

# MUTUAL LEGAL ASSISTANCE AND EXTRADITION

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## I. INTRODUCTION

At the outset, as a member of the Japanese government, I would like to extend a hearty welcome to everyone attending this sixth Regional Seminar on Good Governance. I also would like to extend my congratulations for the 50th anniversary of UNAFEI. I have the greatest respect for UNAFEI's contribution to the promotion and the sound development of criminal justice systems and mutual cooperation in the Asia-Pacific Region. I'm confident that this memorial and commemorative seminar will be fruitful and meaningful to all the participants.

I believe that this Seminar is significant for the reason that Southeast Asian countries have gathered together to have a better understanding of each other within the topic of Mutual Legal Assistance (MLA) and extradition. I, myself, would like to learn more about how the system works in other Asian countries, and I hope I can be of help to others who may be interested in the Japanese system. My presentation today will try to give you an overview of how our MLA and extradition systems work.

## II. TREATIES AND MUTUAL LEGAL ASSISTANCE

I would like to start with a question. Can Japan render assistance without an MLA treaty? The answer is "Yes." As long as there is a guarantee of reciprocity, there is no need for a treaty.

### A. Channels

If there is a treaty, the request can be sent from a Central Authority. In Japan, the Ministry of Justice and the National Police Agency can both send requests as central authorities, but the Ministry of Justice is the only central authority authorized to receive requests. So, our treaty partner will always send their requests to the Ministry of Justice, but they will receive our requests from either the Ministry of Justice or the National Police Agency. If there is no treaty, the request must come through diplomatic channels. Japan has already concluded bilateral MLA treaties with six countries: the United States (US), the Republic of Korea, China, Hong Kong, the European Union (EU), and Russia.

### B. Scope of Assistance

With or without a treaty, Japan can provide assistance using almost the same measures that are allowed in our domestic investigations. Interviewing witnesses, obtaining testimony of witnesses in court, and conducting searches and seizures can all be done for other countries with or without a treaty. However, we cannot execute wiretapping for other countries.

### C. Conditions

As for the denial of requests, our domestic laws provide the following. First, we require a

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guarantee of reciprocity. Next, assistance will not be provided for political offences. Finally, dual criminality is required.

There are special requirements for the examination of witnesses in court and for providing original, tangible evidence. We can only assist if the witness or the original evidence is essential to the investigation in the requesting country. However, if there is an MLA treaty, the requirement of dual criminality and the requirement of essentiality can be exempted.

#### **D. Statistics**

In recent years, we have dealt with around 40 to 70 incoming and outgoing cases per year.

### **III. EXTRADITION**

Next, I would like to turn to the issue of extradition. As with MLA, Japan can extradite a fugitive with or without a treaty.

#### **A. Channels**

Regardless of the existence of extradition treaties, requests should be sent to Japan through diplomatic channels. Japan has already concluded bilateral extradition treaties with the US and the Republic of Korea.

#### **B. Conditions**

As for the required conditions, first we require the guarantee of reciprocity. We cannot extradite the accused for political offences. We also cannot extradite for offences where the maximum term of imprisonment is less than three years under the requesting country's laws, as well as under Japanese law. Dual criminality is also required.

In addition, we need to be shown probable cause that the wanted fugitive has committed the offence. We are often faced with an extradition request which does not contain evidence to support the allegation. Whether or not probable cause exists is the focus when we consider an extradition request. This is because in domestic investigations, probable cause is required to obtain the arrest warrant, and, therefore, Japanese courts strictly examine probable cause in extradition cases as well. Please be advised that should you send an extradition request to Japan, evidence to establish such probable cause is most essential. Lastly, we cannot extradite a Japanese national without an extradition treaty.

#### **C. Statistics**

In the past 10 years, we have extradited 12 fugitives to foreign countries; foreign countries have extradited 23 fugitives to Japan.

### **IV. STRENGTHENING COOPERATION**

At this point, I would like to introduce our efforts to strengthen cooperation in MLA and extradition matters.

#### **A. Role of "CA"**

CA, in Ministry of Justice terminology, means "central authority." To ensure the effectiveness of MLA and extradition, the role of the central authority is important. My

division serves as a central authority in Japan, and my staff and I make efforts to be a functional central authority.

If the central authority becomes just a mailman or mailbox, the execution of the request will be time consuming, and the result of the request will not satisfy the requesting country. On the other hand, if the central authority has the power and discretion over both incoming and outgoing cases, the assistance can be effective. It is important for the central authority to advise counterpart central authorities on what forms of assistance can and cannot be executed and what should be modified in request documents. Otherwise, the requests will often not be completely executed. Also, it will be very helpful if the central authority can advise its domestic police or prosecutors about how the requests are executed in order to meet the requesting country's demands.

In order for the central authority to fulfill such a role, the central authority should be adequately staffed by trained legal experts. Providing and obtaining effective MLA requires abundant knowledge about the MLA and extradition system as well as domestic criminal procedure and criminal law. The central authority should also be adequately equipped, for example, with secured internet and e-mail systems.

The Japanese central authority has five attorneys: four of them are originally public prosecutors. In addition, Japanese legal attachés in China, England, France, Germany, the Republic of Korea, and the US help us to communicate with such countries' central authorities. Hopefully we are working as effectively as we say we are.

## **V. OTHER ISSUES**

At the Ministry of Justice, we have been strongly recommending to our foreign counterparts to engage in informal consultation before sending a formal request. Even if the request is non-treaty based, we think that the central authorities should communicate directly with each other to discuss and solve problems. The use of diplomatic channels is limited to the sending and receiving of formal requests. Therefore, if you plan to send an MLA or extradition request to Japan, please consult with us at an early stage, and we can advise you accordingly. As I have mentioned, providing good advice is an essential function of a central authority.

The next issue is Japanese translation. In some cases, the Japanese translation of the request is unsophisticated, and, thus, we cannot understand the request well. I understand it is difficult to translate materials into foreign languages, and some people say Japanese is one of the most difficult languages to translate to. So, my proposal is that if your country makes an English version of the request, please send the English version as a supplement to the Japanese translation. While the English version cannot be a substitute for the Japanese translation, Japan can accept an English version as a supplement to the Japanese translation. As far as I've heard, in some countries including Thailand, an English version is prepared before translating into the language of the receiving country.

## **V. CONCLUSION**

More information is available on our website ([www.moj.go.jp/english](http://www.moj.go.jp/english)). Also, if you need to consult with us on an individual case, please send us an e-mail at [infojp@moj.go.jp](mailto:infojp@moj.go.jp).