

Confidential

No. 25016/14/2007-Legal Cell
Government of India
Ministry of Home Affairs
Internal Security Division

Dated 31st December, 2007

To

The Home Secretaries of all States/UTs

DGPs and IGPs of all States/UTs

Sir,


Sub : Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs).

The guidelines relating to issue of Letters Rogatory (LRs) for causing investigation abroad were issued by the Ministry of Home Affairs (MHA) in 1996. However, many investigation agencies are either not aware of these guidelines or do not seem to be following them which results in avoidable delays at different levels at the State level.

2. With a view to streamlining and making them more precise and focused, MHA has examined the matter afresh in consultation with the Central Bureau of Investigation (CBI) and comprehensive guidelines are enclosed for dealing with the issues of investigation abroad and initiation and execution of LR as also the procedure for extradition requests and contact with foreign police/legal attaches.

3. You are requested to kindly have these comprehensive guidelines circulated amongst the concerned officers for strict compliance.

Yours faithfully,



(L.C. GÓYAL)

Joint Secretary to the Govt. of India

Copy to

JS (PP) MHA
JS, CPV, MEA
JD (Policy) CBI,
JD, IB,
Joint Secretary, R&AW

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File No.25016 / 14/2007-Legal Cell

Government of India
Ministry of Home Affairs
Internal Security Division

COMPREHENSIVE GUIDELINES REFERRED TO IN LETTER NO. 25016/14/2007-LEGAL CELL DATED 31ST DEC, 2007 OF INTERNAL SECURITY DIVISION, MINISTRY OF HOME AFFAIRS REGARDING INVESTIGATION ABROAD AND ISSUE OF LETTERS ROGATORY AND ALSO THE PROCEDURE FOR EXTRADITION REQUESTS AND CONTACT WITH FOREIGN POLICE/LEGAL ATTACHES.

(a) INVESTIGATION ABROAD

(1) It may be necessary to gather information or conduct formal investigation abroad, in cases, where accused person(s) has escaped from the country after committing the crime or part of the crime has been committed outside the country or the witnesses and other material evidence are available in another country.

(2) However, it may not be necessary to gather formal evidence in all such cases and in many cases/enquiry, the investigation agency may only need informal information or leads in the first instance. The investigation agency may get informal information/material/ leads collected through Interpol or diplomatic channels. [Intelligence sharing, however, is required to be done by intelligence agencies]. The International Police Cooperation Cell (hereinafter referred to IPCC) of CBI New Delhi is the designated agency for routing requests for informal enquiries to be made with National Central Bureau of other countries, Interpol Headquarters as well as our Missions abroad.

(3) For getting informal information/leads conducted through the Interpol channels or Indian Missions abroad, a self contained request, along with necessary details, may be addressed to Assistant Director of the IPCC, Block No. 4, CGO Complex, Central Bureau of Investigation, New Delhi. In case, information is to be collected/ enquiries are to be conducted in more than one country, separate self contained requests may be sent for each country. The request may be routed through the Head of Crime Investigation Department (CID) of the State Police.

- (4) The request must incorporate the following details:
- (i) *The FIR number along with names of the accused and sections of law under which case has been registered.*
 - (ii) *The gist of the allegations in the FIR/ Preliminary Enquiry or any other Investigation Process.*
 - (iii) *The details of information required. In order to facilitate the requested country/ its NCB providing information, the specific relevant details must be furnished.*

(5) It is necessary that material being furnished should be carefully examined and scrutinised at an appropriate level especially as regards accuracy of facts and figures. It must be noted that the information so collected cannot be treated as formal evidence.

(b) VISIT OF POLICE OFFICERS ABROAD FOR INVESTIGATION

- (1) Sometimes, it may become necessary to send Police Officer(s) from India to another country for the purpose of execution of LRs or for collecting information or leads during the course of investigation of a case keeping in view the importance of the case and the complicated nature of offences under investigation.
- (2) As any police officer including that of CBI does not enjoy Police powers in a foreign country, any such visit by a police officer without the express consent of any country may be considered interference in the sovereignty of that country unless some required formalities are observed.
- (3) When it is considered necessary to send a team of Officers abroad, State Government will send a proposal to IPCC, CBI, India which in turn will obtain the approval of MHA for the proposed visit, whenever necessary.
- (4) The following information needs to be sent to IPCC, CBI, India for taking up the matter with the country to which such team is proposed to be sent:
- (i) *A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the requested country. This is to enable the authorities in that country to assess whether the request is justified.*
 - (ii) *All available particulars about the identity or particulars of the person to be contacted or documents to be scrutinised etc.*

This would help the requested country to make all necessary preparations.

- (iii) *Information about penal offence(s) to which mission relates.*
- (iv) *Whether Article 3 of the ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted.*
- (v) *Exact date and duration of the mission and information about the police officers such as their name, ranks etc.*
- (vi) *Any other relevant information which may be relevant in processing such a request.*

(5) The visit will not commence before the required permission is received. The officers must get in touch with Indian Mission on their arrival. In case, the country does not have a Mission, the accredited Mission for India may be kept informed as regards the visit of the officers.

(c) **ISSUE OF LETTERS ROGATORY (LRs) FOR INVESTIGATION ABROAD UNDER SECTION 166-A CrPC, 1973.**

(1) In order to conduct formal investigation and to collect evidence and gather material objects/documents, Section 166-A of the Criminal Procedure Code, 1973 lays down the procedure of sending 'Letter of Request' (*Letter Rogatory*) through a competent Court. *Letter Rogatory* is forwarded within the ambit of Mutual Legal Assistance Treaty (MLAT) in criminal matters, Memorandum of Understanding (MoU)/ Arrangement etc. existing between India and the requested country or on basis of reciprocity in case no such treaty or MoU exists. In certain cases, it may also be possible to use the provisions of an International Convention providing for such mutual cooperation, to which both India and the requested country are a signatory. for sending such *Letters Rogatory*.

(2) No request for issue of a Letter Rogatory (Letter of Request) shall be brought before any Court by an Investigating Agency without the prior concurrence of the Central Authority i.e. Ministry of Home Affairs (MHA) -

(3) In case, it is considered necessary to get a Letter Rogatory (Letter of Request) issued, a self contained proposal has to be sent to Under Secretary (Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi-110 003 to be routed through the Home Department of the State in case of State Police, and directly to MHA in case

of DSPE (CBI) for obtaining concurrence of the Government before filing an application in the Competent Court.

(4) Before making a proposal to MHA, the Investigating Agency concerned may examine the matter in detail whether it is absolutely necessary to get the investigation conducted abroad for taking the case to a logical conclusion. The provisions of the MLAT, MoU, Arrangement or International Convention as well as the requirement of the law of the requested country such as principle of dual criminality, assurance of reciprocity etc., may be studied to ensure that such a request would fall within the parameters of legal requirements of the requested country. It is important as it would have to be specifically mentioned as to under what provisions of the Treaty, MoU, Arrangement or International Convention the request was being made. Where no such bilateral or multilateral arrangement exists a Letter Rogatory may be made on the basis of assurance of reciprocity.

(5) Certain countries do insist that a Letter Rogatory be sent in a particular language or format. If so, the requirements for making such a request may be studied to comply with them. Necessary assistance of IPCC, CBI, New Delhi may be taken for the purpose, if required.

(6) For obtaining the concurrence of MHA, the Investigating Agency concerned has to send the following in triplicate:

- (i) *A self-contained note containing brief facts of the case incorporating the allegations, names of the accused and particulars of the offences committed with details of Sections of Law and a copy of First Information Report (FIR). The FIR may be neatly word processed and must accompany with an English translation if written in vernacular.*
- (ii) *The need to conduct investigation abroad along with the legal opinion of Director of Prosecution or the senior most Law Officer on the need for such Letter Rogatory (Letter of Request), that it would fall within the ambit of MLAT, MoU, Arrangement, International Convention and laws of the requested Country on the principles of dual criminality etc. The relevance of statements of witnesses to be examined and collection of documents/ material being requested to be seized etc., to the investigation of the case may also be commented upon.*
- (iii) *The relevant provisions of the MLAT or MoU or Agreement or Arrangement or an International Convention under which a Letter Rogatory (Letter of Request) is to be made may be*

enclosed. In case it is to be sent on assurance of reciprocity, the same may be mentioned.

(iv) The draft application to be filed in the Competent court for issue of a Letter Rogatory may be enclosed. The application should contain the following:

- a. Background Note with brief facts of the case, the allegations and name of the accused and particulars of the offences committed with an extract of Sections of Law and a neatly word processed copy of First Information Report (FIR) as enclosures.
- b. The details of investigation to be carried out in the requested country. Care must be taken that request made is specific as no country would allow fishing enquiries/ investigation.
- c. Particulars of the witnesses to be examined, their identity and addresses if available along with a detailed questionnaire for examination of each witness.
- d. Description of the documents/articles to be collected and procedure for the same.
- e. Extract of the corresponding Sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country, the principle of dual criminality or any other requirement is essential requirement for execution of a Letter Rogatory.
- f. Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention etc. providing for such assistance by the requested country.
- g. Declaration that the proposed Letter Rogatory is in compliance with all the requirements of the requested country and that the case under investigation is not of political, military, racial or religious character.
- h. A draft Assurance of Reciprocity in case the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.

- i. *Whether a visit by Investigating or any other officer is proposed to assist the authorities in the requested country to execute the Letter Rogatory.*

(7) The following precautions may be taken by the Investigating agency while preparing a Letter Rogatory (LR):

- (i) *The documents, photographs and objects, if enclosed with the Letter Rogatory, should be clearly marked and referred to in the body to enable the requested Authority to know clearly what is required to be done with them.*
- (ii) *All the photocopied papers/ documents enclosed must be legible and translated in the required language, if required.*
- (iii) *The Letter Rogatory should be neatly bound and page numbered.*
- (iv) *The authenticated translated copies, duly signed by a translator, be enclosed along with the original LR, if required to be submitted in a language as prescribed in the MLAT, MoU, Arrangement or otherwise.*
- (v) *At least, five copies of the Letter Rogatory should be prepared including the original. Three copies along with the translated version, if any, are to be sent to MHA along with a copy to the International Police Cooperation Cell of CBI.*

(8) MHA may consult CBI whenever required and convey its concurrence to the proposal to be filed in the competent court for issue of a LR and also mark a copy of its concurrence to IPCC, CBI, New Delhi.

(9) After obtaining the concurrence of MHA, an application may be filed in the Court of competent jurisdiction for issue of a Letter Rogatory addressed to the competent authority of the requested country. The Competent Court may decide to issue a Letter Rogatory (Letter of Request) addressed to the competent authority in the requested country as prayed for or otherwise.

(10) In case, the request is accepted, the Court would issue the Letter Rogatory under its seal and authority. A format and the contents of the LR are given in the Annexure to the guidelines.

(d) PROCEDURE TO BE FOLLOWED AFTER ISSUE OF LR BY THE COMPETENT COURT.

(1) The Investigating agency will send three copies of the LR to IPCC, CBI, New Delhi and one copy to MHA. IPCC, CBI, New Delhi, will forward the same to the competent authority in the requested country through the Indian Missions under intimation to MHA.

(2) The Indian Mission will take prompt action to present/ send the LR to the competent authority and communicate the exact date of such presentation/ submission to IPCC, CBI, New Delhi. The Mission and IPCC, CBI, New Delhi will follow up the execution of LRs with the competent authority in the requested country.

(3) In the event of the requested country seeking clarifications, additional material etc., the Mission will directly communicate the same to IPCC, CBI, New Delhi, who will take necessary action in the matter under intimation to MHA & MEA.

(4) The execution report, along with evidence and supporting material, received from the requested country would be directly sent by our Mission abroad to IPCC, CBI, New Delhi who would in return send the same to the Agency concerned under intimation to MHA and MEA.

(e) HANDLING OF INCOMING LETTERS ROGATORY (LRs)

(1) All incoming LR's will be received by Under Secretary (Legal), Internal Security Division, Ministry of Home Affairs, Lok Nayak Bhawan, New Delhi-110 003 and will be sent to the investigating agency concerned (State Police/CBI) in consultation with JD (Policy) in CBI.

(2) Where LR needs to be executed through the State Police, it will be sent to IPCC, CBI for getting it executed by the concerned State Police.

(3) The agency entrusted with the task of execution of LR will do so at the earliest. The Letter Rogatory would be executed in terms of the provisions of the MLAT, MoU, Arrangement etc., if it exists with the requesting country, otherwise the evidence shall be gathered under the provisions of Indian laws, as applicable.

(4) The following precautions may be taken while preparing the Execution Report:

- (i) The documents, photographs and objects, if enclosed with the Execution report, should be clearly marked and referred to in the body.

- (ii) All the photocopied papers/documents enclosed must be legible and authenticated as per provisions of Indian Evidence Act unless otherwise provided in the MLAT, MoU, Arrangement etc.
 - (iii) The Execution Report should be neatly bound and page numbered.
 - (iv) At least, four copies of the Execution Report should be prepared including the original. Three copies including the original may be sent to IPCC, CBI, New Delhi, while one copy should be retained by the executing agency for future reference.
- (5) After execution, the investigating agency will forward the execution report to IPCC, CBI, New Delhi along with the evidence and material collected who will forward the same to the Central Authority in the requesting country through MEA under intimation to MHA.

(f) **HANDLING OF EXTRADITION REQUESTS**

- (1) Extradition is either done under extradition treaty or other extradition arrangement or assurance of reciprocity with the requested country.
- (2) Extradition request can be normally made only after a charge sheet has been filed in the court and the court has taken cognisance of the case. If the accused available in the other country is to be arrested and produced in the court in India, the requisite action to bring such accused to India is through extradition process and not through LRs.
- (3) Extradition requests are not accepted for political offences. The principle of dual criminality is invariably followed for extradition requests. An accused extradited for a particular offence can be tried only for that offence by the receiving country.
- (4) The State investigating agency will send extradition request to the IPCC, CBI, New Delhi through the State Home Deptt. who would in turn send the same to MEA for further necessary action.

(g) **CONTACT BY AND WITH FOREIGN POLICE/LEGAL OFFICERS/ATTACHES.**

- (1) Foreign police personnel/legal attaches are not permitted to establish any direct contact with the police personnel at the State level unless specifically authorised by MHA.

(2) Any attempt by such foreign police/legal personnel to establish direct contact with the State police authorities should immediately be brought to the notice of MHA.

ANNEXURE

File No.25016 / 14/2007-Legal Cell
Government of India
Ministry of Home Affairs
Internal Security Division

ANNEXURE REFERRED TO IN THE COMPREHENSIVE GUIDELINES ISSUED VIDE LETTER NO. 25016/14/2007-LEGAL CELL DATED 31st DEC, 2007 OF IS DIVISION, MINISTRY OF HOME AFFAIRS REGARDING INVESTIGATION ABROAD AND ISSUE OF LETTERS ROGATORY AND ALSO THE PROCEDURE FOR EXTRADITION REQUESTS AND CONTACT WITH FOREIGN POLICE/LEGAL ATTACHES.

FORMAT AND THE CONTENTS OF THE LETTER ROGATORY (LR)

The Competent Court, after considering the request may decide to issue the Letter Rogatory (letter of Request) as prayed for or otherwise. In case, the request is accepted the Court would issue the Letter Rogatory under its seal and authority. The Letter Rogatory, addressed to the Competent Authority of the requested country, would contain the declaration showing the competence and jurisdiction of the Court issuing such LR and would also contain the following details and annexures :-

- a. Brief facts of the case, the allegations and name of the accused and particulars of the offences committed with extract of Sections of Law.
- b. The details of investigation to be carried in the requested country.
- c. Particulars of the witnesses to be examined, their identity and addresses, if available, along with detailed questionnaire for examination of each witness.
- d. Description of the documents/articles to be collected and procedure for the same.
- e. It may be mentioned that while conducting investigation in the requested State, the statements of witnesses may be recorded as per the requirement of law and procedure in vogue in the requested State and duly authenticated by the Officer recording the same. The documents may be requested to be collected in original and in case the authorities concerned are unable to part with original documents, duly authenticated true copies in the manner of certification provided in the law of the requested State be supplied. In case, the documents requested are "public documents" according to the law of requested State, then request may be made either to give original or to authenticate the documents as provided under Section 78(6) of the Indian Evidence Act, 1872 i.e. a copy

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certified by the legal keeper thereof, with a certificate under the seal of Notary Public, or of an Indian Counsel or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the laws of the requested country.

- f. Request for permitting Officers of the Investigating Agency to present during execution of LR to render assist to the officers executing the request, if considered necessary.
- g. A declaration that evidence made available would be used only in the case in which the request is made, if there is any such requirement.
- h. It may be mentioned that as per Indian Law, it is not necessary to give any notice to the accused either before issuing the LR or before examining the same.

Annexures to be enclosed

- i. A neatly word processed copy of First Information Report (FIR) as enclosure with English Translation if recorded in vernacular.
- ii. Extract of the Sections of Law constituting the offences under investigation along with the Sections of Procedural Laws, if relevant.
- iii. Extract of the corresponding Sections of laws of the requested country which would constitute an offence/s on similar allegations under investigation in India. It may be stated in particular if under the laws of the requested country principle of dual criminality or any other requirement is essential requirement for execution of Letters Rogatory.
- iv. Extract of relevant provisions of the MLAT, MoU, Arrangement or International Convention etc. providing for such assistance by the requested country.
- v. Declaration that the case under investigation was not of political, military, racial or religious character, if required under the MLAT, MoU, Arrangement or International Convention under which the request was being made or otherwise.
- vi. An Assurance of Reciprocity, duly issued by the authorized officer of the MHA under his seal and signatures, in case, the request is being made to a country with whom no MLAT, MoU, Arrangement exists or the request does not fall within the ambit of an International Convention.
