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## Mutual Legal Assistance in Criminal Matters Act 2012

### Liberian Legislative Acts (Handbills)

#### MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS ACT, 2012

It is enacted by the Senate and House of Representatives of the Republic of [Liberia](#) in Legislature Assembled:

**SECTION 1:** Part I Introductory, of the Criminal Procedure Law, Title 2 of the Liberian Code of Laws Revised is hereby amended to add a new Chapter 9 Mutual Legal Assistance in Criminal Matters to read as follows:

#### **PART I INTRODUCTORY**


#### **CHAPTER 9. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS.**

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- §9.11. Privilege for foreign documents
- §9.12. Costs of executing requests for mutual assistance
- §9.13. Asset sharing

#### **§9.1. Purpose**

The purpose of this chapter is to enable the Republic of [Liberia](#) to cooperate with foreign States in criminal investigations and proceedings.

## §9.2. Application of chapter

This chapter shall apply in relation to mutual legal assistance in criminal matters between the Republic of  and:

(a) any foreign State, subject to any condition, variation or modification in any existing or future agreement with that State, whether in relation to a particular case or more generally and shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance; or

(b) any international tribunal.


## §9.3. Scope

Mutual legal assistance shall be afforded to the fullest extent possible with respect to investigations, prosecutions, judicial proceedings in relation to serious crimes, money laundering, terrorism, terrorist financing, and all predicate offenses for money laundering.

## §9.4. Definitions


Unless the subject or context otherwise requires, in this chapter:

document means any record of information, and including anything on which there is writing or marks, figures, symbols, or perforations having meaning for persons qualified to interpret them or anything from which sounds, images or writings can be produced, with or without the aid of anything else or a map, plan, drawing, photograph or similar thing;

foreign State means any country other than the Republic of  and every constituent part of such country, including a territory, dependency or protectorate, which administers its own laws relating to international cooperation;

person means any natural or legal person;

proceedings means any procedure conducted by or under the supervision of a judge, magistrate or judicial officer however described in relation to any alleged or proven offense, or property derived from such offense, and includes an inquiry, investigation, or preliminary or final determination of facts;

Property means currency and assets of every kind in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travelers checks, bank checks, money orders, shares, securities, bonds, drafts, letters of credit, whether situated in  or elsewhere and encompasses legal or equitable interest in any such property whether:

(1) corporeal or incorporeal;

(2) moveable or immovable;

(3) tangible or intangible; and

(4) legal documents or instruments;

proceeds of crime means any property derived or realized directly or indirectly from a serious offense and includes, on a proportional basis, property into which any property derived or realized directly from the offense was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such property at any time since the offense;

record means any material on which data are recorded or marked and which is capable of being read or understood by a person, computer system or other device;

requesting state means any foreign country or state that has made a request for mutual legal assistance.

## §9.5. Authority to make and act on mutual legal assistance requests

**Section 1. Making of request.** The Ministry of Justice in collaboration with the Financial Intelligence Unit shall have the power to make requests on behalf of the Republic of **Liberia** through the Ministry of Foreign Affairs to the appropriate authority of a foreign State for mutual legal assistance in any investigation commenced or proceeding instituted in the Republic of **Liberia** relating to any grave offense including offenses relating to money laundering and terrorist financing, civil forfeiture investigation or proceeding, or administration of a victim's claim. The Ministry of Justice may enter into an agreement with the authority of a foreign State relating to such request and the use and disclosure of any information or evidence received. These provisions shall apply to requests made where State Parties are not otherwise bound by bilateral or other treaties of mutual legal assistance. If those States parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States parties agree to apply the provisions of this chapter in lieu thereof.

**Section 2. Receipt of request.** The Ministry of Justice shall receive requests for mutual legal assistance in criminal matters through the Ministry of Foreign Affairs and either to execute them or transmit them to the Financial Intelligence Unit and other appropriate authorities for execution. The Ministry of Justice shall ensure the speedy and proper execution or transmission of the requests received. Requests for mutual legal assistance and any communication received by the Ministry of Foreign Affairs shall be promptly transmitted to the Ministry of Justice. This requirement shall be without prejudice to the right of a State party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States parties agree, through the International Criminal Police Organization, if possible.

**Section 3. Declining request.** The Ministry of Justice shall not decline to render mutual legal assistance on a reciprocal basis on ground of bank secrecy, financial secrecy or other similar confidentiality provisions. Although mutual legal assistance may be declined on the ground of absence of dual criminality, where consistent with the basic concepts of **Liberia**'s legal system, assistance may be rendered that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other procedures. Reasons shall be given for refusal of any mutual legal assistance in criminal matters to the requesting State. Mutual legal assistance may also be declined by the Ministry of Justice:

- (a) if the request is not made in conformity with the provisions of this chapter, other laws or the Constitution of the Republic of **Liberia**;
- (b) if the request is likely to prejudice **Liberia**'s sovereignty, security, public order or other national or essential interests of **Liberia**;
- (c) if the request is prohibited by Liberian law and the action requested with regard to any similar offense, had it been subject to investigation, prosecution or judicial proceedings in **Liberia**; or
- (d) if it would be contrary to the legal system of **Liberia** for the request to be granted.

## §9.6. Mutual legal assistance requests

**Section 1. Requests by the Ministry of Justice.** The mutual legal assistance requests on a reciprocal basis which the Ministry of Justice is authorized to make are:



- (a) that the foreign State has evidence taken or statements from persons, or documents or other articles produced in evidence in the foreign State;

- (b) to effect service of judicial documents;
- (c) to execute searches, seizures and Freezing Orders; (d) to examine objects and sites;
- (e) to provide information, evidentiary items and expert evaluations;
- (f) to provide originals or certified copies of relevant documents and records, including Government , bank, financial, corporate or business records;
- (g) to identify, track or trace proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- (h) to facilitate the voluntary appearance of persons for a requesting state; (i) to identifying, freezing and tracing proceeds of crime;
- G) to locate and restrain any property believed to be the proceeds of crime located in the foreign State;
- (k) to locate and confiscate any property believed to be located in the foreign State, which is the subject of a Confiscation Order relating to money laundering or terrorist financing;
- (l) to transmit any such confiscated property or any proceeds realized therefrom or any such evidence, documents, articles or things; and
- (m) to enable the recovery of assets.

**Section 2. Requests from foreign States.** Requests for mutual legal assistance on a reciprocal basis from foreign States shall be executed as soon as possible by the Ministry of Justice and full account shall be taken of suggested deadlines of the requesting State for which reasons are given. Response shall be made to reasonable inquiries on the status and progress in handling of sr1ch request by a requesting State.

**Section 3. Postponement of request.** A request for mutual legal assistance may be postponed by the Ministry of Justice on ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

### **§9.7. Content of requests for mutual legal assistance**

A request for mutual legal assistance shall be made in writing or, where possible, by any means capable of producing a written record in an acceptable language under conditions allowing establishment of authenticity. In urgent circumstances and where agreed with another State, a request may be made orally but shall be confirmed in writing forthwith. A request shall be executed in accordance with the domestic law of  Liberia  and in accordance with the procedures specified in the request. A request for mutual legal assistance shall contain:

- (a) the identity of the authority making the request;
- (b) the subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;
- (c) a summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;
- (d) a description of the assistance sought and details of any particular procedure that the requesting State party wishes to be followed;
- (e) where possible, the identity, location and nationality of any person concerned; and
- (f) the purpose for which mutual legal assistance is sought.

## §9.8. Foreign requests for voluntary appearance of detained person

**Section 1. Informed consent of detainee.** Where the Ministry of Justice approves a request of a foreign State to have a person, who is detained in custody in **Liberia** by virtue of a sentence or order of a court transferred to a foreign State for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings, an authorized person may apply to the court for a transfer order. The court may make a transfer order where it is satisfied, having considered any documents filed or information given in support of the application, that the detained person freely gives his or her informed consent to the transfer and voluntary appearance.

**Section 3. Credit for time served.** The person transferred shall receive credit for service of the sentence being served in **Liberia** for time spent in the custody of the foreign State to which he or she was transferred to make a voluntary appearance.

## §9.9. Foreign requests for evidence-gathering

**Section 1. Witnesses and experts.** Where the Ministry of Justice grants a request by a foreign State on a reciprocal basis to compel a person to give evidence as a witness or expert in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State, such person shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from **Liberia**. Such safe conduct shall cease when the witness, expert, or other person having had, for a period of fifteen consecutive days or for any period agreed upon from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the foreign State or, having left it, has returned of his or her own free will.

**Section 2. Government records.** The Ministry of Justice may provide to a requesting foreign State on a reciprocal basis copies of Government records, documents or information that are available to the general public by law, or at its discretion, not available to the general public relating to a criminal matter.

**Section 3. Investigative techniques.** On a reciprocal basis, the Ministry of Justice may grant requests to allow for the appropriate use of special investigative techniques of controlled delivery and other special investigative techniques such as electronic or other forms of surveillance and undercover operations within **Liberia** and allow for the admissibility in court of evidence derived therefrom pursuant to established rules of evidence.

## §9.10. Enforcement of Confiscation Order abroad

Where after conviction for a serious offense including money laundering and terrorist financing, a Confiscation Order has been made in the Republic of **Liberia** in respect of property that is proceeds or an instrumentality, and such property is situated in a foreign State, the Ministry of Justice may request assistance from the foreign State to ensure that the property specified in the order is realized. If a request has resulted in the realization of property in the foreign State, the property realized shall be applied in accordance with the terms of any agreement with that foreign State. A request for such assistance shall have attached to it a copy of the final Confiscation Order and a statement signed by a judge of that court to the effect that no further appeal against the order can be made.

## §9.11. Privilege for foreign documents.

A document sent to the Ministry of Justice by a foreign State in accordance with a request for mutual legal assistance shall be privileged and no person shall disclose to anyone the document, or its purport, or the contents of the document or any part thereof, before the document, in compliance with the conditions on which it was sent, is made public or disclosed in the course of and for the purpose of any proceedings. Except to the extent required by this

chapter to execute a request by a foreign State for mutual legal assistance, no person shall disclose the fact that the request has been received, or the contents of the request. A violation of the provisions of this section shall constitute a first degree misdemeanor under the Penal Law.

### **§9.12. Costs of executing requests for mutual assistance.**

The Ministry of Justice on a reciprocal basis shall consult with a requesting foreign State when making a request for mutual assistance to determine the manner in which related costs shall be borne.

### **§9.13. Asset sharing**

Where the Ministry of Justice considers it appropriate in view of reciprocity and because of an international arrangement so requires or permits or in the interest of comity, the Ministry of Justice may order that the whole or any part of any property confiscated under this chapter or the value thereof be given or transmitted to the requesting state.

**SECTION2:** This Act shall take effect immediately upon publication in Handbills by the Ministry of Foreign Affairs.

## **ANY LAW TO THE CONTRARY NOTWITHSTANDING**

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