

International Legal Assistance

In the area of international cooperation for taking evidence and processing criminal matters in Mexico, we can refer to the systems or procedures for channeling and receiving requests.

These two systems or procedures for taking evidence or executing decisions by Mexican authorities that go beyond our boundaries to the territory of other member states of the international community are based on the characteristics of the system of criminal procedure in Mexico. Obviously this situation is reflected in the way that Mexico processes requests from other countries.

In this regard, it is important to note that the authority in charge of investigating and prosecuting crimes is the Ministerio Público, which performs its functions through the procuradurías at state level. The Procuraduría General de la República operates in the federal sphere; there are 31 state Procuradurías Generales de Justicia and one for the Federal District that have jurisdiction over the so-called *delitos del fuero común* [common crimes] stipulated in the local criminal codes.

Both the Procuraduría General de la República and the 32 procuradurías of the federative entities are administrative authorities, since they come under the Executive Branch in their respective government systems.

The investigation and prosecution of crimes are the responsibility of the Ministerio Público, which has very broad powers to gather evidence, including taking depositions and testimony of expert witnesses, and, by judicial authorization, performing home searches for the purpose of obtaining proof.

The Ministerio Público immediately proceeds to take custody of property or assets that may have been seized during the initial interrogation or inquiry, when it believes that they may be the instruments, objects, or proceeds of the crime; during the trial, it may request the judge to put a lien on the property in question.

Once the Ministerio Público gathers sufficient evidence to prove the *corpus delicti* and the probable responsibility of the suspect, as a basis for instituting criminal proceedings, and the judicial authority in turn verifies that both requirements are evidenced in writs, and if the judge is of the opinion that constitutional requirements have been met, he will issue the arrest warrant against the probable author[s] of the crime.

If during the pretrial investigation, the Ministerio Público needs to obtain evidence, in the form of depositions, documents, expert testimony, or by any other measure or procedure that must be performed or carried out in a foreign country, it will request the taking of such evidence by means of a request for

legal assistance or a letter rogatory, since at times they are essential for full investigations.

When during a criminal proceeding one of the parties offers to the judge to present evidence that must be taken in another country (testimony, documents, expert opinion, etc.), the judge, if he approves, will send a request to the competent foreign judicial authority, which may be processed through the central authority, if there is a treaty on the subject with the requested country, and if it so permits, or, if necessary, by diplomatic channels.

Description of the process of mutual judicial assistance

Requests formulated under a treaty, agreement, or convention for mutual legal assistance

- They must be presented in writing to the central or coordinating authority established in the treaty, agreement, or convention for mutual legal assistance, duly translated into Spanish;
- The requesting country must indicate the authority that is responsible for the investigation, judicial proceeding, or trial;
- A summary of the facts that gave rise to the initial investigation or trial must be provided, in order to establish the link between them and the evidence requested;
- The crime or crimes for which said investigation or trial was opened must be indicated;
- A specific description of the need for assistance.
- Request for documents and records:
 - Location of the documents, and
 - In the case of financial institutions, the name and address of the institution and the pertinent account number.
- Request for testimony:
 - The domicile where the witness can be located;
 - The date of birth, and
 - The list of questions to be answered.

- Requests for search or custody of property or assets
- Precise location of the property or assets;
- In the case of financial institutions, the name and address of the institution, and the pertinent account number.
- Request for location of persons:
- Information on their possible whereabouts;
- Their date of birth,
- Information on their family relationship, and
- The name of their parents or family members.
- Request for notification of documents:
- The documents to be notified must be duly annotated or authenticated and translated into Spanish.
- Once the requested procedures have been carried out, the documentary records made of them are transmitted through the central or coordinating authority pursuant to the treaty, agreement, or convention, duly annotated and/or authenticated.

Requests made when there is no treaty, agreement, or convention in the area of international legal assistance

- They must be presented in writing to the central or coordinating authority established in the treaty, agreement, or convention for mutual legal assistance, duly translated into Spanish;
- The requesting country must indicate the authority that is responsible for the investigation, judicial proceeding, or trial;
- A summary of the facts that gave rise to the initial investigation or trial must be provided, in order to establish the link between them and the evidence requested;
- The crime or crimes for which said investigation or trial was opened must be indicated;
- A specific description of the need for assistance.

- Request for documents and records:
- Location of the documents, and
- In the case of financial institutions, the name and address of the institution and the pertinent account number.
- Request for testimony:
- The domicile where the witness can be located;
- The date of birth, and
- The list of questions to be answered.
- Requests for search or custody of property or assets
- Precise location of the property or assets;
- In the case of financial institutions, the name and address of the institution, and the pertinent account number.
- Request for location of persons:
- Information on their possible whereabouts;
- Their date of birth, and
- Their family relationship.
- Request for notification of documents:
- The documents to be notified must be duly annotated or authenticated and translated into Spanish.
- Once the requested procedures have been carried out, the documentary records made of them will be sent by the Procuraduría General de la República to the Secretariat of Foreign Affairs, so that it may in turn send them by diplomatic channel to the requesting state.
- Requests for legal assistance that are not based on a treaty, agreement, or convention for mutual legal assistance will be executed in accordance with the domestic law of Mexico.