

**MUTUAL LEGAL ASSISTANCE GUIDELINES (INTERNAL USE)**

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## 1. INTRODUCTION

These guidelines are issued in pursuance of the Mutual Legal Assistance Act 2020, and UNSC resolution 1373 which calls upon all states to “ find ways of intensifying and accelerating the exchange of operational information” and “exchange information in accordance with International and domestic laws”. These Guidelines have been designed to assist foreign countries understand the steps which are to be followed when requesting International cooperation from Pakistan and the information which is required to be sent for meaningful reply. These guidelines also intend to raise awareness amongst the officials in all relevant ministries, departments, agencies, or organizations, etc. of Pakistan with respect of seeking international cooperation from other countries and providing in-time quality response on incoming requests from other countries.

WHAT THE AUTHORITIES SHALL LEARN FROM READING THESE GUIDELINE:

a)	Importance of INTERNATIONAL COOPERATION.
b)	Process of INTERNATIONAL COOPERATION.
c)	Methods and procedure which are to be followed to generate INTERNATIONAL COOPERATION request.
d)	Steps to be taken in case of INTERNATIONAL COOPERATION request from foreign countries
e)	Importance of informal INTERNATIONAL COOPERATION request.
f)	Prioritization of cases of INTERNATIONAL COOPERATION
g)	Conditions of Refusal of INTERNATIONAL COOPERATION request.

### 1.1. MUTUAL ASSISTANCE AND ITS IMPORTANCE

The globalization of crime requires states to have a wide range of methods for international cooperation with countries from the same region (regional instruments) and from different regions of the world (international instruments). International cooperation is a process by which countries seek and provide many forms of legal assistance from and to other countries in criminal and other matters. International Cooperation may be carried out through a formal request of legal assistance from the

Central Authority of one state to another State through which the requested authority is asked to perform one or more specified actions, like collecting the evidence or interviewing the witnesses, etc. on behalf of the requesting country. These requests are conventionally transmitted through diplomatic channels or via central authorities. The requested country is expected to respond at the earliest possible time. Cooperation may also be sought through informal channels.

Pakistan is committed to providing timely and quality international cooperation to the international community in relation to criminal matters. To this end, new laws, policies and procedures have been instituted to ensure that authorities are able to respond to and seek quality requests for assistance.

### **1.2 WHEN IS A MUTUAL ASSISTANCE REQUEST MADE: -**

All domestic LEAs are required to explore the potential international linkages during every criminal investigation including terrorist financing and money laundering cases and to actively seek international cooperation from other countries. Ministry of Interior's and NACTA's Directive on International Cooperation in TF and ML matters and SOP for JITs/Investigators for Terrorist Financing Investigations may also be consulted for further guidance. Accordingly, LEAs shall closely coordinate with the Ministry of Interior to that end.

Moreover, LEAs and Federal Agencies are requested that formal international Cooperation may preferably be initiated on the basis of Information obtained through informal channel as it will be more effective and has chances of immediate reply. Concerned authorities including NAB, FIA, Customs, ANF, CTDs, Provincial authorities and others shall make their own internal detailed guidelines /policies to seek Internal Cooperation through informal channel.

### **1.3 ROLE AND FUNCTIONS OF THE CENTRAL AUTHORITY**

Outgoing and incoming international cooperation requests will be routed through the Secretary of the Ministry of Interior, Government of Pakistan, which shall act as the Central Authority for this purpose in Pakistan as defined in section 2(c) of MLA Act, 2020. The International Cooperation Wing of the Ministry of Interior will handle all the international incoming and outgoing requests as per given timelines and will liaise with the Committee as necessary.

The central authority shall have all such powers as may be necessary to perform its duties and functions under MLA Act 2020.the central authority shall be authorized to,-

- (a) make a request, on behalf of Pakistan, to an appropriate authority of a foreign country for mutual legal assistance in relation to a criminal offence in which any investigation has commenced or proceedings instituted within Pakistan or outside Pakistan;
- (b) receive and deal with the request from any appropriate authority of a foreign country for mutual legal assistance in relation to a criminal offence in which any investigation has commenced or Proceedings instituted, within Pakistan or outside Pakistan, or where there are reasonable grounds

- of suspecting that a criminal offence has been committed within or outside Pakistan;
- (c) certify or authenticate, or arrange for the certification and authentication of any documents or other material supplied in response to a request for assistance;
  - (d) take practical measures to facilitate the orderly and rapid disposition of request for assistance;
  - (e) make any arrangements deemed necessary in order to transmit the evidentiary material gathered in response to request for assistance to the appropriate authority of the requesting country or to authorize any other authority as prescribed to do so; and carry out such other tasks as provided for in this Act or which may be necessary for effective assistance to be provided or received.

#### **1.4 PROCESS OF INTERNATIONAL COOPERATION.**

Upon receiving a request of international cooperation being made by a foreign country (incoming request) or law enforcement agencies of Pakistan (for outgoing request), the Central Authority would entertain and proceed with the matter through the following steps.

- a) The central authority shall forward the international cooperation request (complete in all aspects including translation) along with the details of the said request to the International Cooperation Wing of MOI.
- b) The International Cooperation Wing at the MoI shall scrutinize and inform the central authority about the authorities/countries relevant to take further steps in respect of the request. With the approval of the Central authority, the request shall be forwarded to the concerned departments (incoming request) or Ministry of Foreign Affairs (outgoing request) for proceeding with the request in a time period of 7 working days.
- c) The concerned departments in case of an incoming request shall use the available laws of the land including Pakistan's Penal Code 1860 , Criminal Procedure Code 1898, Anti-Terrorism Act 1997, Anti Money Laundering Act 2010, Customs Act 1969 etc. to execute the request.
- d) The LEAs and other authorities in Pakistan shall consider all the aspects during the enquiry as required in the incoming international cooperation request.
- e) In order to ensure the said forwarded request is handled in an efficient, timely manner, the Central Authority shall follow up with the concerned regional/provincial governments or federal ministries and departments on an on-going basis after 7 days of forwarding the request.

- f) All the provincial government, federal Ministries or departments are bound to send detailed replies to MOI within 30 days of receipt of request.
- g) In case complicated or lengthy processes are required, the concerned government/departments shall send an interim reply within 30 days of receipt of request citing reasons for delay, and then send complete reply subsequently.
- h) Ministry of Interior shall send the reply to the concerned foreign Central Authority through MOFA within 7 days.
- i) In the case of outgoing international cooperation requests, LEAs and concerned authorities shall follow the same route.

In case the request is received from non-treat country, all the above steps shall be taken after approval of the Federal government as per section 3(3) of Mutual Legal Assistance (Criminal Matters) Act, 2020.

#### **1.5 CONFIDENTIALITY**

- a. The information or documents obtained from the disclosing authority shall not be shared with any third party by the requesting authority except as specified in the request.
- b. The Requesting Authority shall not permit the use or release of any information or document obtained from the disclosing authority for purposes other than those stated in the request.
- c. The Requesting Authority shall be responsible for any unauthorized disclosure of information, including disclosure by a third party which has received information directly or indirectly from the Requesting Authority.
- d. The authorities shall apply, and cause to be applied, strict controls and safeguards to ensure that the information exchanged between them is used only in an authorized manner and treated in a confidential manner.
- e. The information received through international cooperation shall be confidential, subject to official secrecy and protected by the same confidentiality as is provided by the national legislation of the Requesting Authority for similar information from its national sources.

#### **1.6 PRIORITIZATION**

- a. The potential International aspects of TF and ML investigations should be considered in all domestic proceedings and International cooperation, whether formal or informal.
- b. The primary focus of tracing cross border TF links should remain on key risk areas including Kidnapping , extortion, narcotics, proceeds from

businesses, use of illegal MVTs, cash couriers from person to person and Hawala/hundi, raising funds in the name of social welfare activities for moving outside the country and funding of organisations from abroad.

c. Overall prioritization regarding international cooperation, would be in the following order:-

- i. Terrorism and Terrorist Financing/Money Laundering
- ii. Illegal MVTs
- iii. Cash courier
- iv. Extortion
- v. Narcotics
- vi. Kidnapping including Kidnapping For Ransom
- vii. Fraud
- viii. Time bound cases
- ix. Murder
- x. Rape
- xi. Other cases.

## **2. EXECUTING OUTGOING MLA REQUEST.**

### **2.1 TYPES OF MLA REQUESTS BY PAKISTAN TO A FOREIGN COUNTRY (OUTGOING MLA REQUESTS):**

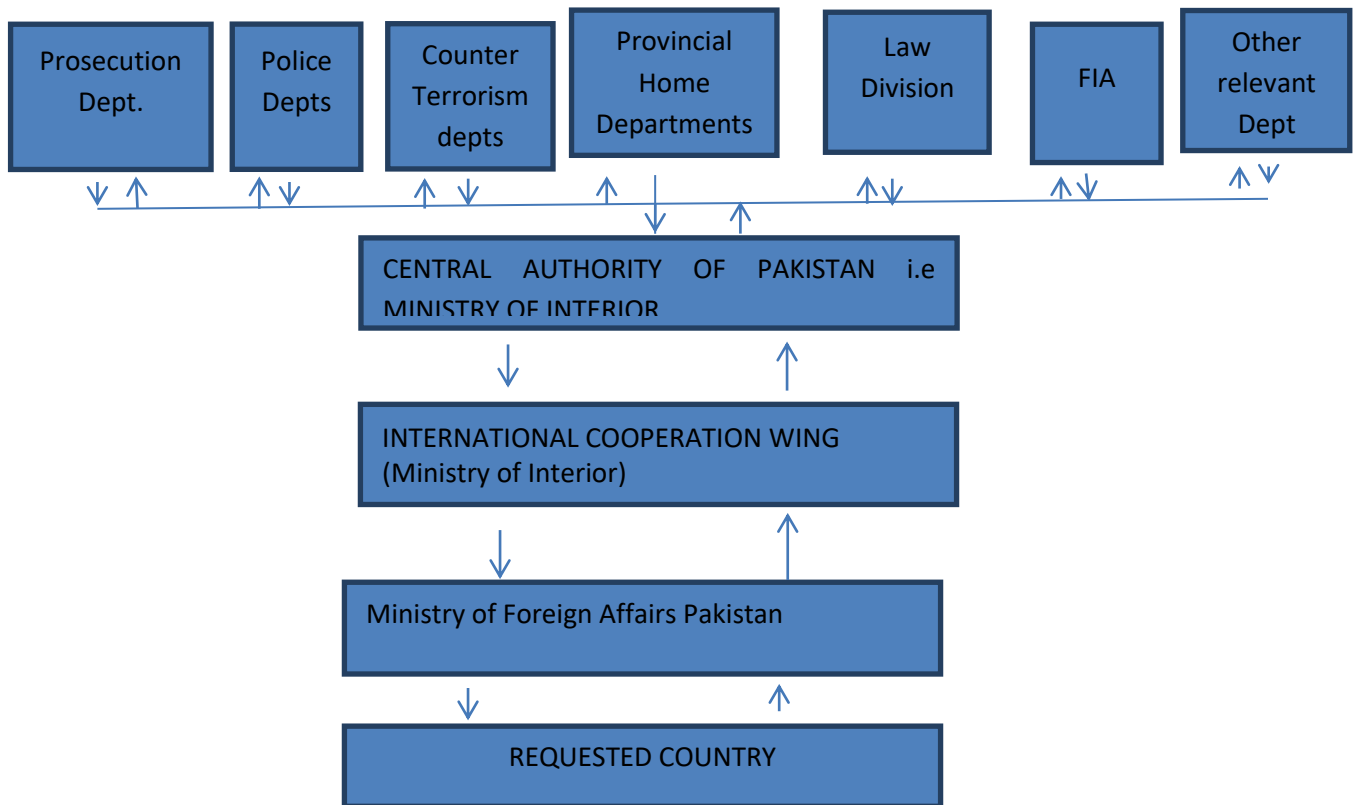
As per Section-7 of MLA Act 2020, a request for International cooperation by the Central Authority of Pakistan to a foreign country may comprise one or more of the following matters, namely: -

- a) inquire about location and identification of witnesses, suspects, perpetrators and offenders;
- b) have evidence taken or documents or other articles produced;
- c) obtain search warrants or other lawful instruments authorizing a search for evidence relevant to investigations or proceedings in Pakistan, located or believed to be located in that country, and if found, to seize them as permissible under the domestic law of that country;
- d) freeze or seize properties that may be the subject of investigations or proceedings, believed to be located in that country, through relevant legal process in that country;
- e) transmit to Pakistan any evidence, documents, articles, properties or proceeds realized from the disposal of properties;
- f) transfer in custody to Pakistan a person in foreign country who consented to assist Pakistan in the relevant investigations or proceedings;
- g) effect service of judicial documents;
- h) identify or trace proceeds or instrumentalities of crime or properties for evidentiary purpose;

- i) facilitate the voluntary appearance of persons required in relation to any existing or intended investigations or proceedings in Pakistan;
- j) provide original or certified copies and accompanying affidavits with certified copies when necessary, of relevant documents and records, including government, banks, and financial corporations or business records;
- k) provide any other type of assistance that is not contrary to the domestic law of that country;

**It may be clarified that International Cooperation is a request for foreign assistance and it is not an Extradition request for which a separate procedure is followed under Extradition Act 1972.**

**2.2 (Flow of request will be in following manner)**



**2.3 FORMAT OF OUT GOING REQUEST**

The request for International cooperation by Pakistan may be sought on the basis of following format:

- **Legal basis for the request:** A description of the legal basis upon which the request is made e.g law, bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity or UN resolution or UN convention.
- **Summary of the relevant facts:** Summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s). Copy of First Information Report (FIR) must also be attached with the request.

- **Description of the offence and applicable penalty:** A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State.
- **Description of the evidence/assistance requested:** A description in specific terms of the evidence or other assistance requested. Ambiguity must be avoided.
- **A clear and precise explanation of the linkage:** A clear and precise explanation of the linkage(s) between the investigation, prosecution or proceedings and the assistance sought i.e. describing how the evidence or other assistance sought is relevant to the case.
- **A description of the procedure:** a description of the procedure to be followed by the authorities of the requested State in executing the request to ensure that the request achieves its purposes, including any special procedures to enable any evidence obtained to be admissible in the requesting State and reasons why the procedures are required.
- **Presence of officials from the requesting State in executing of request:** An indication as to whether the requesting department/agency etc. wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested.



### **3. EXECUTING INCOMING MLA REQUEST.**

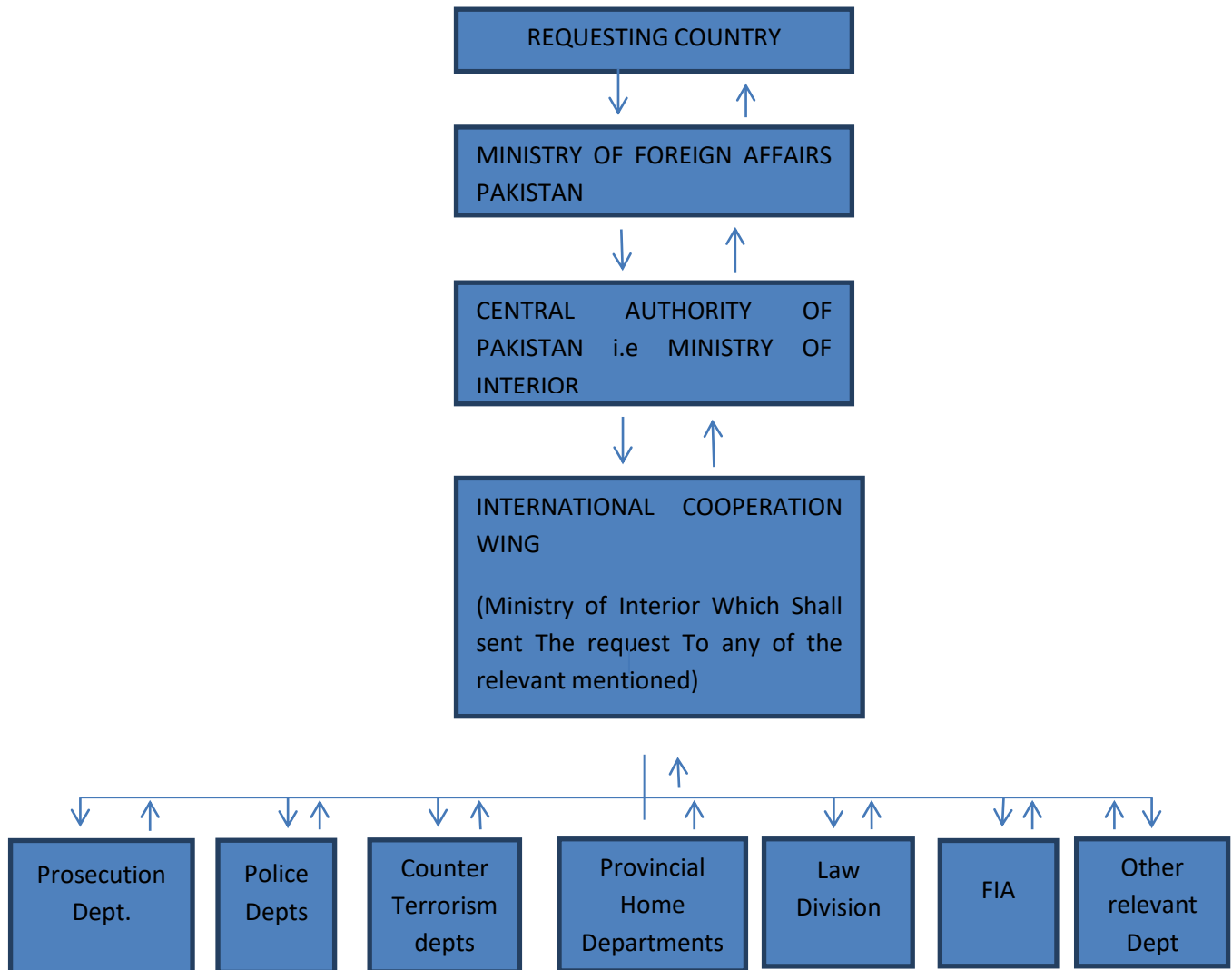
#### **3.1 GROUND FOR MLA REQUESTS TO PAKISTAN BY A FOREIGN COUNTRY (INCOMING MLA REQUESTS):**

Where a country makes a request for international cooperation, the Central Authority may approve the international cooperation request in relation to investigations commenced or proceedings instituted in that country in line with section 3 of MLA Act 2020.

The request referred above must include the following, namely:-

- a. the name of the appropriate authority or such other authority concerned with the criminal matter to which the request relates;
- b. a description of nature of the criminal matter and a statement setting out a summary of relevant facts and law;
- c. the description of the purpose of the request and the nature of assistance being sought;
- d. in the case of request to freeze, seize or confiscate assets believed to be located in Pakistan, the request must be accompanied with the details of the criminal offense, particulars of any investigation or proceedings having commenced in respect of that offence and a copy of any relevant freezing, seizure or confiscation order of the court;
- e. details of any procedure that the country wishes to be followed by Pakistan in giving effect to the request;
- f. a statement setting out any requirements of the country concerning any confidentiality relating to the request and the reason thereof;
- g. details of the period within which the country wishes the request to be responded;
- h. details, where applicable, regarding the grounds for believing that the relevant properties to be traced, frozen or seized or confiscated, are located in Pakistan; and
- i. any other information that may assist in giving effect to the request including a request from the country to send prosecutors or investigators to assist in execution of the request.

### 3.2 (Flow of request will be in following manner)



### 3.3 FORMAT OF INCOMING REQUEST

The request for International cooperation from Pakistan may be sought on the basis of following format:

- Legal basis for the request: A description of the legal basis upon which the request is made e.g law, bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity or UN resolution or UN convention.
- Summary of the relevant facts: Summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s). Copy of First Information Report (FIR)/initial facts of registration of case must also be attached with the request.
- Description of the offence and applicable penalty: A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State.

- Description of the evidence/assistance requested: A description in specific terms of the evidence or other assistance requested. Ambiguity must be avoided.
- A clear and precise explanation of the linkage: A clear and precise explanation of the linkage(s) between the investigation, prosecution or proceedings and the assistance sought i.e. describing how the evidence or other assistance sought is relevant to the case.
- A description of the procedure: a description of the procedure to be followed by the authorities of the requested State in executing the request to ensure that the request achieves its purposes, including any special procedures to enable any evidence obtained to be admissible in the requesting State and reasons why the procedures are required.
- Presence of officials from the requesting State in executing of request: An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested.

#### 4. DETAILS AND METHODS OF ASSISTANCE REQUESTED.

##### 4.1 ASSISTANCE REQUESTS FOR EVIDENCE GATHERING ORDERS AND SEARCH WARRANTS

i. If a request for evidence gathering or search warrants is received, the central authority may apply to the court for a search warrant or any evidence gathering order, as the case may be. The court, to which an application is made may issue a search warrant or, as the case may be, an evidence-gathering order where it is satisfied on the basis of evidence presented before it that there are reasonable grounds to believe that,-

- (a) the acts complained of, if performed in Pakistan, shall constitute an offence under the laws of Pakistan; or
- (b) the person committing an offence or the witness is in Pakistan.

##### **An evidence-gathering order,-**

- (a) shall provide for the manner in which the statement or testimony is to be taken or
  - (b) the evidence is to be obtained or
  - (c) the person or thing to be identified in order to give proper effect to the request unless prohibited under the laws of the Islamic Republic of Pakistan, and, in particular, may require any person named therein to-
    - (i) make a record from data or make a copy of record;
    - (ii) attend court to give evidence or oath; or
    - (iii) Produce to the court or to any person, named by the court, anything including any article, record or copy thereof;
    - (iv) and may include such terms and conditions as the court considers expedient, including those relating to the interests of the person named therein or of the third party.
- ii. Where the evidence sought under this Act is a statement or testimony of any person, the court may permit,—
- a) any person to whom the foreign investigation, prosecution or proceedings relate or that person's legal representative to participate in the proceedings; and
  - b) the legal representative of the country to participate in the proceedings and question the witness.

#### **4.1.1 REFUSAL OF A PERSON**

A person named in an evidence-gathering order may refuse to answer a question or to produce a record or thing where such refusal is based on,—

- a) a law in force in Pakistan
  - b) privilege recognized by a law in force in the country that made the request; or
  - c) a law in force in the country that made the request provides that the answering of that question or the production of that record or thing by that person in its own jurisdiction is, or shall be deemed to be, a criminal offence
- i. In case of refusal of the person as explained above the Central Authority shall notify the requesting country accordingly and request it to provide a response on whether the person's refusal is well founded under the law of that country and any response received by the central authority from the country in response to a request shall be admissible in the evidence gathering proceedings in accordance with law
  - ii. The court may issue a bailable warrant for the arrest of a person named in an evidence-gathering order where it is satisfied on the basis of evidence presented before it, that the person was personally served with the order and he willfully did not attend or remain in attendance as required or is about to abscond.
  - iii. A person arrested in pursuance of warrant issued by the court shall forthwith be brought before the court, to ensure compliance with the order made under subsection (2), and the court may pass order that the person be detained in custody for a period not exceeding forty-eight hours or released with or without production of sureties.

A search warrant,—

- (a) shall be issued in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898);
  - (b) shall specify time and date when the court will hear any representation from any person from whom a record or thing is seized pursuant to the warrant, before any order is made to send it to the country from which it is obtained; and
  - (c) may include such terms and conditions as the court considers desirable including conditions relating to the time or manner of its execution.
- iv The person executing a search warrant,-
    - (a) may seize any property which be believed on reasonable grounds has been obtained for, or used in or intended to be used in connection with the matter specified in the request for mutual legal assistance received by the central authority; and
    - (b) shall, at least three days before the time of the hearing to consider its execution, file in the court a written report concerning the execution of the warrant including a description of the records or things seized.

- v. At the hearing to consider the execution of search warrant, the court, after considering any representation made by the central authority or any person from whom record or thing was seized pursuant to the warrant or any person who claims to have an interest in the record or thing may, -
- (a) order that the record or thing be returned to the person from whom it was seized or to the person lawfully entitled to its possession and that it would be in the public interest to return it; or
  - (b) order that the record or thing be sent to the country, and include in the order such terms and conditions as the court considers necessary -
    - (i) to give effect to the request from that country; and
    - (ii) with respect to the preservation and return to Pakistan of any record or thing seized so as to respect the interest of a third party.
- vi. No record or thing seized and ordered to be sent to a country shall be sent until the central authority is satisfied that the country has agreed to comply with any terms or conditions imposed in respect of the sending abroad of the record or thing.
- vii. The court may issue an order that the testimony of statement, the identification of a person or thing or any other form of assistance be provided by use of video or audio transmission technology. Any such court shall-
- (a) order the person to attend at a time and place fixed by the court to give his statement, testify or otherwise provide assistance by video conference and to remain in attendance until excused by the authorities of the requesting country;
  - (b) to answer any questions raised by the authorities of the foreign states, or persons authorized by those authorities, in accordance with the laws that apply to that foreign states; and
  - (c) to produce or show to those authorities at the time and place fixed by the court, prosecutor or other authority any item, including any document or copy thereof and may include any other appropriate conditions.
- viii. The costs of establishing a video or telephone link, costs related to the servicing of a video or telephone link in name of state shall be borne by the requesting state, unless otherwise agreed.
- ix. Any evidentiary material provided to a country by Pakistan as a result of a request for gathering of evidence under this Act, -
- (a) shall not be used for any other purpose than the investigation, prosecution or judicial proceedings in respect of which the request for assistance was made; and
  - (b) shall be inadmissible as evidence in any proceedings other than the proceedings in respect of which it was obtained.

**Note: A request for assistance shall be executed in accordance with any procedure specified in the request, unless such execution is contrary to the provisions of any law or the Constitution of the Islamic Republic of Pakistan.**

#### **4.2. ASSISTANCE FROM PERSONS SERVING IMPRISONMENT.**

i. Where the central authority approves a request of a country to have a person serving a term of imprisonment in Pakistan, transferred to the requesting country for fixed period to give evidence or assist in an investigation or proceedings in that country relating to an offence committed or suspected on reasonable ground to have been committed against the laws of the requesting country, in respect of conduct which if occurred in Pakistan constitutes a criminal offence, the central authority shall apply to the court for a transfer order.

ii. The court, to which an application is made may make a transfer order where, after having considered among other things any document filed or information given in support of the application, it is satisfied that the person serving imprisonment has made an informed consent to such transfer.

iii. A transfer order, made under Section 11 sub-section (2) of MLA Act 2020, -

- (a) shall set out the name of the person serving imprisonment and his place of confinement with a specific provision for the safety, security and wellbeing of the person being transferred;
- (b) shall require the person who has custody of the person to deliver him into the custody of the person who is designated in the order or who is a member of the class of persons so designated;
- (c) shall require the person receiving the person into custody to take him to the requesting country and on return of the person to Pakistan, to return him to the place of confinement where he was detained when the order was made through immigration officer, or to such other place of confinement as the central authority subsequently may notify;
- (d) shall specify the reasons for the transfer;
- (e) shall fix the period of time at, or before the expiration of, which the person must be returned to Pakistan;
- (f) shall have written undertaking from the requesting country that the person will not be detained, prosecuted, extradited to a third country or punished for any offence against the law of the foreign country that is alleged to have committed, or that was committed, before the person's departure from Pakistan;
- (g) shall have written undertaking from the requesting country that the person shall be provided consular access to Pakistani diplomatic personnel in that country and shall not to be required to give evidence in any proceeding in the foreign country other than in respect of conduct which if occurred in the Islamic Republic of Pakistan constitutes a criminal offence, to which the request relates;
- (a) may include such terms or conditions relating to the protection of the interest of the person as the court considers appropriate; and

- (b) an undertaking from the requesting country must be procured to ensure that the requesting country to whom the person is transferred shall not require Pakistan to initiate extradition proceedings for the return of the person so transferred.
- iv. The time spent in transit to and in custody of the requesting country by a person pursuant to transfer shall be deemed to have been spent in service of the sentence.

#### **4.3 ASSISTANCE WITH REQUESTS FOR FREEZING OR SEIZURE ORDERS**

i. Where the central authority approves a request of a country to restrain dealings in any properties, some or all of which are located in Pakistan, the central authority may apply to the court for a freezing or seizure order. The application made so shall include the request to obtain attachment/ restraining orders of the property under the relevant laws without any delay until the final decision.

Where possible, the Central Authority should liaise informally with the requesting country first, to ensure that the proposed MLA request meets Pakistan's legal requirements, and to determine the most relevant legal provisions to best preserve the assets in Pakistan.

- ii. Section 13 provides two options for the provision of assistance:
  - Where a country requests a restraining order to be sought in Pakistan (s13(2)); and
  - Where a country requests the registration of a foreign restraining order (s13(3)).

#### **Application for a restraining order in Pakistan on behalf of a requesting country:**

iii. Under section 13(2), a court to which an application is made may after providing the person with the opportunity of being heard issue a freezing or seizure order, where the court is satisfied that there are reasonable grounds to believe that-

- (a) an offence has been committed by a person under the laws of the requesting country which, if committed in Pakistan, also constitutes a criminal offence in Pakistan;
- (b) an investigation or proceedings have commenced in the country relating to that offence;
- (c) properties derived by the person, by himself or any other person on his behalf, from the commission of the offence are located in Pakistan; and
- (d) an order has been made in the country having the effect of confiscating such properties.

Concerned authorities should note the requirement in section 13(2) that the application is to be made after providing the person with the opportunity of being heard. Therefore, before taking action under this section, authorities shall liaise with the requesting country to advise them of Pakistan's legal requirements to provide notice to all persons prior to the application. Requesting countries should be notified of the alternative provisions at section 13(3) that allow Pakistan to register a foreign restraining order without the requirement of such notice prior.

If the requesting country does not have a restraining order in place in respect of the



property in Pakistan, authorities may consider advising the requesting country to institute or amend restraining orders to ensure they specifically include the property in Pakistan. An application can then be made to the court in Pakistan under section 13(3) by the Central Authority to register that order.

#### **Application for the registration of a foreign restraining order**

iv. Under section 13(3), Where a competent court of requesting country has passed a freezing or seizure order, or has passed any amendment in respect thereof, the central authority shall apply to have the same registered with the court and the freezing or seizure order, or the amendment thereof, as the case may be, shall not be effective in Pakistan until it is so registered.

Where a foreign freezing or seizure order is registered in accordance with this section, a copy of any amendments made in the order of the country, whether before or after registration, may be registered in the same manner as the order was registered, but shall not have effect for the purpose of MLA Act 2020 until they are so registered.

v. The court shall, on application by the central authority, cancel the registration of a foreign freezing or seizure order, if it appears that the order has ceased to have effect in that country.

vi. Where the foreign freezing or seizure order is a facsimile of a duly authenticated foreign order, or amendment made in such order, the facsimile shall be regarded for the purpose of MLA Act 2020 as the duly authenticated foreign order.

vii. Registration effected by means of a facsimile shall cease to have effect at the end of a period of fourteen days commencing on the date of registration, unless a duly authenticated original order has been registered by that time.

Implementing authorities should note that this sub-section does not require notice to be given to an accused prior to the application; however notice should be served on the accused person after the application.

#### **4.4 ASSISTANCE REQUEST FOR DETENTION OF A PERSON IN PAKISTAN**

The central authority may, by written notice, authorize temporary detention in Pakistan of a person in detention in a country who is transferred from that country to Pakistan for such period as may be agreed with that country for the purposes of request and return the person in custody to that country.

i. A person in respect of whom a notice is issued shall, so long as the notice is in force, -

- (a) be permitted to enter Pakistan and remain in Pakistan for the purpose of the request and to leave Pakistan when no longer required for that purpose; and
- (b) while in custody in Pakistan for the purpose of request, be deemed to be in lawful custody.

ii. The central authority may at any time vary notice where the country makes a request for release of the person from custody, either immediately or on the specified date, and direct that the person be released from custody accordingly.

iii. The provisions of this section shall apply, mutatis mutandis, in the case of any detained person in transit through Pakistan from one foreign country to another pursuant to a request for assistance of the kind.

iv Any person in Pakistan, who is in Pakistan in response to a request by the central authority under MLA Act 2020 to give evidence in any proceedings or to give assistance in relation to an investigation, prosecution or the related proceedings, may not be detained, prosecuted or punished for any other criminal offence that occurred prior to his arrival in Pakistan; and subjected to judicial process in any other matter before the person's departure from the country pursuant to the request.

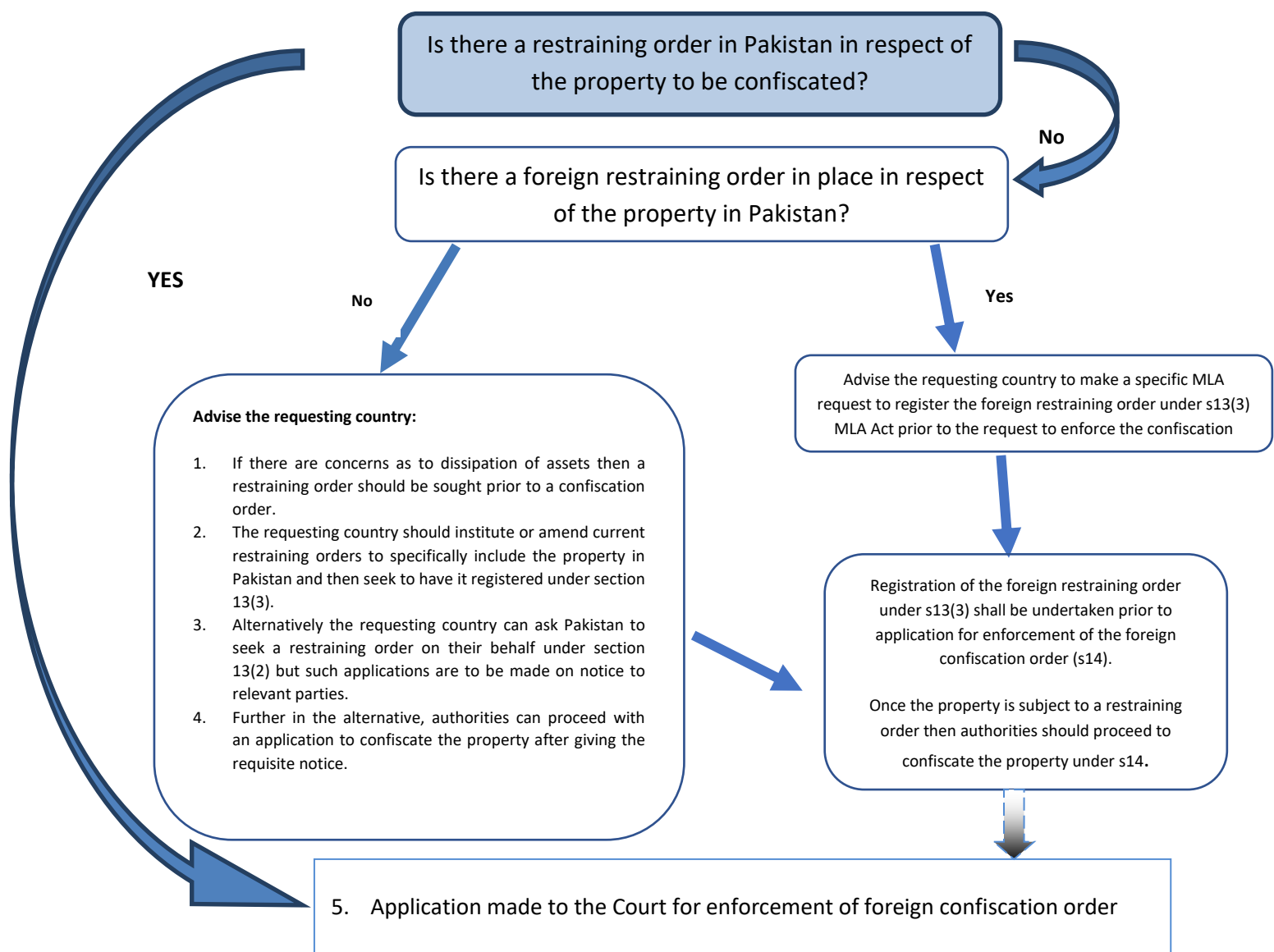
#### **4.5 ASSISTANCE FOR FOREIGN CONFISCATION ORDER**

- i. Where the central authority approves a request of a country for enforcement of a confiscation order in relation to any property which is believed on reasonable grounds to be located in Pakistan, the central authority may apply to the court for enforcement of the confiscation order against such property.
- ii. Section 14 sets out the requirements to be established prior to application for enforcement of a foreign confiscation order.
- iii. *The application made so shall include the request to obtain attachment/restraining orders of the property under the relevant laws without any delay until the final decision.*
- iv. The court shall issue adequate notice to all persons appearing to have an interest in the property against which the confiscation order may be executed.
- v. Any person with an interest in the property against which the application for execution of the confiscation order has been filed may, within thirty days of receiving notice under sub-section (2), make an application objecting to the confiscation.
- vi. The court to which an application is made under subsection (i) may order to enforce the foreign confiscation order, where it is satisfied that there are reasonable grounds to believe that-
  - (a) an offence has been committed by a person under the laws of the requesting country which, if committed in Pakistan, also constitutes a criminal offence in Pakistan;
  - (b) the foreign confiscation order has been made in the country in relation to the offence referred to in clause (a);
  - (c) the confiscation order is in force in the requesting country and is not subject to appeal;
  - (d) the properties specified in the confiscation order are located in Pakistan; andthe person, whose property is the subject of the confiscation order, had appeared or participated in the proceedings or intentionally refused to do so despite having notice of the proceedings which culminated into such confiscation order being passed.

The central authority may enter into arrangements with the requesting country for transfer to the central authority the whole or part of any property, proceeds or instrumentalities of crime confiscated in Pakistan in response to a request for the enforcement of a confiscation order pursuant to MLA Act 2020.

- i. Prior to application for enforcement of a foreign confiscation order, the relevant authority should determine the following matters:
  - a. *Is there a freezing or restraining order in place in Pakistan in respect of the relevant property? If the answer is no, then:*
  - b. *Is there a restraining order in the requesting country in respect of the relevant property? and*
  - c. Does the application for enforcement of a foreign confiscation order also include an application for registration of a restraining order?
- ii. Prior to an application to the Court to enforce a foreign confiscation order, authorities should ensure that the property is protected from dissipation, by way of a restraining order. This restraining order should be applied for through the Pakistan courts to prevent dissipation of assets prior to registration of the foreign confiscation order.
- iii. If there is no restraining order registered in Pakistan prior to the application for enforcement of a foreign confiscation order, authorities should liaise with the requesting country first to avoid risk of dissipation. See section 13 above for the procedure to apply when applying for a restraining order.

**See attached flowchart that outlines the process to be undertaken**



#### **4.6 ASSISTANCE WITH REQUEST TO RECOVERY OF FINES**

- i. Where the central authority approves a request from a country to enforce payment of a fine imposed by a court of that country, it shall make an application to the court to enforce payment of the fine in the manner as if the fine has been imposed by a court in Pakistan.

*Explanation.* — For the purpose of this section, the expression “fine” shall include any pecuniary penalty determined by a foreign court to represent the value of any property, benefit, advantage, obtained or derived directly or indirectly as a result of the commission of an offence.

- ii. The court may pass the order for enforcement of fine, if it is satisfied that-
  - (a) the foreign order is in force in that country and is not subject to appeal; and
  - (b) where the person, who is the subject of the foreign order, had appeared or participated in the proceedings or intentionally refused to do so despite having notice of the proceeding, which culminated into such confiscation order being passed.
- iii. No proceedings shall be instituted after the expiry of three years from the date when the fine was imposed.

#### **4.7 ASSISTANCE WITH REQUESTS RELATING TO ELECTRONIC DATA**

- i. The central authority may issue an order to any person in the Islamic Republic of Pakistan to preserve and safeguard the following data requested by requesting state.

- (a) the need for specified electronic data to be preserved;
- (b) the urgency of preserving it;
- (c) sufficient information to locate the electronic data; and
- (d) a statement that a request for production of the data will follow,

- ii. The order under sub-section (1) shall lapse if the request for production is not received within forty-five days of the request for preservation.

- iii. Upon request of a country, the central authority may make an application to the court to issue an order for the production of,—

- (a) specified electronic data in the possession or control of a person which is stored in a computer system and is reasonably believed to be connected with a criminal matter pending in the requesting country; and
- (b) electronic data in the possession or control of service provider, where such data or information is reasonably believed to be connected to criminal matter pending in the requesting country.

The court may issue a search warrant or order authorizing a person designated by it to search or otherwise access any computer system or part thereof in which computer data may be stored.

The search warrant or order issued pursuant to subsection (iii) may authorize the designated person, where necessary, to seize or otherwise, secure an information system or part thereof;

- (b) make and retain a copy of the electronic data;
  - (c) maintain the integrity of the relevant electronic data; and
  - (d) render inaccessible or remove the electronic data in the accessed information system.
- iv. The person in possession of the electronic data or information system sought to be searched, seized or produced, may file an application within fourteen days of notice of an order objecting to such seizure, copying, retaining or otherwise handing of such electronic data:
- v. Provided that until the expiry of the said fourteen days from the date of the notice of the order, the electronic data shall be kept secured and no copies or extracts from the data shall be allowed.

## **5. REFUSAL OF REQUESTS:**

The Central Authority of Pakistan may refuse the international cooperation request on following grounds: -

- a. The request is prejudicial to the sovereignty, security, public interest or national interests of Pakistan.
- b. There are reasonable grounds to believe that the request has been made for the purpose of punishing a person by reason of his race, sex, sexual orientation, religion, nationality, ethnic origin, language, colour, age, mental or physical disability or political opinion.
- c. The provision of assistance is prejudicial to an investigation or on-going proceedings in Pakistan.
- d. The provision of the assistance imposes an excessive burden on the resources of the Federal, Provincial or local authorities of Pakistan.
- e. The authorities of Pakistan are prohibited by the domestic law or order of a court from carrying out any action.
- f. It is contrary to the laws of Pakistan.
- g. the request is in violation of international conventions of human rights.

## **6. SEEKING INFORMAL REQUEST.**

- a. An informal request in the criminal justice context is a request made/sent to a foreign law enforcement agency by a counterpart agency, generally via telephone, facsimile or email. An example include seeking routine information such as whether a particular person resides at an address or owns/operates a particular business, seeking company registration or passport details or advice as to whether the individual is “known to police”. Even though these are referred to as ‘police to police’ they can involve requests from police to the FIU and vice versa. They might also arise where a foreign police service seeks information from counterparts in Pakistan. The LEAs and other concerned agencies will actively seek informal cooperation from other counties as agency to agency

cooperation is preferable for timely execution.

- b. Often LEAs develop memoranda of understanding (MOU) with other LEAs to govern the exchange of information between them. While these are not government to government agreements, they are important official statements of the respective obligations each party agrees to undertake.
- c. It is important to clarify the purpose for which the information is being sought – is it for intelligence purposes or to be used in legal proceedings? Formal requests are often made under some power in the legislation establishing the requesting agency. If the purpose is for possible use in legal proceedings it may be necessary to get legal advice on the request. It may need to be made as an official mutual legal assistance request.
- d. A written request for informal assistance from/to a foreign LEA may normally contain some or all of the following information:
  - A statement of facts outlining the matter for which assistance is being requested;
  - The names, addresses and other identifying information relating to the subjects of the investigation or intelligence activity for which assistance is sought;
  - Details of the specific offence or suspected offence;
  - A statement as to the nature of the assistance or the specific information which is the subject of the request; and
  - A brief statement regarding who will have access to any information provided in response to the request and the way in which the information will be used by the requesting jurisdiction.
- e. If a LEA comes into possession of information, which it knows or believes will be of interest or assistance to another jurisdiction or a domestic agency:
  - Enter the information into the database, create a file and assign a sequential file number if a file or data entry does not already exist.
  - Ensure that the information is of a nature that can be disclosed.
  - Ensure that such disclosure is within the authority of the LEA.
  - Prepare a report in the prescribed form for transmission.
  - Transmit the report to the foreign or domestic agency or agencies to which it is or may be of interest.
  - Seek an acknowledgement of the receipt of the information.
  - Add to the request, any qualifications regarding the use of the information, as may be deemed necessary by the LEA from which the information was obtained if it was not information held by the LEA. These qualifications should include a condition that the information is provided on a confidential basis and is not to be

made public and forbidding use of the information as evidence in a criminal or civil proceeding until the information is released pursuant to a formal request in accordance with Mutual Legal Assistance legislation.

- f. The formal international Cooperation may be initiated on the basis of Information obtained through informal channel. Concerned authorities including NAB, FIA, Customs, ANF, CTDs, Provincial authorities and others shall make their own detailed guidelines /policies to seek Internal Cooperation through informal channel.

**7. NON-DISCLOSURE OF CONFIDENTIAL REQUESTS FOR ASSISTANCE.—**

i. Unless the said act, a person who, because of his official capacity or office has knowledge of the,—

- (a) contents of such request made under this Act;
- (b) fact that such a request has been or is about to be made; or
- (c) fact that such a request has been reused,

shall not disclose those contents or those facts except to the extent that the disclosure is necessary to execute the foreign request.

ii. Any person who contravenes the provision of sub-section (i), shall be deemed to have committed an offence and shall on conviction be punished with imprisonment of six months or with fine not exceeding five hundred thousand rupees or with both.

iv. The court may order the person providing a statement or testimony, or the custodian of evidence or information being provided under this Act, to keep confidential the fact of having such statement or testimony or having produced such evidence or information. The failure in this respect is liable to a sentence which on conviction may entail imprisonment of six months or with fine not exceeding five hundred thousand rupees or with both.

**8. EXPENSES RELATED TO MLA REQUEST**

The execution of a request for mutual legal assistance in Pakistan shall be conducted without charge to the requesting country, except for-

- (a) costs incurred by the attendance of experts in the territory of Pakistan; or
- (b) costs incurred by the transfer of a person in custody; or
- (c) any costs of substantial or extraordinary nature.

**The costs of establishing a video or audio or telephone link, costs related to the servicing of a video or telephone link in Pakistan, the remuneration of interpreters provided by it and allowances to witnesses and their travelling shall be borne by that country.**

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