

Drafting letters of request - issues to be aware of

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Basics

- Make sure the request is properly addressed
- Always give full case lawyer and case officer contact details
- Useful to summarise domestic power to issue requests

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Extract

• I the undersigned, [...] being a [...]] have the honour to request the assistance of the Competent Legal Authority in [...], in relation to certain enquiries being conducted into [offence description]. I am authorised to make this request pursuant to [quote domestic legal basis]

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Subject

- Who are you investigating?
- Person?
- Legal entity?
- Possibility to request assistance where the subject is unknown
- Give full details
- Name, date of birth, nationality, normal place of residence (passport/id card number if known)

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Offences

- Investigation, prosecution or conviction of particular offences
- Brief description of the offence
- Annex of law should always be attached to the request
 - Allows requested state to satisfy itself as regards dual criminality

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Case summary

- This should be factual and precise
- Highlight sufficient evidence to justify allegation
- Length will depend upon complexity
- Standard – reasonable suspicion
- Clear link between case summary and assistance requested.

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Legal bases and rules of evidence

- Under what convention are you requesting assistance?
- List all relevant conventions that apply
- Have regard to offence you are investigating/prosecuting
- If you have specific evidential rules and procedures, state them

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Extract

- **1. Witness Statements** – In order to be admissible in proceedings, a witness's statement must be signed by the maker and dated. If the witness is under 21, his age should be given. (NB. Although such a witness statement will be admissible at certain preliminary stages of the criminal proceedings, it will usually not be admissible at the trial itself, and so it will very often be necessary to call the witness to give live evidence at the trial. This is due to the operation of the hearsay rule, referred to below).
- **2. Hearsay** – Hearsay evidence includes the testimony of a witness as to the assertions of another person, and documents offered to prove the truth of what is asserted therein. The basic principle is that a witness must confine his evidence to his own personal observations. In general, hearsay evidence is inadmissible in English Courts. For example, a summary by a law enforcement officer of the observations made by other officers in his team would be hearsay, and generally inadmissible.

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Extract

- *[the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, done at Vienna in 1988]
- *[the UN Convention on Narcotic Drugs, done at New York in 1961] [with Additional Protocol, done at New York in 1972]
- *[the UN Convention on Psychotropic Substances, done at Vienna in 1971]
- *[the European Convention on Mutual Assistance in Criminal Matters, done at Strasbourg in 1959] [with Additional Protocol done at Strasbourg in 1978]
- *[the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, done at Strasbourg in 1990],
- *[the bilateral agreement / exchange of letters between [...] and [...] of [date]],
- *[the good international relations between our countries and our common interest in the fight against crime]

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Assistance requested

- What do you want?
- List clearly
- Make sure that this links back to case summary
- Do you or your officers wish to travel?
- If yes, justify

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Extract

- Arrangements to permit the said [name and contact details] and any other official who may accompany him/her charged with the investigation of this case on behalf of [...], to be present when these enquiries are made in your country, to advise in detail on the form in which evidence should be taken in order to comply with the requirements of our domestic law and procedure, and to make such physical examination of premises and property as may be necessary for the proper presentation of the case before our domestic courts.

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Confidentiality and reciprocity

- Do you require strict confidentiality?
- If yes, justify
- Should not ask for what you cannot provide in return
- If unable to offer reciprocity must be made clear

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Extract

- **AND** it is further requested that, in order not to prejudice the investigation, the existence and contents of this [International Commission Rogatoire] / [Letter of Request] and any action taken in response to it, be not notified by the competent authorities in your country to any person outside such authorities (in particular, any of the above subjects), except to the extent that a request to notify such a person in any of the foregoing respects, is contained in, or is necessarily implied by the terms of, any of the above paragraphs 1 – [].
- *[**AND** it is further requested that action be taken to ensure that [a person from whom evidence is sought e.g. a Bank] does not so notify any other person, including [any of] the above subject[s], consequent on the request[s] for assistance at paragraph[s] [] above .]
- *[However, there is no objection, if your law so requires, for an interested person, including one of the above subjects [,] to be informed in advance of an application to a judicial authority for access to property, pursuant to the request[s] for assistance at paragraph[s] [] above]
- The reasons for requesting confidentiality in the above terms are that, [with the exceptions indicated above]
- I confirm that the assistance requested in paragraphs 1 – [] above could be obtained under the powers provided for by the current laws of [...], if in a like case a request for such assistance were made to the authorities in [...] (noting that a witness cannot be compelled , under those laws, to attend court proceedings abroad).

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Issues for consideration

- Certainty
- Confidentiality
- Nexus
- Disclosure
- Dual Criminality
- Defamation
- Reciprocity

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Certainty & Confidentiality

- Illustrate existence of evidence in requested state
- Clear, unambiguous and time specific
- Is this necessary?
- Can hamper execution of request
- Some states can only guarantee confidentiality up to a certain stage of execution

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Nexus

- Establishing a clear link between facts and evidence sought
- More than just evidence is relevant to your case
- Requests are normally time sensitive
- Do not include sensitive information
- Public documents in some states

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Dual criminality

- Need to detail offences in full – annex of law
- Some types of request can only be executed if dual criminality is satisfied
- Beware of making unsubstantiated allegations against suspects or third parties

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