

Cross-Border Evidence Sharing

| The ASEAN MLAT in Criminal Matters (2019)

The ASEAN Mutual Legal Assistance Treaty (MLAT) in Criminal Matters (2019) is the primary framework facilitating cooperation in criminal investigations, including cybercrime and digital forensics, among the 10 ASEAN member states. It provides a standardized mechanism for requesting and providing assistance, such as the gathering and sharing of digital evidence, to ensure investigative outcomes are legally sound and admissible.

1. Core Framework Objectives

The ASEAN MLAT aims to harmonize legal assistance procedures, minimize bureaucratic delays in cross-border investigations, and combat transnational crimes, including cybercrime, fraud, and corporate malfeasance.

- **Standardization:** Establishes a uniform set of rules and procedures for requesting and providing legal assistance, including the collection of electronic data across borders.
- **Central Authority Coordination:** Requires all formal requests to be funneled through established Central Authorities of the requesting and requested states, ensuring high-level oversight and legal legitimacy.

2. Essential Procedures for Forensic Practitioners

For forensic examiners and incident responders, adhering to the ASEAN MLAT process is vital for the cross-border admissibility of digital findings.

- **Formal Request Initiation:** The requesting state must submit a formal, comprehensive MLAT request to the central authority of the requested state.
- **Prohibited Actions:** Unilateral evidence sharing, direct submission to foreign courts without central authority approval, or the public dissemination of digital evidence gathered from another member state are strictly prohibited and will likely result in the evidence being excluded.

Best Practice: Timeliness and Compliance

Cross-border evidence sharing is complex. Initiate the MLAT request process **within 24 hours** of identifying the need for digital evidence located in another ASEAN jurisdiction. This early initiation is crucial as cross-border cases in the APAC region can take 2–3 times longer to prosecute than domestic ones due to these formal requirements.

3. Strategic Implications

- **Legal Admissibility:** Evidence obtained outside of the formal MLAT process is frequently rejected by courts, undermining the entire investigative effort.
- **Data Sovereignty:** Respect for each member state's legal framework and data sovereignty is paramount. The MLAT process is designed specifically to balance cooperation with these national legal protections.
- **Documentation Rigor:** Maintain an exhaustive record of all steps taken during the MLAT request process, including correspondence, submitted forms, and regulatory approvals.