

Grounds to refuse the assistance

The refusal grounds for the MLA request for obtaining an evidence:

(Mandatory Refusal causes)

1. When there is no guarantee of reciprocity from the requesting state or if the request is based on a treaty but not fulfilling the criteria provided in the treaty ;
2. When the offence for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating political offense;
3. When the act constituting the offense for which assistance is requested would not constitute an offense under the laws, regulations or ordinances of Japan were it committed in Japan;

* Dual criminality:

Dual criminality in the context of providing the evidence, is flexible enough to the extent that as long as a part of alleged offence taken by the offender in question could fulfill the element of some crime in Japan, the request would be considered to meet our dual criminality requirement (abstract dual criminality).

However, in order to make the assessment, the request letter should contain the details of the facts that constitute the offence (not just the name of the offence or the translation of the law). If no details are given, we would be in a position to judge dual criminality solely on the basis of the offence category or to take an extra time to make an inquiry to the requesting authority for more details.

Dual criminality requirement may subjected to different treatment if the request is based on the MLAT/MLAA.

4. Lack of clarification as to why the evidence sought is essential to the case (with respect to a request for an witness testimony or a submission of original evidence). The explanation could be, for example, the evidential rules of the requesting State requires admissible witness statement needs to be sworn statement. Please specify the provisions of the law if it is legal requirement.

(Discretionary Refusal causes)

5. When the Minister of Justice deems it inappropriate to honor the request.

The refusal grounds for the MLA request for confiscation, value confiscation (confiscating the value equivalent to the relevant asset) or freezing assets for the confiscation or value confiscation.

(Mandatory Refusal causes)

1. When there is no guarantee of reciprocity;
2. If the alleged offence, if took place within the jurisdiction of Japan, would not fulfill the elements of those crimes specified in the AOCA or a drug offence.
3. If the request does not meet the dual criminality requirement;

* Dual criminality in the context of assisting confiscation or the freezing of the asset in the view of confiscation, would require the alleged offence to be punishable by Japan should the offence took place within the Japanese jurisdiction (“concrete” dual criminality). Hence, the assessment takes into consideration of such factors that would block the conviction such as “self defense”. However, unlike the dual criminality assessment for the extradition request, the request for the confiscation would not question the statute of limitation.

4. When any criminal case involving the alleged offense is pending before a Japanese court, or there is final and binding judgment by a Japanese court for such case;
5. The asset sought is not confiscatable under the laws and regulations of Japan for the offence for which assistance is requested (ex. The asset does not belong to a bona fide third party) or the alleged offence, if committed within the jurisdiction of Japan, would not allow the value equivalent to the assets sought to be confiscated;
6. If the assets sought under the final and binding confiscation order of the requesting State was under collateral and the respective secured party had not been given the opportunity to be heard of the right in the said confiscation procedure without any fault of the third party.
7. Unless the request for the freezing of the asset in the view of confiscation or value confiscation is based on a judicial order to freeze/ confiscate/ value confiscate within the requesting State, when there is NO reasonable

ground to suspect that the alleged offence had indeed been committed or that the facts constituting the alleged offence, if took place within the Japanese jurisdiction, would NOT be confiscatable/ value confiscatable;

(Discretionary Refusal causes)

8. When the Minister of Justice finds it inappropriate to honor the request.