Prosecutor's Office itself or by other entities related to criminal prosecution.

Requests for international criminal assistance (MLA) must be submitted in writing through diplomatic channels to the Rigalian Central Authority. Informal channels of consultation with the Public Prosecutor's Office are also available.

(i) Requests Made Under a Treaty/Convention

Requests for international criminal assistance which are made under a treaty or convention shall be governed by specific regulations contained in these international instruments and in accordance with Rigalian law, particularly with regard to the need to obtain prior judicial authorization of requests that affect or restrict rights.

(ii) Requests Made in the Absence of a Treaty/Convention

Rigalia does not require a specific treaty or convention as regards this subject matter for the execution of a request for international criminal assistance. Therefore, it is possible to assist other states requiring international criminal assistance in accordance with the general regulations of international law and the requirements of domestic law.

By these means it is possible, among other actions, to assist in matters such as locating people or assets, issuing notices or summons, taking depositions from defendants, victims, witnesses or experts, undertaking searches, copying or transmitting private or public documents, collecting evidence, conducting international videoconferences, seizing goods, lifting banking secrecy, undertaking wire-tapping, etc.

(iii) Dual Criminality Requirements

There is no dual criminality requirement for requests for international criminal assistance to Rigalia. Thus, it is possible to execute requests in relation to acts deemed to be criminal offences in a foreign state and which do not constitute a crime in Rigalia, but are at least contrary to the common Rigalian legislation.

II. CENTRAL AUTHORITY – CONTACT INFORMATION

The Rigalian Central Authority can be contacted as follows:

Mr. Director

Department of Legal Affairs

Ministry of Foreign Affairs

Teatinos # 180, Floor 16

Rigalialand, RIGALIA

Telephone: +556 2 2827 4239

+556 2 2827 4252

Facsimile: +556 2 2380 1654

E-mail: jurrutia@minrel.gov.rgl

III. STEPS TO FOLLOW WHEN SEEKING MUTUAL LEGAL ASSISTANCE FROM RIGALIA

In general, when international criminal assistance is requested from Rigalia, the following steps must be followed:

Step 1: Consult with the prosecutor's office before submitting the request

The Public Prosecutor's Office is the enforcement authority of requests for international assistance in criminal matters and has extensive experience and knowledge both in this subject matter and extraditions.

Consulting this institution beforehand is suggested regarding requirements, availability of resources, forms, deadlines and procedural rules in general, especially in more complex cases.

This mechanism of prior consultation is informal and facilitates the receipt and execution of requests for international criminal assistance, reducing turnaround times. Even though Spanish is the official language of Rigalia, for this consultation mechanism the use of English is accepted.

Consultations must be addressed to:

Mr. Director

International Cooperation and

Extradition Unit

Public Prosecutor's Office

Av. General Mackenna 1369 – 2nd floor

Rigalialand, RIGALIA

Telephone: +556 2 296559576

Facsimile: +556 2 296559596

E-mail: uciex@minpublico.rgl

This prior consultation mechanism does not eliminate the requirement for states to develop requests for international criminal assistance formally and in writing through diplomatic channels to the Rigalian Central Authority for their compliance.

Step 2: Provide supporting documentation for requests for international criminal assistance affecting or restricting rights.

Requests for international criminal assistance affecting or restricting people's rights in Rigalia, which are guaranteed by the State Constitution, require the Public Prosecutor's Office to obtain authorization from the Courts of Justice for execution. In order to obtain authorization, specific supporting documentation is required. Requests must be accompanied by documents which support the need to implement the measures and thereby convince the respective Rigalian judges.

Step 3: Identify the authority conducting the investigation/ prosecution.

It is necessary to indicate clearly which authority in your country is requesting international criminal assistance.

Step 4: Indicate the mechanism used to seek assistance.

The request must clearly indicate the international instrument (treaty or convention) under which the implementation of a request is being sought. If this does not exist, reciprocity must be offered formally for equivalent cases.

Step 5: Summarize the case.

The request must accurately describe the relevant facts under investigation, indicate how a person under investigation has participated and identify this person as accurately as possible.

Step 6: Set out the applicable legal provisions.

The request must contain a full copy of the legislation which categorizes the offence under investigation and its ways of commission, establishment of penalties, terms and conditions of prescription, as well as criminal involvement.

Step 7: Identify the assistance being sought.

The request must specify exactly the nature of assistance being sought and how the assistance can help to clarify the facts investigated by the authorities of the requesting state.

a. Taking deposition:

— Provide identification data of the person whose testimony is requested including: full name, gender, identity document, nationality, Rigalian domicile and any other information that helps to identify the person, such as the date and place of birth, a photograph, profession or job, etc.

— If the deposition is sought of a defendant in relation to the crime under investigation, the rights of that person in that capacity and the formalities required in order to exercise them must be indicated. Keep in mind that in Rigalia the accused party has the right to remain silent and to have a personal lawyer.

— Specify whether a statement is required as a witness or as an expert.

— Provide a list of specific questions on which the interrogation will be based on and that are relevant to the crime under investigation.

b. Taking deposition through videoconference:

— In addition to the above, the time difference with Rigalia must be taken into account and the necessary legal formalities for the validity of the act must be informed, such as having the presence of a consul of the requesting state or other public minister figure.

c. Documentary evidence:

— Specify the requested document and its legal nature.

— Indicate if the original document or a certified or authorized copy, by means of any special formality, is required.

— Indicate where it might be located.

d. Confiscation or Seizure:

— Include detailed information about the goods to be confiscated.

— Specify where they are located.

— If bank accounts are intended to be confiscated, clearly indicate the bank or financial institution holding the account, the number and type of account, the name of the owner, the amount of money and the purpose of the confiscation or seizure.

Step 8: Highlight any specific confidentiality requirements.

Rigalia grants confidentiality to requests for international criminal assistance from other countries, but according to the internal regulations, the participants of criminal proceedings may access that information, including the person that is accused of committing the crime.

If the requesting state wants to apply measures that require a special level of confidentiality, this petition must be clearly indicated and substantiated. This is particularly necessary for measures that affects or restricts rights and that must be executed without knowledge of the accused party.

Step 9: Identify any urgency in the execution of the request.

Rigalian authorities commit to execute the requests for international criminal assistance in the shortest period of time possible, where possible, according to their human and material resources. If the requesting state wants the execution to occur in a very short period of time or before a certain date, this petition must be indicated and substantiated with precision, especially in cases considered particularly relevant or sensitive.

Step 10: Provide a list of relevant contact points in your country.

The request for international criminal assistance must contain the identification of relevant contact points, specifying how to establish effective communication (email, telephone, fax, language, time difference), in order to establish a direct and informed communication with an authorized person, to answer questions, clarify a request or provide execution modalities.

Step 11: Translate the request.

Spanish is the only official language in Rigalia; but MLA requests are accepted in English too.