



Mutual Legal Assistance

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Global and Domestic Developments

- Major challenge facing every state worldwide
- Cross-border co-operation post 11 September 2001 and 7 July 2005
- Message to criminal element
- Effective Mutual Legal Assistance - an essential component of all transnational criminal investigations, and key to success in securing evidence and assets abroad



United Nations Convention Against Corruption (UNCAC)

UNCAC binds countries to offer MLA “to the fullest extent possible” **under relevant laws, treaties, agreements, and arrangements** of the requested state party...

..in gathering and transferring evidence for use in court, to extradite offenders, and with the tracing, freezing, seizure and confiscation of the proceeds of corruption (articles 31,44, 46).

Article 43 UNCAC



- Parties shall cooperate in criminal matters including proceedings in civil and administrative matters relating to corruption.
- Whenever dual criminality is considered a requirement...it shall be deemed fulfilled if the **conduct** underlying the offence is a criminal offence under the laws of both States Parties.(NB. Not category or type)

Council of Europe Criminal Law Convention on Corruption (CoE Convention)



Parties shall afford one another the widest measure of mutual assistance by promptly processing requests... (article 26).

..and may, without prior request, forward to another Party information on facts when it considers that the disclosure of such information might assist ..(Proactive article 28)



Meaning of Mutual Legal Assistance

- Narrow sense: Assistance in securing information or evidentiary material for investigation or prosecution
- Broad sense:
 - Enforcement of foreign restraint or confiscation orders
 - recovery of fines
 - compensation, transfer of proceeds of crime and cooperation in operational activities
- Widest sense: Inclusion of extradition



Types of Assistance

Formal

- Letters rogatory
- Bilateral treaties
- Multilateral treaties
- Letters of request

Informal

- FIU/Egmont
- Embassy contacts
- Interpol
- Police to police
- Internet research
- Commercial databases
- Government databases
- Be creative



Kinds of Assistance

- Assistance by Requested State in respect of investigations, prosecutions or proceedings in the Requesting State
- Assistance includes:
 - locating/identifying persons
 - locating/providing documents, records and articles, including lending of exhibits
 - taking statements or testimony of persons
 - search and seizure



Kinds of Assistance (continued)

- serving documents, including documents seeking attendance of persons;
- facilitating appearance of witnesses or assistance of persons in investigations;
- assisting in proceedings related to restraint and forfeiture of proceeds of crime, compensation or restitution or recovery or collection of fines;
- any other form of assistance not prohibited by laws of Requested State.



Practical Considerations – informal method

- Police - to - police assistance
- Voluntary statements
- Involvement of investigation team
- Cannot compel
- Restriction on use of information



Practical Considerations – formal method

- Most suitable, acceptable and safest method
- Time-consuming
- Summons of witnesses
- Extension of list of questions
- Evidence forwarded via diplomatic channels



Admissibility of evidence

- How do I ensure that the evidence obtained meets admissibility requirements?
- Do I need to inform the suspect of intention to secure assistance of foreign authorities in obtaining evidence abroad?
- Oral testimony
- Documentary evidence



General Principles Applicable to MLA

- Is there a treaty – on what basis is the assistance requested?
- Is there dual criminality: similar conduct?
- Who is the Central Authority?
- Who is the Competent Authority?
- To whom must the request be addressed?
- Establish informal contact beforehand



Setting out your story : Who what how why when where.

- Who you are and your legal status
- What crime(s) is (are) being investigated
- Who is under investigation
- If there assets involved, how they are linked to the crime and where located
- If you want a freezing order
- State the facts.



Setting out your request : Identify the help you need from them

- Use of search and seizure powers
- Production of documents, bank accounts, hard discs, etc.
- Identify how documents required relate to offenders and offences.
- Identify assets sought and how they relate to offenders and offences.



General Principles Applicable to MLA

- Specialty Principle
- Confidentiality – tip off provision
- Proportionality Principle – no “*fishing expeditions*”
- Urgency
- Reciprocity
- Dual criminality
- Statute of Limitation



General Principles Applicable to MLA – content of request

- Description of factual background which should include:
 - Connection between person under investigation, facts/evidence and criminal relevance of facts (for dual criminality)
 - Connection between relevant facts and requesting jurisdiction (for double jeopardy)
- Description of the requested assistance
 - Indicate needed information – has to be clearly defined (bank account number, details of person etc.)



Usual Motives for Refusal of MLA

- No treaty or agreement
- No conduct amounting to an offence
 - Illicit enrichment
 - Tax, Control of Changes, etc
 - Prosecution for Race, religion, Military issues
- No link between assets sought and offences
- Technically incorrect : no reciprocity clause, not signed, not translated, not competent, not sent to the right authority.



Usual Motives for Refusal of MLA

- Human Rights Considerations in Requesting State
 - Treatment during investigation, kind of sentence (Death sentence, corporal punishment)
 - Denial of justice in the Criminal Procedure (Independence of Court, Access to lawyer, Right to Appeal, etc, European Court of Human Rights standards)
 - Conditions of Repression in Requesting State
 - Military Courts/Commissions, Politically motivated
 - Alibi, importance of the offence, Statute of Limitation, Amnesty



Usual Motives for Refusal of MLA

- Public Order, Security, Essential Interests of Requested State
 - Armament, High Technology, Highly sensitive matters (Terrorism)
- Prosecution in Requested State
 - Ne bis idem, Parallel Procedures

NB Economic security or reasons, or international relations not valid



United Kingdom Requests for Mutual Legal Assistance in Criminal Matters

- Guidelines for authorities outside of UK
- 10th Edition – 14 September 2012
- How to make a request for MLA
- Forms of MLA the UK can provide
- Requests for Intelligence
- Example Letters of Request to UK
 - Request for Evidence
 - Restraint of Proceeds of Crime



Case Study

- Involving payment of \$10 million by Egyptian government department to offshore entity in respect of purchase of electronic equipment worth only \$8 million
- **Dramatis Personae**
 - Mr Hussein El Shamy, Director General of local buyer, Department of Health and Welfare
 - Bargain Electrical Limited, the offshore seller
 - Non-disclosure of interest by Director General
 - Benefit of \$2 million to El Shamy, trust beneficiary



Results

- Transfer of \$2 million to Lifestyle Corporation through bank of offshore seller
- ill-gotten gains fund lavish lifestyle and the purchase of offshore assets





Challenges to Investigation

- Identify and trace assets
- Follow the flow of the funds offshore
- Pierce beneficial ownership of the trusts
- Uncover El Shamy's links with offshore companies and trusts
- Link the Director General with criminal conduct



Questions to answer

- What information do I have?
- What information do I need?
- Who do I approach for such information?
- How do I compile the request for information?
- How do I satisfy both the domestic and foreign legislative requirements?



You must do an investigation!