

Electronic Evidence Country Fiche: MALDIVES

1) DEFINITIONS

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| Maldives |
| What are the definitions in your laws/regulations, if any, of: |
| Electronic evidence |
| <p>According to the Evidence Act of January 2023 (Act No. 11/2022), there is a specific definition of “electronic evidence”. It is enshrined into Section 64 (a) as “a computer that may be used to prove or refute a fact that has been created in the trial of a case submitted to the court system or other such device or any means through such system or device, stored or recorded, and data that can be identified or interpreted by a person or a computer system or other such device. This includes data displayed or printed or generated or otherwise emitted from the system or device”.</p> <p>Moreover, according to the latest amendments to the Evidence Act (Act No. 11/2022), under Section 151 (i) "Document", means any record of information, including the following means: (1) written or printed object (whether a chart or plan or graph or drawing); (2) A computer file that is accessible by electronic means; (3) Photo; (4) A disk or tape or film or roll on which sound or other such data is stored; (5) A film or negative or other object on which a scene or other such data is stored. The same term is defined by Section 56(m) of the Mutual Legal Assistance in Criminal Matters Act (Law No 2/2015). Section 8 of the 1968 Penal Code of the Maldives also describes the word “Document” as to include “any matter expressed or described upon any substance by means of letters, figures or marks and is intended to be used or which may be used as evidence of that matter. It is immaterial by what means or upon what substance the letters, figures or marks are formed. And items not intended for use as evidence are included within this definition if such item may be likely to be used as evidence”.</p> |
| Computer system |
| <p>The term “computer system” appears in Section 64(b) of the Act No. 11/2022, defined through the terms “electronic medium” as “the computer system or other similar device on or through which data is stored or recorded, including procedures governing the recording and preservation of electronic evidence”, and in other provisions including sections 64(a) and 67(a)(1) of the Act No. 11/2022.</p> <p>As regards to definition of “computer”, a provision is incorporated in section 151(c) of the Act No. 11/2022, which defines computer as “electronic, magnetic, optical, or electrochemical equipment and similar related devices with which information can be</p> |

used, and related or similar devices for calculation, use of the same, storage of information and facilitating communication. However, that meaning does not include the following: (1) Automatic typewriter, typesetter; (2) Handheld calculator; (3) Non-programmable or non-informative materials; (4) Other devices of this type that a relevant government authority has stipulated as similar and has been announced publicly by publishing it on the government Gazette”.

Computer data

The term “computer data” does not appear to be defined within legislation of Maldives. However, section 64(c) of the Act No. 11/2022 defines “data” as “anything that represents information or concepts, in any form”. Moreover “electronic data” means “data generated in the course of the common use of an electronic device” (Section 65(b)). This legislation also defines “computer” as “electronic [...] equipment” with which information can be used and stored (Section 151(c), as above).

Categories of computer data (e.g. basic subscriber information, traffic data and content data)

The legislation of Maldives does not provide definitions for specific types of data.

Electronic surveillance or real-time collection of computer/communication data

Rule 2.1(a)(1) of the Criminal Procedure code Act number 12/201 Maldives Rules of Criminal Procedure, grants a wide and veritably unqualified power to law enforcement officers to search and seize ‘evidence of an offence’. Further, Article 2.1(c)(1)(v)(bb) of the 2005 Maldives Rules of Criminal Procedure authorises warrantless searches when a law enforcement officer has reason to suspect that exigent circumstances exist, which includes, under Article 2.1(d), that there is a substantial risk that ‘evidence will be destroyed’.

Article 101 of the 2020 Police Service Act (Law No. 34/2020), the police may carry out ‘special investigative tactics’ and for purposes of investigation, surveil suspects (including using hidden cameras and hearing devices), and obtain a suspect’s communications from his communications devices (including emails and phone conversations).

Under article 49(a) of the 2014 Prevention of Money Laundering and Financing of Terrorism Act (Law No. 10/2014), a court, to obtain evidence only in respect of money laundering and financing of terrorism, may order – among others – to have access to computer systems, networks; and servers and the placing under surveillance or tapping of telephone lines, facsimile machines or electronic transmission or communication facilities; as well as the audio or video recording of acts and behaviour or conversations; and the interception or seizure of correspondence.

Service provider (e.g. ISP, hosting)

There are no specific definitions for “Service provider”. However, on the base of Section 66(f) of the Act No. 11/2022, the service provider is a person in charge of the procedures for maintaining the chain of custody of electronic data or evidence and is responsible for preserving or transmitting the data or evidence.

2) DATA RETENTION REGIME

Maldives

Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?

It appears that the law of the Maldives does not establish retention periods for service providers to store data.

3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL

Maldives

What is the requirement under your domestic law for electronic evidence to be admissible in criminal trial?

About admissibility as evidence in Court, section 65 of the Act No. 11/2022 establishes that “a) Since a particular piece of evidence is electronic, it is not acceptable to reject it as evidence for that reason alone; b) [...] electronic data or a statement contained in it may be admitted as evidence to prove a fact contained in electronic data if it is data generated in the course of the common use of an electronic device; c) Electronic data is deemed to have been generated directly through the electronic means by which it was generated or using any other appropriate means, and whether a person has directly or indirectly participated in its preparation; d) Electronic data is admissible evidence whether it is generated after the commencement of the trial of a civil or criminal case, or after the commencement of the investigation of the case.

Moreover, in order to introduce electronic evidence or data into legal proceedings, the authenticity of the electronic data or evidence must be proven according to section 66 of the Act No. 11/2022. Notably, an affidavit signed by the person submitting the data or evidence to the court is sufficient as evidence to prove the authenticity of the electronic data or evidence. (Section 66(b)). Nevertheless, letter (d) of this section provides that “[U]pon request by a person who questions the authenticity of an electronic data or evidence [...] or its chain of custody, the person who submitted the

evidence shall provide the following documents. (1) A copy of the evidence or data to be provided to the experts appointed by the opposing parties questioning the authenticity of the evidence or chain of custody; (2) Sufficient details regarding the procedure of chain of custody and steps taken in handling the evidence should be provided”.

In determining the accuracy of the electronic resource and the weight of the electronic evidence, “[...] the court shall consider the electronic means by which electronic data is recorded or stored to be valid in the following circumstances.(1) Where evidence is adduced that supports a finding that at all times the computer system [...] was operating properly, or if not, that in any respect in which it was not operating properly or out of operation, the authenticity of the data was not affected by such circumstances, and there are no other reasonable grounds to doubt the authenticity of the evidence. (2) It has been proven that the electronic data is encoded or stored by a person who has an interest in conflict with the person submitting the data. (3) The electronic data was recorded or stored by a person who is not a party to the case in the ordinary course of their business and it has been proved that they did so without any influence or authority of the person who submitted the data” (Section 67(a)). According to letters (b) and (c) of this section, “In admitting electronic data as evidence of a case, the nature, purpose, and accuracy of the data or the statement in the data, [...] The court shall take into account the following matters in determining the weight to be given to electronic data submitted to the court as evidence under (b) of this Article or to a statement contained therein. (1) The period between the time an event contained in the electronic data or the statement in the data came into existence and the information about the event was uploaded to the electronic resource that generated it. (2) Whether there is any reason to believe that the person who entered the information [...] or the person responsible for maintaining the data prepared through the electronic resource may attempt to falsify or conceal the facts contained in the data”.

The Anti- Terrorism Act number 32/2015 also recognized for the admissibility of the electronic evidence in section 27(9)(10)(11). According to Section 27 (d) Evidence obtained by an investigatory body from the following sources can be used against a person accused of an act of terrorism as stated in this Act. The judge must consider such evidence admissible when they come from (1) International intelligence or investigatory body; (2) Foreign intelligence or investigatory body

In addition to the Evidence Act, electronic data is also admissible under Section 27C [‘Official Document’ for the purposes of section (a)(6) refers to formal representations made or information disseminated by an enforcement agency of the Republic of Maldives or a foreign country by means of any of the following instruments: ... (2) A computer file generated from an electronic mean or device].

4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES

4.1. Direct requests from foreign authorities to service providers

4.1.1. Requests for preservation

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| Maldives |
| What legal framework(s) is/are applicable, if any? |
| It does not seem to be provided within the legal framework of the Maldives whether it is possible for foreign authorities to contact directly service providers within the country. |
| Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities? |
| This information appears not to be provided explicitly by the legislation of the Maldives. |
| If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)? |
| <p>The 2000 United Nations Convention against Transnational Organized Crime includes spontaneous information sharing under Art. 18 (4) and (5). The letter specifies the type of MLA that can be requested including, among others, “taking evidence...”, “providing evidentiary items...”, “executing searches and seizures...”, and “other type of assistance not contrary to the domestic law of the requested State”.</p> <p>Due to Art. 43 of the United Nations Convention Against Corruption (2003), related to international cooperation, States Parties shall consider assisting each other in investigations relating to corruption; and Art. 46 establishes the MLA mechanisms in relation to the offences covered by this Convention.</p> <p>Maldives has police to police cooperation. Maldives Police services is part of the G7-24/7 contact points network. Act Number 34/2020 enables Maldives police services to collaborate with international parties to obtain information.</p> <p>.</p> <p>Furthermore section 27 (d) of the Anti- Terrorism Act number 32/2015 states that, where there is no Mutual Legal Assistance treaty in force between the Maldivian Government and a foreign Government, this Act does not restrict the enactment of an agreement stipulating the procedures to be followed in exchanging evidence between the foreign authorities stated in subsections (d)(1) and (2).</p> |

For countries who have not ratified nor implemented the above-mentioned instruments, or when the request has an object outside their scope, the following legal framework(s) can be applicable:

- Mutual legal Assistance Act, 2015. Article 2(b) of the Mutual Legal Assistance in Criminal Matters Act (Law No. 2/2015) spells out further its object, and reads: “[to facilitate] the obtaining of evidence and other articles in another State in relation to criminal investigations or proceedings in Maldives, or the making of arrangements for persons in another State to give evidence or assist in such criminal investigations or proceedings and matters connected therewith”.

The mutual legal assistance covered, pursuant to Article 3(a) of the Mutual Legal Assistance in Criminal Matters Act, includes, in relevant part: “(1) taking of evidence or statements from persons; or [...] (7) providing information and evidentiary items; or (8) providing originals or certified copies of relevant documents and records including bank, financial, corporate or business records [...]”.

Notably, section 11 of MLA 2015 states: “(a) Where a foreign State makes a request for the following types of assistance relating to a proceeding or investigation relating to a criminal matter in that State, the Prosecutor General may authorize, at his or her discretion, the provision of such assistance. (1) The taking of evidence from a person in Maldives; (2) The production of a document or other article in the Maldives that may be required with respect to the criminal matter; (3) The transmitting of the evidence and documents or articles obtained under sub-section (1) and /or sub-section (2) to the foreign State.

- Article 28-4(d) of Anti-Terrorism Act (Act No. 32/2015) provides that the Maldives Police Service, in conducting criminal investigations relating to terrorist activities, is not restricted from “preserving evidence”.

Maldives, as member countries of Interpol, hosts an INTERPOL National Central Bureau (NCB). This connects their national law enforcement with other countries and with the General Secretariat via our secure global police communications network called I-24/7.

Is a judicial order required from the requesting state?

It is not specifically indicated whether a judicial order is required. However, it should be noted that under Section 7 of MLA Act, assistance provided to a foreign state from the Maldives may be subject to conditions set by the Prosecutor General. In practice where a judicial order is absent, the Prosecutor General will grant permission to a law enforcement officer to apply for a search/seizure order. Then the law enforcement officer will apply for a court order. Even in cases where a judicial order is submitted, this process is followed.

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| Are there any time limits for data preservation? Any possibility of extension? |
| There are limitations as no law governs the preservation of data. |
| Would service providers in your country notify the data subjects of the request? |
| In practice they do not notify. There is no law that specify that notifying is needed. |

4.1.2. Requests for voluntary disclosure

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| Maldives |
| What legal framework(s) is/are applicable, if any? |
| There is no legal framework applicable. |
| Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities? |
| <p>All requests should go through the Prosecutor General or a person authorized by the Prosecutor General in accordance with section 6(a)(b) of the MLA Act. The Prosecutor General acts as the central authority for sending and receiving MLA requests, who also establishes the conditions to provide such assistance to a foreign State. (Section 7 of the MLA Act)</p> <p>Moreover, section 52 (Non-disclosure of information) states: “(a) Where a person who, because of their office or employment, has knowledge of the contents of a request for assistance made by a foreign State or the fact that such request has been made or granted, that person shall not disclose the contents or that fact unless it is necessary to do so in the performance of his or her duties or the Prosecutor General has given his or her approval to such disclosure”.</p> |
| If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)? |
| <p>Police-to-Police cooperation (Interpol): Maldives, as member countries of Interpol, hosts an INTERPOL National Central Bureau (NCB). This connects their national law enforcement with other countries and with the General Secretariat via our secure global police communications network called I-24/7.</p> <p>Spontaneous information sharing under Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime.</p> <p>24/7 contact point that has been establishes within Maldives police services.</p> |

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| Is a judicial order required from the requesting state? Are there any time limits? |
| It does not seem to be provided by the law. |
| Would service providers in your country notify the data subjects of the request? |
| It does not seem to be provided by the law. |
| How can the process be simplified or quickened in emergency situations? |
| It does not seem to be provided by the law. |

4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

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| Maldives |
| How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)? |
| <p>According to Section 6 of MLA Act, each request for assistance by a foreign country shall be made to the Prosecutor General (or a person authorised by). In the same provision (letter d) it specifies “(1) the name of the requesting authority; (2) the nature and scope of the assistance sought, and the details of any particular procedure or requirement that the requesting State wishes to be followed; (3) the name and description of the main functions of the law enforcement or judicial authority that initiated the request; (4) A statement providing a description of the nature of the criminal investigation or prosecution or proceeding to which the request relates and a statement setting out a summary of the relevant facts and laws; (5) where the request relates to a person, the name, location and nationality of that person; (6) The purpose of the request; (7) Any other information that is deemed by the Prosecutor General to be necessary for the proper execution of the request”.</p> <p>The legislation of Maldives does not provide the procedure that shall be followed in executing the request of a foreign country, however section 11 of the MLA Act reads:(a) Where a foreign State makes a request [...] of assistance relating to a proceeding or investigation relating to a criminal matter in that State, the Prosecutor General may authorize, at his or her discretion, the provision of such assistance. [...]. (b) The authorization by the Prosecutor General pursuant to this Section shall be made in writing in the form prescribed under the Regulations made under this Act.</p> |
| Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)? |

In pursuance of a request, the requested country shall take the appropriate action to give effect to it providing assistance to the extent permitted by its law.

While there not seem to be ad hoc provision which ground the legal bases for issuing specifically an order for retention and acquisition expressly of data, metadata, traffic data, access data and content data, Section 37 of the MLA Act establishes (on requests relating to proceeds of crime in the Maldives) that “(a) Where a court in a foreign State has ordered for the forfeiture to the state, property in connection with a serious criminal offence or proceeds of a serious criminal offence committed in that foreign State, and where such property or money is located in the Maldives, the appropriate authority of that foreign State may request the Prosecutor General to make necessary arrangements for the enforcement of that Court order in the Maldives; (b) Where property in connection with a serious criminal offence or proceeds of a serious criminal offence committed in a foreign state is located in the Maldives, and an order is made by a court in the foreign country to confiscate, freeze or place such property in the possession of an authorised person pending the conclusion of the criminal proceeding relating to that offence, the appropriate authority of a foreign state may request the Prosecutor General to make necessary arrangements for the enforcement in the Maldives of such court order; (c) Where property in connection with a serious criminal offence or proceeds of a serious criminal offence committed in a foreign state is located in the Maldives, and where a court in the foreign state has made an order against such property or proceeds other than an order under subsection (a) or (b), the appropriate authority of that foreign State may request the Prosecutor General to make necessary arrangements for the enforcement of such court order in the Maldives”.

What are the central and competent authorities in your country to:

- a) Receive a request for MLA in criminal matters?**
- b) Execute/recognize the measure (if other than the receiving authority)?**

According to Section 6(a) every request by a foreign country to Maldives for assistance shall be made to the to the Prosecutor General or a person authorised by the Prosecutor General.

Section 6(a) of MLA Act indicates that the Prosecutor General can authorise another person to receive the request for assistance by a foreign country.

Moreover, regarding “search and seizure” requests by foreign states, section 16 of MLA Act indicates that when a foreign state requests the issuance of a warrant to search an article pertinent to a criminal proceeding or investigation of a serious crime in that foreign state, where the Attorney General finds that there is sufficient evidence that the article is in the Maldives, he or she may order the police in writing to apply to the Court for a warrant. It follows that the authorized police officer should apply to the court for a warrant. At this point the court must make itself available for early action.

If there are reasonable grounds to believe that a warrant for the seizure of an article should be issued, the Court may “issue a warrant to enter land or premises to locate

the article, and to search the land or premises for the article and to seize it any other thing found therein” (Section 17).

What are the accepted languages for MLA requests?

While no legal framework in the Maldives appears to be in place governing this particular issue, one might, by analogy, apply Article 6(c) of the Mutual Legal Assistance in Criminal Matters Act, under which requests to the Maldives shall be in English or accompanied by a certified English translation.

Can the request be submitted electronically to the central authority?

Information not provided. In practice we do accept electronic copies of the MLAR

Can the request be submitted directly to the central authority?

Request can be submitted to the central authority directly. In practice most requests are submitted to the central authority. Very few requests are sent through Ministry of Foreign Affairs.

What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?

Section 8 establishes the legal ground for refusal of assistance by Maldives. Specifically, if “(1) there are substantial grounds for believing that the request for assistance has been made for the purpose of prosecuting a person for an offence of a political nature;(2) [...] prosecuting a person on account of the person’s race, sex, religion, nationality or political or other opinion; (3) the request relates to the prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Maldives, would have constituted an offence under the military law applicable in the Maldives, but not also under the ordinary criminal law of the Maldives; (4) [...] the request, if granted, would prejudice the sovereignty and security of the Maldives; (5) Where the request relates to the prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or has undergone the punishment prescribed for that offence, in respect of that offence [...] constituted by the same act or omission as the first-mentioned offence; (6) the assistance sought by the request does not fall within the scope this Act” (Section 8(a)).

A request by a foreign country for assistance may also be refused by the Prosecutor General on the base of dual criminality; or if the request relates to an act or omission that, if it had occurred in the Maldives, would have constituted an offence under the laws of Maldives, but the person responsible could no longer be prosecuted by reason of lapse of time or any other reason that bars prosecution; where the provision of the assistance could prejudice a criminal investigation or proceeding in the Maldives; the provision of the assistance would or would be likely to prejudice the safety of any person

or would impose an excessive burden on the resources of the Maldives. Additionally, whether it would result in manifest unfairness or a denial of the human rights of a person. Finally, in all cases where the request should not be granted and the Prosecutor General is of the opinion that it is best to refuse the request. (Section 8(b)).

As per section 9, a request by a foreign country for assistance may be refused if “it relates to the prosecution or punishment of a person charged with, or convicted of, an offence for which the death penalty may be imposed in the foreign country”; unless otherwise in the opinion of the Prosecutor General. It reads: “(b) A request by a foreign country for assistance under this Act may be refused if the Prosecutor General believes that the provision of the assistance may result in the death penalty being imposed on a person; and having regard to the special circumstances of the case, is of the opinion that in the circumstances of the case the request should not be granted”.

5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

5.1. Direct requests to foreign service providers

5.1.1. Requests for preservation

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| Maldives |
| What legal framework(s) is/are applicable, if any? |
| It does not seem to be explicitly provided by the legislation of the Maldives whether it is possible to make request for data protection/preservation directly to foreign based service providers. |
| Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers? |
| Information not provided |
| If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA? |
| Police-To-police cooperation, same as above, as well as the cooperation under the international legal framework (UNCAC, UNTOC etc...) and MLA. 24/7 contact point that has been establishes within Maldivian police service. |
| Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons? |

It does not appear to be provided by Maldives' legislation.

5.1.2. Requests for voluntary disclosure

India

What legal framework(s) is/are applicable, if any?

It is not explicitly defined within the legislation of the Maldives whether it is possible to request for disclosure directly to service provider based in a foreign country.

Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?

Information not provided.

If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?

Requests can be made through Interpol or police-to-police channels and spontaneous information sharing is always granted also under Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime.
Make a request through mutual legal assistance, is always allowed.

Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?

It is not explicitly defined within Maldives' legislation.

5.2. Requests sent by your central authority for Mutual Legal Assistance (MLA)

India. (we have a treaty with India)

What is your central authority to send requests for MLA in criminal matters?

Information not provided



UNODC

United Nations Office on Drugs and Crime

Are informal contacts with the central authority of the requested states allowed and used?

Information not provided.