



MUTUAL LEGAL ASSISTANCE IN ASIA AND THE PACIFIC: *EXPERIENCES IN 31 JURISDICTIONS*

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Outline

1. Introduction
2. Common Challenges to Effective MLA in Corruption Cases
3. Best Practices for MLA in Corruption Cases
4. Practical Tools for Facilitating Effective MLA
5. Conclusion and Recommendations



1. Introduction

- OECD Anticorruption Initiative for Asia-Pacific
- ADB-OECD (2017), Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions
- 2010–2015 time period
- Focuses on the practical challenges jurisdictions in the Asia-Pacific region face in relation to requests for MLA, particularly in corruption cases



“Corruption”, UNCAC:

- (i) bribery of national or foreign public officials (arts. 15 & 16),
- (ii) embezzlement/misappropriation of property by a public official (art. 17),
- (iii) trading in influence (art. 18),
- (iv) abuse of functions (art. 19),
- (v) illicit enrichment (art. 20),
- (vi) private sector bribery (art. 21), and
- (vii) private sector embezzlement (art. 22).



2. Common Challenges to Effective MLA in Corruption Cases

- A. Lack of an effective legal basis for cooperation
- B. Differences in legal and procedural frameworks
- C. Language barriers
- D. Delay, no response at all, or insufficient response
- E. Resource issues
- F. “Traditional” grounds for refusing MLA



A. Lack of an effective legal basis for cooperation

- An obstacle for 5 members of the Initiative in relation to both outgoing and incoming requests for MLA (Japan; Malaysia; Nepal; Sri Lanka; Vietnam)
- Multilateral treaties
- Bilateral treaties
- Domestic law
- Reciprocity





B. Differences in legal and procedural frameworks

- Challenge in obtaining MLA for 9 members: Australia; Bhutan; Cook Islands; Indonesia; Korea; Macao, China; Singapore; Sri Lanka; Vietnam.
- In preparing outgoing requests for Macao and China.
- Legal misunderstandings can arise in a variety of areas:
 - *The legal basis for providing MLA.*
 - *The grounds upon which MLA can or must be refused.*
 - *Legal requirements for obtaining certain types of assistance.*
 - *Procedural requirements for obtaining assistance.*
 - *The approaches of common law versus civil law jurisdictions.*



C. Language barriers

- 10 of the 17 members: Australia; India; Indonesia; Japan; Korea; Macao, China; Malaysia; Singapore; Sri Lanka; Vietnam.
- Most members of the Initiative draft outgoing MLA requests in English (Table 2)





Drafting languages used for MLA requests in the Asia-Pacific region

Jurisdiction	Language used in preparing outgoing MLA requests
Australia	English
Bangladesh	English
Bhutan	English
Cook Islands	English
Fiji	English
Hong Kong, China	English
India	English
Indonesia	English
Japan	Japanese
Korea	Korean
Macao, China	Chinese or Portuguese
Malaysia	English
Nepal	Nepalese
Philippines	English
Singapore	English
Sri Lanka	English
Thailand	Thai
Vietnam	Vietnamese



D. Delay, no response at all, or insufficient response

- 10 of the 17 members: Australia; Bhutan; Cook Islands; Hong Kong, China; India; Indonesia; Japan; Korea; Sri Lanka; Vietnam.
- Delay can be a function of any number of factors—a lack of resources in the responding state, a lack of cooperation among the responding jurisdiction's agencies, the nature or amount of evidence sought, or the procedural steps required before the request can be carried out (Table 3).
- No response
- Incomplete or insufficient responses





Timeframe for responses to MLA requests in six members of the Asia-Pacific Initiative

	Australia	Bangladesh	India	Indonesia	Japan	Korea	Macao, China
Total requests submitted	20	36	117	38	24	75	11
Requests executed	16	30	22	38	21	51	9
Requests still pending	4	6	77	0	3	18	1
Requests rejected	0	0	3	0	0	1	1
Requests withdrawn	0	0	15	0	0	4	0
Usual time to receive assistance	14 months	12 months	1–22 months	6–12 months	1–13.3 months	7–8 months	6–48 months



E. Resource issues

- 7 of the 17 Initiative members
- Requests for MLA have increased in recent years without a commensurate increase in resources (Hong Kong, China, and Australia)
- Resource and technological needs (Australia)
- Building the infrastructure to support MLA (Nepal)
- Personnel: number and capacity (training of staff) (Australia; Bangladesh; Bhutan; Cook Islands; Sri Lanka; Vietnam)



F. “Traditional” grounds for refusing MLA

1. Evidentiary and informational issues
2. Dual criminality
3. Other grounds for refusal



3. Best Practices for MLA in Corruption Cases

- A. Building networks and relationships
- B. Preparing a strong request for assistance
- C. Consultations in relation to MLA requests
- D. Transmission and prioritisation
- E. Monitoring requests





A. Building networks and relationships

- Relation over time
- Trust
- Regular bilateral meetings
- Law enforcement official meetings



B. Preparing a strong request for assistance

To be successful, a request for MLA must be accompanied by supporting information that provides executing authorities with (i) an adequate legal basis to undertake the requested action and (ii) necessary facts and other details for doing so.

1. Training for individuals preparing requests
2. Guidance for preparation of requests





C. Consultations in relation to MLA requests

- Article 48 of UNCAC
- Law enforcement officials have important roles to play at each stage of the process:
 - pre-request stage
 - preliminary exchanges of information to support more formal MLA requests where possible in accordance with legal framework
 - alert their counterparts abroad that a request is underway
 - consultations with the other jurisdiction following the submission of a request if it is not clear



D. Transmission and prioritisation

- Several government bodies may be involved in requesting or executing a request: central authorities, judicial authorities, investigators, prosecutors, and counterparts abroad.
- Clear procedures are essential to ensuring that requests are appropriately transmitted and prioritized.
- Role of central (and other receiving authorities) and law enforcement authorities in reviewing and prioritising incoming requests.





E. Monitoring requests

- Modern technology permits the use of electronic platforms for managing incoming and outgoing MLA requests.
- In some jurisdictions, case management occurs primarily via in-person contacts.



4. Practical Tools for Facilitating Effective MLA

Where possible in accordance with the law:

- A. Direct law enforcement cooperation
- B. Spontaneous exchanges of information
- C. Using international networks to facilitate assistance





A. Direct law enforcement cooperation

Formal MLA request and obtaining a response can be a time-consuming, bureaucratic process.

- Informal cooperation mechanisms regarding non-coercive MLA can lead to valuable intelligence to further an investigation.
- Examples, where possible in accordance with the law:
 - Legal advice about the process and procedures for obtaining MLA
 - Preliminary information about a case
 - Company records
 - General information about persons or companies
 - Preservation of documents
 - Information needed to facilitate a witness interview



- Information about the ownership of property
- Exchanges of information between FIU
- Exchanges of investigative findings
- Identification or seizure of bank accounts
- Assistance locating a witness or suspect through intelligence means
- Assistance with cross-border police investigations or operations
- Interviews with witnesses conducted on a voluntary basis
- Information about the travel plans of an accused person
- Recording of a witness statement





- Law enforcement agencies that engage in such direct cooperation:
 - Investigative units of anti-corruption authorities
 - FIU (See table 4)
 - Police forces
 - Tax authorities
 - Prosecution authorities

Singapore's FIU, the Suspicious Transaction Reporting Office (STRO), regularly refers information it discovers to its foreign counterparts. This is driven by a desire to determine whether money laundering offences have been committed in Singapore; however, in some cases this may also lead to investigations abroad. From 2011 to 2015, STRO provided information spontaneously in relation to FATF-designated categories of offences, as follows:

	2011	2012	2013	2014	2015
Instances where information supported on-going investigations by foreign law enforcement agencies	5	12	20	16	16
Instances where information was useful for intelligence	5	9	30	14	7
Other instances	-	1	5	21	20
Total	10	22	55	51	43

In summary, of the 181 instances where Singapore's FIU sent information spontaneously during this period, 38% of the instances resulted in support to on-going foreign investigations and 36% were useful for intelligence purposes.



- Members of the initiative do not regularly use direct law enforcement cooperation.
- Direct cooperation to obtain admissible evidence is not allowed under the law in some jurisdictions (Australia).
- In other jurisdictions, information obtained through direct law enforcement cooperation is not admissible in court absent a formal request (5 members).



B. Spontaneous exchanges of information

- A growing number of jurisdictions are beginning to recognise the importance of sharing information that might be useful to another jurisdiction in an investigation or prosecution, even absent a formal request.
- However, this can only be done within a jurisdiction's legal framework.
- UNCAC, article 46





- Law enforcement authorities are critical to such spontaneous exchanges of information
- In some jurisdictions the central authority does not normally exchange spontaneous information with another jurisdiction or is expressly prohibited from spontaneously providing information to another jurisdiction.
- Some Initiative members have never received or provided spontaneous information about a corruption offence.



C. Using international networks to facilitate assistance

1. Periodic meetings with other jurisdictions
2. Involvement in international or regional networks and organisations
3. Liaison officers stationed abroad





Rule of law issues

- Informal and spontaneous MLA must only be provided in accordance with a jurisdiction's legal framework:
 - Preserve continuity (chain) of evidence
 - Due process guarantees



5. Conclusion & Recommendations

1. Recommendations at the individual law enforcement level
2. Recommendations at the agency and national level
3. Recommendations at the international level



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For more information:
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