

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Mutual Legal Assistance in Asia and the Pacific

Experiences in 31 Jurisdictions



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ABBREVIATIONS AND ACRONYMS

ACCB	Anti-Corruption Commission of Bhutan
ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
ASEAN Treaty	Association of Southeast Asian Nations Mutual Legal Assistance Treaty of 2004
CAD	Singapore Commercial Affairs Department
CIS	Commonwealth of Independent States
COE	Council of Europe
CPIB	Singapore Corrupt Practices Investigation Bureau
Egmont Group	Egmont Group of Financial Intelligence Units
FBI	US Federal Bureau of Investigation
FIU	Financial Intelligence Unit
ICAC	Hong Kong, China, Independent Commission Against Corruption
ICCCA	Australian International Crime Cooperation Central Authority
Initiative	ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
Interpol	International Criminal Police Organization
KPK	Indonesia Corruption Eradication Commission
LEN	Asia-Pacific Law Enforcement Network
MACC	Malaysia Anti-Corruption Commission
MACMA	Australia Mutual Assistance in Criminal Matters Act of 1987
MLAT	Mutual Legal Assistance Treaty
MOU	Memorandum of Understanding
NACC	Thailand National Anti-Corruption Commission
OECD	Organisation for Economic Co-operation and Development
OECD ACN	OECD Anti-Corruption Network for Eastern Europe and Central Asia
OECD Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997
OECD WGB	OECD Working Group on Bribery in International Business Transactions
PPO-Macao	Public Prosecutions Office of Macao, China
STR	Suspicious Transaction Report
UNCAC	United Nations Convention against Corruption of 2003
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime

FOREWORD

Mutual legal assistance (MLA), and international cooperation more broadly, are important issues in the investigation and prosecution of corruption crimes. This report outlines common barriers to MLA among the 31 member jurisdictions of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, and describes best practices used to overcome these barriers.

Since 1999, jurisdictions in the Asia-Pacific region have resolved to work together to fight corruption by cooperating through the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The Initiative currently includes 31 members and is a regional forum for supporting national and multilateral efforts to address corruption in Asia and the Pacific through exchange of expertise, mutual support, and capacity building. The Initiative's members range from small to large economies with varied experiences investigating and prosecuting corruption cases. Over the past decades, the Initiative has provided a valuable opportunity for Asia-Pacific jurisdictions to share knowledge and experiences in fighting corruption and to establish contacts to facilitate regional cooperation. The members collectively form the Initiative's Steering Group. An Advisory Group, consisting of the Initiative's partner organisations and donors, provides strategic advice to the Initiative.¹ The Asian Development Bank (ADB) and the Organisation for Economic Co-operation and Development (OECD) provide secretariat support to the Initiative.

As early as May 2005, the Initiative identified the process of obtaining and providing mutual legal assistance (MLA) in relation to corruption cases as a serious obstacle to effective enforcement of corruption offences, and a workshop during the Fifth Regional Anti-Corruption Conference for Asia-Pacific in September 2005 addressed this topic. The Initiative then began an in-depth thematic review of the topic of MLA, extradition, and recovery of the proceeds of corruption. In September 2007 the Steering Group adopted a final report on this topic, the Thematic Review on Mutual Assistance, Extradition and Recovery of Proceeds of Corruption (ADB & OECD 2007).

Members of the ADB/OECD Anti-Corruption Initiative

Afghanistan
Australia
Bangladesh
Bhutan
Cambodia
People's Republic of China
Cook Islands
Fiji Islands
Hong Kong, China
India
Indonesia
Japan
Republic of Kazakhstan
Republic of Korea
Kyrgyz Republic
Macao, China
Malaysia
Mongolia
Nepal
Pakistan
Republic of Palau
Papua New Guinea
The Philippines
Solomon Islands
Samoa
Singapore
Sri Lanka; Thailand
Timor-Leste
Vanuatu
Vietnam

¹ Current members of the Advisory Group include the German Development Co-operation (GIZ), German Federal Ministry for Economic Cooperation and Development (BMZ), Japan's Ministry of Foreign Affairs, the Governance Network of the OECD Development Assistance Committee (DAC GOVNET), the American Bar Association/Rule of Law Initiative (ABA-ROLI), the Asia-Pacific Group on Money Laundering (APG), Transparency International (TI), the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), and the World Bank.

Recognising the continuing importance of bringing law enforcement officials together to address topics such as MLA, in November 2015, the Initiative held a pilot meeting of the Asia-Pacific Law Enforcement Network in corruption cases (LEN or Network). This Network aims to create a forum in which law enforcement officials (both investigating and prosecuting officials) can discuss enforcement-related topics in corruption cases, with a focus on practical challenges and best practices. The Network is also an important setting for facilitating international cooperation among participating jurisdictions by creating opportunities for officials to build relationships and discuss specific cases. Participants in the 2015 pilot meeting responded favourably to the event and decided to hold the Network's first regular meeting on 8–10 November 2016 in Thimphu, Bhutan, as part of the Initiative's 14th regional seminar.

During the pilot meeting, the Network's participants also agreed to conduct a brief study on common barriers to MLA among Network members and best practices used to overcome these barriers. This report is the result of that effort. The topic of MLA and a draft version of this report were discussed during the Network's November 2016 meeting. This study builds upon the 2007 thematic review, as well as work by similar international initiatives (see OECD 2012; OECD ACN 2016), although it does not address the topics of extradition and recovery of the proceeds of crime that were addressed in that earlier work.

This study was funded by Deutsche Gesellschaft für Internationale Zusammenarbeit (German Development Corporation) (GIZ) in the framework of the global programme "Combatting Illicit Financial Flows." In preparation for the study, the secretariat of the ADB/OECD Initiative engaged in initial research and prepared a questionnaire (with input from the OECD Anti-Corruption Division). The questionnaire was sent to Initiative members in July 2016, with a request that they also provide updates to the information about their legal and procedural backgrounds that was published as part of the 2007 report. Eighteen jurisdictions submitted responses to the questionnaire: Australia; Bangladesh; Bhutan; Cook Islands; Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Korea; Macao, China; Malaysia; Nepal; Philippines; Singapore; Sri Lanka; Thailand; and Vietnam. Fourteen jurisdictions also provided updates regarding their legal and procedural frameworks for MLA (Australia; PR China; Cook Islands; Fiji Islands; Hong Kong, China; Japan; Korea; Macao, China; Malaysia; Nepal; Philippines; Singapore; Thailand; and Vietnam).²

On the basis of these responses, along with additional desk research, Ms. Melanie Reed (ADB/OECD Initiative consultant) prepared this report under the direction and coordination of the ADB/OECD Initiative secretariat. In order to verify information and validate the findings, the draft study was circulated to Initiative members in October 2016. The draft study was then presented to the Network during the 8–10 November 2016 meeting. Based on feedback obtained during these discussions, as well as additional inputs from Initiative members, the study was finalised in January 2017.

² Four jurisdictions (Afghanistan, Bhutan, Solomon Islands, and Timor Lest) have joined the Initiative since 2007 and thus did not submit updates. Instead, these jurisdictions were asked to complete more comprehensive versions of the questionnaire that included questions about their frameworks for MLA.

EXECUTIVE SUMMARY

The importance of MLA as a means of gathering information and evidence about corruption cases is increasing as crimes become more complex and cross-border transactions become ever more prevalent. Nonetheless, members of the ADB/OECD Initiative have widely varying experiences in requesting and providing such international assistance. While some members engage in international cooperation on a regular basis, other members rarely request or receive MLA in relation to corruption cases. Most likely, this partially reflects how often corruption crimes are investigated and prosecuted in these jurisdictions, but also probably reflects the experience each jurisdiction has working on international criminal cases in general.

This report attempts to highlight some of the challenges faced by members of the Initiative and to highlight best practices and recommendations that may assist members in more effectively working together to fight corruption in all its forms. Some members of the Initiative continue to face challenges presented by their legal and/or procedural frameworks for MLA. These challenges may involve the overall framework for MLA (that is, whether there is a legal basis for international cooperation with certain jurisdictions) or may involve the legal authority officials have to engage in activities to facilitate international cooperation (for example, direct law enforcement cooperation outside of the formal MLA process or the spontaneous provision of information to counterparts in another jurisdiction). However, the greatest challenges members of the Initiative face appear to be of a more practical nature. An increasing need for international cooperation in corruption cases is tied closely to a need for more resources to facilitate international cooperation. This includes resources directly linked to preparing a successful request for MLA, such as templates for preparing requests, information about legal and procedural requirements, foreign language capabilities, and appropriately trained staff. It also includes technology resources, such as networks for securely transmitting information, equipment that facilitates effective communication between counterpart officials (e.g., tele- or video-conferencing), and case management systems to track incoming and outgoing requests. In some instances, the jurisdictions that are most strapped for resources are also those with the least amount of experience with MLA in corruption cases, suggesting an opportunity for the Network to leverage its joint experience to create tools and other synergies that may benefit the entire group.

INTRODUCTION

The term “corruption” encompasses a group of pernicious crimes that can stunt economic growth and ultimately harm the most vulnerable members of society. Corruption crimes can be particularly difficult to investigate and prosecute because they often occur in the shadows, using hidden bank accounts, shell companies, and misleading accounting. When a corruption crime involves activities or persons in multiple jurisdictions, the crime becomes even more difficult to detect, investigate, prosecute, and punish. Individuals may move or otherwise become unavailable to interview or prosecute, evidence can be hidden, companies may be disbanded or protected by local privacy laws, and funds may be transmitted to bank accounts across borders where they can become difficult to trace.

For these reasons, international cooperation is essential in connection with cross-border corruption cases. International law sets forth clear obligations for jurisdictions to assist each other in corruption cases. For example, the United Nations Convention against Corruption (UNCAC), which entered into force in 2005, requires state parties to pass laws criminalising a wide range of corruption offences.³ It also requires state parties to provide the “widest measure” of mutual legal assistance (MLA) to each other and includes a list of specific forms of MLA included in this mandate.⁴ Twenty-nine of the 31 Asia-Pacific jurisdictions covered by this report have ratified or acceded to UNCAC and are therefore subject to this directive (see table 1 in part I.A below).

This study focuses on international cooperation in corruption cases, focusing on the 2010–2015 time period. For the purpose of this study, the term “corruption” includes the following crimes covered by 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). “International cooperation” refers to MLA as well as to myriad other forms of cross-border law enforcement assistance, such as police-to-police cooperation and exchanges between financial intelligence units. In particular, this study focuses on the role of law enforcement authorities—including investigators and prosecutors—in facilitating MLA and other types of international cooperation.

This report does *not* attempt to provide a complete overview of the international cooperation process. In reference to Asia-Pacific jurisdictions, that topic was thoroughly addressed in the thematic review *Mutual Legal Assistance, Extradition and Recovery of Proceeds of Corruption in Asia and the Pacific* (ADB & OECD 2007). Rather, this report focuses on the practical challenges jurisdictions in the Asia-Pacific region face in relation to requests for MLA, particularly in corruption cases. The report also highlights practices implemented among Asia-Pacific jurisdictions to address these challenges. In providing this overview, the report sets forth practical case examples wherever possible. As appropriate, jurisdiction’s identities have been anonymised.

The report begins by discussing some of the common challenges in obtaining and providing MLA among Asia-Pacific jurisdictions. It then discusses best practices Asia-Pacific jurisdictions might consider as they attempt to make the MLA process more effective and efficient. Finally, the report addresses practical tools for effective international cooperation in corruption cases, including direct law enforcement cooperation, the exchange of spontaneous information, and international networks and resources.

³ UNCAC art. 16.

⁴ *Ibid.*, art. 46.

I. COMMON CHALLENGES TO EFFECTIVE MLA IN CORRUPTION CASES

A. Lack of an effective legal basis for cooperation

The lack of an effective legal basis for cooperation is an obstacle for some members of the Initiative in relation to both outgoing and incoming requests for MLA. Five of the 17 Initiative members that responded to the questionnaire indicated that issues relating to the legal basis for cooperation have presented a challenge in obtaining or providing MLA (Japan; Malaysia; Nepal; Sri Lanka; Vietnam). For example, Nepal indicated that even though it can provide international assistance on the basis of reciprocity in the absence of a treaty, its courts will not enforce decisions of foreign courts in the absence of a treaty agreement—and Nepal has yet to conclude any bilateral treaties on this topic. Other jurisdictions that presented the legal basis for cooperation as a problem also noted the absence of MLA treaties with other states that could provide a basis for cooperation.

For example, the lack of a legal basis for cooperation may be a problem if both the requesting and receiving state are not parties to the same agreement providing for MLA in relation to corruption cases. Importantly, two members of the Initiative—Samoa and Japan—have not become state parties to UNCAC, which requires state parties to provide each other MLA in corruption cases. Even though the other 29 of 31 members of the Initiative have ratified or acceded to UNCAC, this does not mean that UNCAC will necessarily provide a basis for MLA in every case. For example, a party might not feel obligated to provide MLA if a jurisdiction that requests assistance from it has not also become a state party to the instrument.⁵ Furthermore, even if a state is a party to an international agreement such as UNCAC that requires state parties to provide MLA in relation to corruption cases, domestic law may influence the treaty's force of law in practice. In some jurisdictions (e.g., Vietnam), a treaty may not have force of law unless implementing legislation is passed at the domestic level.⁶

⁵ Notably, UNCAC only requires state parties to “afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by [that] Convention”—not to extend the same privileges to states that are not party to UNCAC (art. 46.1, emphasis added). UNCAC (art. 46.23) also sets forth specific requirements regarding the form and substance of any MLA request submitted under its authority, as well as the types of assistance that may be rendered. A state party that denies a request for MLA that is governed by UNCAC is required to provide the requesting party with adequate reasons. Similar provisions are provided in treaties such as the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention) and the 2004 Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN Treaty).

⁶ A treaty is “self-executing” in jurisdictions where its ratification automatically gives it the force of law. In other jurisdictions, a treaty is not self-executing, which means that it does not have force of law until implementing legislation is passed. Vietnam, has expressly declared that UNCAC is not self-executing in its jurisdiction.

Table 1. Adherence to treaties providing support to MLA among members of the Asia-Pacific Initiative

	CIS Conventions ⁷	OECD Convention	ASEAN Treaty	UNCAC	UNTOC
Afghanistan				X	X
Australia		X		X	X
Bangladesh				X	X
Bhutan				X	
Cambodia			(signed, but not a state party)	X	X
China, PR				X	X
Cook Islands				X	X
Fiji Islands				X	
Hong Kong, China				X ⁸	X ⁹
India				X	X
Indonesia			(signed, but not a state party)	X	X
Japan		X		(signed, but not a state party)	(signed, but not a state party)
Kazakhstan	X			X	X
Korea		X		X	X
Kyrgyzstan	X			X	X
Macao, China				X ¹⁰	X ¹¹
Malaysia			X	X	X
Mongolia				X	X
Nepal				X	X
Palau				X	
Pakistan				X	X
Papua New Guinea				X	X
Philippines			(signed, but not a state party)	X	X
Samoa					X
Singapore			X	X	X
Solomon Islands				X	
Sri Lanka				X	X
Thailand			X	X	X
Timor-Leste				X	X
Vanuatu				X	X
Vietnam			X	X	X

⁷ Commonwealth of Independent States Conventions on Legal Assistance and Legal Relationships in Civil, Family and Criminal Matters, 22 Jan. 1993 and 7 Oct. 2002.

⁸ Pursuant to a decision of the People's Republic of China, PR China's ratification of UNCAC and UNTOC also apply to Hong Kong, China, and Macao, China (ADB & OECD 2007, 29, 31).

⁹ See previous footnote.

¹⁰ See footnote 11.

¹¹ See footnote 11.

Bilateral treaties can often provide an effective alternative framework for MLA when an international agreement does not apply, either because both jurisdictions are not party to the international agreement or because the international agreement has not been implemented into domestic law. However, only a handful of Initiative members have a robust bilateral MLAT framework.¹² When no applicable treaty exists, it may be possible in some jurisdictions to exchange information on the basis of reciprocity.¹³ All members of the Initiative except nine (Afghanistan; Bangladesh; Bhutan; Cambodia; Kyrgyzstan; Mongolia; Philippines; Solomon Islands; Timor-Leste) have indicated that their jurisdictions' laws would allow them to provide MLA in the absence of a treaty (see also ADB & OECD 2007, 32). Nonetheless, the lack of such mechanisms in nine jurisdictions raises concerns, since some of these jurisdictions are also not parties to international agreements that would allow for cooperation in corruption cases.

These issues suggest a need for further efforts to strengthen the legal framework—particularly at the domestic level—for cooperation between jurisdictions, within and even outside of the Asia-Pacific region.

B. Differences in legal and procedural frameworks

Nine of the 17 jurisdictions that responded to the questionnaire indicated that variances in the legal frameworks of different jurisdictions are a pressing challenge in obtaining MLA (Australia; Bhutan; Cook Islands; Indonesia; Korea; Macao, China; Singapore; Sri Lanka; Vietnam). In fact, Macao, China, indicated that this is its most pressing challenge in preparing outgoing requests for MLA.

This difficulty applies to both outgoing and incoming requests. Regarding the former, it may be difficult for investigating and prosecuting officers in a requesting state to prepare a request for MLA that contains the appropriate level of detail and specificity if they do not understand the legal requirements of the jurisdiction from which assistance is needed. Legal misunderstandings can arise in a variety of areas:

- *The legal basis for providing MLA.* As noted in the previous section, different jurisdictions take different approaches to whether becoming a state party to an international agreement such as UNCAC is “self-executing,” that is, whether it provides a sufficient basis for providing MLA without the need for implementing domestic legislation. If the treaty is not self-executing, obtaining MLA may be a non-starter.
- *The grounds upon which MLA can or must be refused.* Different jurisdictions take different approaches to which grounds allow or require the declination of MLA and how these grounds are interpreted by authorities. For example, some jurisdictions take a strict approach to the issue of dual criminality, while others take a more lenient, conduct based approach (see subsection F.2 below). Individuals drafting MLA requests need to understand these requirements in order to provide appropriate information and reasoned argumentation to overcome them (if possible).
- *Legal requirements for obtaining certain types of assistance.* Different jurisdictions take different approaches to due process requirements, for example, the evidence that must be produced before coercive actions (such as a detention, search, or seizure) may be undertaken. Similarly, some jurisdictions (particularly those that are not party to multilateral agreements such as UNCAC, the OECD Convention, or the ASEAN Treaty) may be barred from providing certain types of confidential information in response to a request for MLA (such as bank records; see ADB & OECD 2007, 58).

¹² As one example, Malaysia indicated in its response to the questionnaire that it has entered into MLA treaties with ASEAN member states, Australia, Hong Kong, India, the UK, and the US.

¹³ See ADB & OECD (2007, 45) and OECD (2012, 19–20) for discussions of this principle.

- *Procedural requirements for obtaining assistance.* Some jurisdictions' laws set forth quite specific directives regarding how a request for international assistance must be presented to be successful. This can include to whom the request must be submitted (e.g., a central authority or through diplomatic channels), the form and language of the request, and supporting information or evidence that must be provided. A failure to comply with these requirements can result in the request being delayed, declined, or misdirected and lost. For example, Macao, China, explained in its response to the questionnaire that when an incoming request for MLA does not comply with form and content requirements, it is returned to the requesting state for amendment. Unfortunately, however, Macao, China's Public Prosecutions Office (PPO–Macao) has never received a reply to such a request for amendment; as a result, the MLA request cannot be completed.
- *The approaches of common law versus civil law jurisdictions.* Finally, as Hong Kong, China, highlighted in its questionnaire response, misunderstandings can arise when civil law and common law jurisdictions engage in international assistance efforts together, as authorities in each jurisdiction may have differing perspectives on the weight of legislation versus court judgments.

Box 1. Overcoming differences in legal systems in order to repatriate proceeds of crime

A Macao, China, court convicted defendant D of bribe taking, money laundering and other corruption offences. The Court of Final Appeal of Macao SAR ruled that assets relating to the offences should be confiscated, including US\$ 43 million in the form of bank deposits and real estate property in another country C. Accordingly, in February 2007, PPO–Macao formally requested MLA from country C in order to request that the assets at issue be frozen.

In May 2010, PPO–Macao made a supplementary request that the assets not only be frozen, but also be recovered and returned to Macao, China. Country C's court issued a temporary restraining order on the funds. In April 2013, country C's prosecution service filed a court application for an "external order," that is, a copy of the Macao, China court order. After a court hearing where the application and witness statements were examined and the counsel representing the prosecution service were heard, the court ordered that the assets be seized.

There was no dispute over the bank deposits, even though some accounts were under the name of D's wife or other relatives. However, a businessperson who claimed to own a house that was among the assets asked that proceeds from the sale of that property be returned to him. Since there was a third party claim on D's property, PPO–Macao needed to provide evidence to country C to prove that D was the true owner of the property. Because Macao, China, and country C have very different legal systems (one based on civil and one based on common law), the two prosecution services were required to overcome one legal barrier after another. To enable the relevant authority in country C to collect further evidence to prove ownership of the disputed property, PPO–Macao sent supplementary legal assistance requests, statements, copies of relevant laws, and legal interpretations to country C's prosecution service. Officers in both jurisdictions communicated frequently via email and teleconference to move the case forward. They were finally able to convince the country C court that D owned the property.

In December 2013, country C's court entered an enforcement receivership order and appointed a receiver over all D's specified and realisable property and assets. Empowered by this order, the receiver collected the money D had deposited in 76 accounts in five different banks in country C (approximately US\$ 29 million, including accumulated interest). The receiver also took possession of the sales proceeds of D's property (approximately US\$ 14 million, including interest), which had been held in an escrow account pending resolution of the case. In total, approximately US\$ 44 million were collected and (following the deduction of country C's expenses in recovering the sums) were repatriated to Macao, China.

On the other side, a jurisdiction receiving a request for MLA may not be able to provide the desired assistance in a form that is useable in the requesting state’s investigation or prosecution if the legal requirements of the requesting state are not clarified in the initial request or through consultation, or if the responding state is not allowed to undertake the requested action because of its own due process law. The worst-case scenario is that a jurisdiction receiving a request undertakes efforts to execute the request (at significant cost to itself), and the provided assistance is deemed unusable because of the requesting state’s legal or procedural requirements.

Such differences among legal systems are even more acute in jurisdictions that do not have a clear framework for issuing and receiving requests for MLA. In a number of Initiative jurisdictions, the laws on international cooperation are in a state of flux and only time and practice will clarify how the laws apply. For example, Nepal has recently promulgated an MLA law and regulations, but has not yet concluded bilateral MLA treaties that could form the basis for providing MLA. As its law and practice develops, the jurisdiction will be able to more effectively provide assistance to other jurisdictions.

C. Language barriers

Language barriers are an oft-cited obstacle to effective international cooperation in corruption cases (OECD ACN 2017), and 10 of the 17 members that responded to the questionnaire shared the same view (Australia; India; Indonesia; Japan; Korea; Macao, China; Malaysia; Singapore; Sri Lanka; Vietnam). As table 2 shows, most members of the Initiative draft outgoing MLA requests in English. Many MLATs allow for MLA requests to be submitted in English, but if not the request is then translated into a language allowed under a governing MLAT or the domestic law of the foreign state.¹⁴

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

¹⁴ The following members of the Initiative accept incoming MLA requests in English, subject to differing provisions in a governing treaty: Australia; Bangladesh; Cook Islands; Fiji; Hong Kong, China; Indonesia; Kazakhstan; Korea; Kyrgyzstan; Malaysia; Nepal; Pakistan; Palau; Papua New Guinea; Philippines; Singapore; and Thailand (ADB & OECD 2007, 62). PR China will accept incoming requests in English or French and then translate the request into Chinese for execution if the requesting state agrees to assume the costs (63).

The use of a broadly understood language is meant to help overcome these language barriers. Nonetheless, if the jurisdiction receiving the request does not have strong capabilities in a language such as English, barriers can nonetheless arise. For example, Korea explained in its response to the questionnaire that jurisdictions often request a copy of a request for assistance in their own language, even when the applicable treaty only requires an English translation, suggesting that dealing with an English language request may be difficult for the receiving jurisdiction.

Furthermore, a number of jurisdictions noted that translations are often quite poor. The issue of poor translation is compounded when the request does not include a sufficient explanation of the need for assistance, the type of assistance sought, or supporting facts because language barriers may prevent the state receiving the request from picking up the phone to obtain clarification from the requesting state. Furthermore, any need to seek clarification slows down the overall MLA process.

This is not to say, of course, that when a jurisdiction uses its own language to prepare an outgoing MLA request that language barrier issues will necessarily arise. The critical point is that any outgoing request must be properly translated into a language accepted in the receiving state. For example, Japanese authorities indicated that they initially draft MLA requests in Japanese, but have no trouble obtaining a clear English translation of the request by a professional translator.

Another problem that may arise is that a jurisdiction receiving a request for assistance may be reluctant to provide the assistance because of discomfort due to language barriers. One member of the Initiative believes this has been a problem when dealing with European states.

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

Ten of the 17 jurisdictions that responded to the questionnaire explained that obtaining a timely response to MLA requests is a common and pressing challenge in corruption cases (Australia; Bhutan; Cook Islands; Hong Kong, China; India; Indonesia; Japan; Korea; Sri Lanka; Vietnam). In some cases, delay may begin at home, even before a request is submitted abroad. For example, the need for coordination between the prosecutor or investigator and the central authority can slow down the process of getting the request submitted to the foreign state. 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 (e.g., a need to obtain a court order prior to a search and seizure). Sometimes the requesting jurisdiction may contribute to the delay by failing to gather enough information about the possible location of evidence or witnesses to assist the responding state in carrying out the request.¹⁵

Delay is a particular concern in complex corruption cases, since shell companies can be disbanded, computer files can be deleted, funds can be hidden, and witnesses can abscond in the time it takes to complete a request. At the same time, locating and identifying evidence can take time, as it may involve witnesses in remote locations or terabytes of documents on servers in other jurisdictions. Once a request is sent abroad, it may seem to enter a black hole, since it can be difficult for the requesting state to obtain information about the request, even whether it is capable of being executed. Consider the following example:

¹⁵ See OECD (2012) for a discussion of these and other issues leading to delay.

Box 2. Case example: Delay in responding to a request

Hong Kong, China's Independent Commission against Corruption (ICAC) sought assistance from an overseas jurisdiction to locate a potential witness for interview. The request was made through the relevant consulate office in Hong Kong, China, because no law enforcement liaison officer of that jurisdiction was posted in Hong Kong. Several months later, after ICAC officials undertook numerous attempts to follow up on the request, the other jurisdiction finally responded that the witness could not be located.

Such breakdowns in communication do not always just relate to interactions between jurisdictions, however. One Initiative member (Malaysia) noted that a lack of communication within its country—between the central/receiving authority and the executing authority—can also result in misunderstandings about facts and information and thereby obstruct the execution process.

Initiative members who responded to the questionnaire indicated that obtaining a response to a request for MLA can take as little as 3 months to more than 4 years. Most requests submitted by Initiative members appear to be fulfilled between 6 months and 1 year. Delay may be a concern in corruption cases, since they often involve illicit flows of funds that may be lost if they are not located and seized at an early stage of an investigation or prosecution. Furthermore, suspects or other witnesses may relocate, shell companies may be disbanded, documents may be destroyed, or statutes of limitations may expire.

Table 3. 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

It goes without saying that receiving no response at all to an MLA request is also a serious hurdle to international cooperation, as shown by the example in Box 3.

Even when the other state eventually responds to the MLA request, 8 of the 17 jurisdictions responding to the questionnaire noted that the prevalence of incomplete or insufficient responses is a major problem in effectively utilising the MLA system (Australia; Cook Islands; Hong Kong, China; Indonesia; Japan; Malaysia; Sri Lanka; Vietnam). For example, Australia noted a difficulty in obtaining material requested in a form that is admissible in an Australian court. “MLA responses that do not fit the needs of the requesting country can result in duplicative investments of time and money by the governments of both countries, as well as additional delays,” since the country that “receives an incomplete MLA response must either submit another request—further delaying obtaining the complete results—or forgo obtaining necessary evidence” (OECD 2012, 36). This ultimately results in a waste of the valuable resources that were used to request and execute the MLA request.

Box 3. Case example: Non-responsiveness by a requested state

In 2010, the Commercial Affairs Department of the Singapore Police Force (CAD) received information from Interpol that illicit funds had been transferred out of a Swiss account to an account in Singapore. Foreign authorities had investigated the account holders, and they were convicted in foreign courts for embezzling USD 36.66 million and laundering some of this money through foreign bank accounts.

CAD commenced a domestic money laundering investigation and learned that the account holders had about USD 41 million in a bank account in Singapore. These funds were seized, but CAD required information about the predicate offences charged in the foreign states in order to establish a domestic offence of money laundering under the Singapore Confiscation of Benefits Act.

Accordingly, in 2012, Singapore's central authority sent an MLA request to a Middle Eastern jurisdiction to obtain information about the predicate offence as well as additional information about the movement of the funds. CAD also sent requests for information through Interpol channels.

In spite of several attempts to follow up on these requests and send reminders, the requested jurisdiction never responded to Singapore's requests. The account holders challenged CAD's seizure through their lawyers and a disposal inquiry was held. In the absence of assistance from the foreign jurisdiction, the court ordered that the funds be released.

Several states indicated that they attempt to seek clarification from the other state involved in an MLA request in order to avoid these problems (including Australia; Hong Kong, China; Indonesia; Korea; and Malaysia). However, undertaking such communications is time-consuming. Furthermore, in some cases the responding state will not allow its investigative officers to deal directly with the requesting state, which means questions cannot be clarified. This underscores the need for central authorities and investigative authorities in a jurisdiction to closely cooperate with each other, so that the need for clarification does not unduly slow down the process.

E. Resource issues

Seven of the 17 responding Initiative members cited the issue of resources as a challenge to obtaining and providing MLA, and this issue is likely to become even more of an obstacle as the world becomes more globalised and international crime becomes more prevalent (Australia; Bangladesh; Cook Islands; Hong Kong, China; Nepal; Sri Lanka; Vietnam). Australia cited resource and technological needs as its most pressing challenge in both outgoing and incoming requests. Nepal noted that building the infrastructure to support MLA is its most pressing challenge, a challenge that can only be met with an appropriate outlay of resources.

Both Hong Kong, China, and Australia explained that requests for MLA have increased in recent years. In relation to outgoing requests, Australian authorities explained,

Over the reporting period [2010–2015] the number of outgoing requests has grown annually, without a commensurate increase in resources. Managing increasing demands with finite resources will continue to be a challenge and will require a strategic approach to how mutual legal assistance requests are prioritised, drafted and managed. Engagement with domestic agencies about mutual legal assistance options (including informal avenues for assistance) and use of technology to streamline processes are among the changes under consideration.

In some jurisdictions, the issue of resources may primarily affect the central authority. However, in jurisdictions where investigators and prosecutors are already stretched, this issue can reach offices handling the practical aspects of MLA as well. This may be a particular concern in smaller Asia-Pacific

jurisdictions where very few government attorneys handle all aspects of MLA, from receiving a request to executing it. Australia, Cook Islands, and Sri Lanka all noted issues with having sufficient individuals on the ground to execute requests for MLA. For example, Cook Islands explained that it has five attorneys on staff at its Solicitor General’s Office. If several MLA requests were to come in at once, inevitable delay could occur simply because there might not be enough staff to execute the requests (although this situation has as of yet never arisen).

This issue of personnel is not just about numbers. It also relates to the capacity of personnel. Six jurisdictions (Australia; Bangladesh; Bhutan; Cook Islands; Sri Lanka; Vietnam) pointed out the need for training of staff members as a pressing resource need. In addition, efforts need to be undertaken to retain staff. Regular staff turnover among investigating and prosecuting officials can result in a loss of institutional knowledge about preparing and executing MLA requests that can negatively impact the efficiency and success of requests. As already discussed above in subsection C, finding staff or outside service providers capable of translating requests and responses is also a challenge, especially when less common languages are involved.

Technological resources can also be an issue: computers, network connections, and software are baseline components to monitoring and managing cases, ensuring secure transmission of information, and engaging in effective communications (especially through means such as tele- and video-conferencing). Australia and Sri Lanka cited technology as a particular resource need. Such resources may be lacking, especially at the regional and district level, where investigating and prosecuting officers are likely to work when executing requests. At the core of all resource challenges is sufficient budget support to finance these activities. Time is also an important (and often overlooked) resource. Even when staff are highly trained and technology is available, obtaining court orders, translating documents, locating witnesses, and communicating about cases takes time, which can delay execution.

An OECD report highlighted these issues in the context of a foreign bribery investigation (2012, 39–40):

[F]oreign bribery investigations often involve complex financial records at multiple locations and in multiple languages. Although modern technology provides the means for investigators to gather, sort and search large volumes of electronic records from back-up discs, hard drives and the like, in many countries records continue to be kept in hard copy. Searching such records, duplicating them and providing the relevant documents to a requesting country can be a daunting task, particularly if the institutional framework of the country does not designate certain individuals as responsible for such work. Even where records are available electronically, the recipient country may not have the technical expertise or financial resources needed to preserve, restore, retrieve, obtain, process and produce those records.

F. “Traditional” grounds for refusing MLA

Legitimate grounds for refusing an MLA request range from a lack of dual criminality to political concerns. They are discussed in numerous written works and are not elaborated here because only a few Initiative members indicated that such “traditional” refusal grounds present challenges to MLA. Notably, 8 of the 17 jurisdictions that responded to the questionnaire indicated that they had not had any requests for MLA relating to a corruption case denied during the 2010–2015 period (Australia; Bangladesh; Bhutan; Fiji; Hong Kong, China; Japan; Nepal; Philippines). Accordingly, it should come as no surprise that 9 jurisdictions indicated that they do not encounter challenges related to “traditional” grounds for refusing an MLA request (Australia; Bangladesh; Bhutan; Japan; Korea; Malaysia; Nepal; Philippines; Sri Lanka).

Nonetheless, issues may still arise for other jurisdictions. This section discusses two of the most prevalent grounds for refusing MLA among Asia-Pacific jurisdictions—evidentiary issues and dual criminality—before noting a few other “traditional” grounds that have been cited as problematic by Initiative members.

1. *Evidentiary and informational issues*

The refusal ground that was most often cited as a hurdle to international cooperation was the need to meet evidentiary requirements of the state whose assistance is desired. Three jurisdictions (India; Indonesia; Macao, China; Sri Lanka) reported that they have had outgoing MLA requests denied on this ground, for instance, because the responding state deemed the information on the request to lack information about essential elements of the offence at issue. By way of example, Macao, China, told of an instance when it requested assistance to retrieve funds seized in another jurisdiction as part of a criminal case. The other jurisdiction refused assistance because the MLA request from Macao, China, judicial authorities and the underlying Macao, China, court judgment did not prove that the defendant’s assets in the foreign state were actually the proceeds of crime (see also box 4).

Evidentiary issues can take a number of forms. As in the example cited by Macao, China, above, a governing treaty or a receiving state’s domestic laws may require that an MLA request include certain facts or other underlying information to be executed as a legal matter. The legal MLA framework may also require the production of evidence of the alleged crime, especially if the request involves coercive measures such as a detention, search, or seizure.

Box 4. Case example: Rejection of MLA request because of lack of confiscation declaration in the judgment

In 2011, a trial court in Macao, China, entered into a judgment against individual P *in absentia*, ruling that P was guilty of 8 counts of bribery. P was sentenced to 6 years + 10 months imprisonment. However, P was not present in Macao, China, having left in 2006 immediately after the arrest of an accomplice in order to escape punishment.

The following year, in December 2012, PPO–Macao received a letter from another jurisdiction’s prosecution service, advising that the other jurisdiction had been criminally investigating P since 2010 for bribery and money laundering and had also frozen a large number of deposits in P’s name.

After analysing this letter, PPO–Macao decided to seek MLA from the other jurisdiction in accordance with UNCAC art. 51 and Macao, China’s Law no. 6/2006 on Mutual Legal Assistance in Criminal Matters art. 23. Specifically, PPO–Macao requested the following:

- specific information about the criminal investigation of P in the foreign jurisdiction;
- a continuation of the freeze of P’s bank assets in the foreign jurisdiction; and
- assistance with confiscating, recovering, and returning P’s illegally obtained monies to Macao, China.

In January 2014, PPO–Macao received an official letter from the other jurisdiction, stating that the foreign prosecutor would not provide the assistance and that P’s bank accounts had been unfrozen. The reason given for the refusal of assistance was that the MLA request, including the court judgment, did not prove that P’s bank deposits in the foreign jurisdiction were the proceeds of crime.

But evidentiary issues come into play as a practical matter as well. If appropriate information and supporting documentation is not included in a request for assistance, it may be impossible to execute it, even if the information is not legally required. For example, Hong Kong, China, explained that some states ask for information about bank records or property without providing the necessary identifying information so that the request can be carried out. Australia explained in its response to the questionnaire, “The biggest challenge to Australia’s ability to respond to requests for international cooperation is in managing

expectations of requesting states, in particular where requests contain insufficient information to confirm that proceeds of corruption are located in Australia.”

Many jurisdictions will attempt to ameliorate such issues through consultation, but even when such communications can ultimately resolve an issue, the time taken to consult slows the process of obtaining the needed information. In some instances, the requesting state may not have the resources or knowledge to provide the information, leading to a standstill. For example, Macao, China, reported that on several occasions it has returned a request for MLA to the requesting state for amendment, but has not received a response, leading to a failure to execute the request. These issues can be exacerbated by the language barriers discussed in section C above.

2. *Dual criminality*

One jurisdiction (India) has had an MLA request rejected on the ground of dual criminality. “Dual criminality” refers to the requirement in some states that the criminal offence underlying a request for MLA must be a crime in both the state requesting and the state providing the assistance (OECD 2012, 20, 42). This principle can become a hurdle in a corruption case because the same action may give rise to a different criminal offence in different jurisdictions.¹⁶ For example, one state may consider the crime to be “bribe giving,” while another might consider the crime to be “bribe receiving” because of their differing authority to prosecute the persons involved. Yet another state might consider the crime to be “money laundering” because—while the underlying crime was not committed in that state—funds related to that crime were transmitted through the state. Fortunately, many jurisdictions take a conduct-based approach to the issue of dual criminality (ADB & OECD 2007, 90): if the conduct for which assistance is sought is a criminal offence under the laws of both jurisdictions (regardless of what the offence is actually called, or the exact elements of the offence), the requirement of dual criminality will be deemed fulfilled. This is also the approach UNCAC adopts (see art. 43.2).

Although members of the Initiative are less likely to require dual criminality for MLA than in coercive measures when responding to another jurisdiction’s request for MLA, the requirement may still come into play if an Asia-Pacific jurisdiction submits a request to a jurisdiction that views dual criminality in a stricter way. It also may create an issue among states that have not criminalised certain forms of corruption at all, such as not creating a law that bars bribery of foreign officials (see ADB & OECD 2007, 44). In addition, this requirement may create an obstacle in relation to the prosecution of a legal person, for example, if a requesting state seeks information from another state in order to investigate or prosecute a company but the other state does not view legal persons as subject to criminal liability (see *ibid.*, 44).

Law enforcement officials may be able to assist central authorities in overcoming the issue of dual criminality by outlining the criminal conduct at issue in such a way that central authorities reviewing the request recognise that the conduct at issue is the same in both jurisdictions.

¹⁶ The Initiative’s 2007 report notes that about half of the Initiative’s members require dual criminality in MLA requests and the requirement is discretionary in the rest of the jurisdictions (ADB & OECD 2007, 90).

Box 5. Dual criminality in Singapore

Pursuant to legislative amendments to the Mutual Assistance in Criminal Matters Act (MACMA) that entered into force 1 September 2014, dual criminality is no longer a prerequisite for MLA that does not (i) involve coercive measures, (ii) attract penal sanctions for non-compliance, or (iii) adversely affect the property rights of individuals.

Dual criminality is also no longer required for MLA pertaining to foreign tax evasion offences committed in jurisdictions that have an Avoidance of Double Taxation Agreement, International Tax Compliance Agreement or an Exchange of Information arrangement with Singapore (MACMA § 20). Even without a relevant tax agreement, dual criminality is also not needed for several other elucidated types of assistance (§§ 21–22).

Finally, even when a particular offence is not set forth in the MACMA, the law includes a threshold “catch-all” provision permitting assistance to be rendered in relation to any foreign offence that corresponds to any serious offence carrying a maximum sentence of at least four years under Singapore law. This significantly reduces the scope of dual criminality from being a bar to the provision of assistance under the MACMA.

3. *Other grounds for refusal*

Other refusal grounds cited by Initiative members include essential interests and public order concerns, jurisdictional issues, double jeopardy (*ne bis in idem*), interference with an on-going investigation or prosecution,¹⁷ and the nature or severity of punishment (see example in box 6).

Two jurisdictions (Indonesia and Sri Lanka) also explained that a responding jurisdiction putting excessive restrictions on how assistance may be used undercuts its ability to effectively utilize international cooperation.

Box 6. Case study: The issue of capital punishment in MLA requests submitted to Australia

The Australian government has a long-standing policy of opposition to the death penalty, and Australia’s MLA framework reflects this opposition. The Australian Mutual Assistance in Criminal Matters Act requires the attorney general or his or her delegate to generally refuse to provide international assistance where an individual has been arrested or detained on suspicion of having committed, has been charged with, or has been convicted of an offence punishable by the death penalty. An exception can be made if the foreign jurisdiction provides an undertaking that the death penalty will not be imposed or that if the death penalty is imposed, it will not be carried out.

In one matter, the Australian International Crime Cooperation Central Authority (ICCCA) found that the offences relevant to an incoming MLA request were punishable by death in the requesting state. Australia was unable to obtain an assurance from the requesting state that if the requested assistance were provided the alleged offender would not face the death penalty (or that the death penalty would not be imposed). As a result, Australia was unable to provide the requested assistance.

¹⁷ This ground often results in a delay of the requested assistance, rather than an outright denial. For example, Australia explained in its response to the questionnaire that an executing agency may provide copies of evidence (instead of original evidence) until such time as the Australian prosecution has concluded.

II. BEST PRACTICES FOR MLA IN CORRUPTION CASES

A. Building networks and relationships

Success in obtaining international assistance in a corruption case begins even before any international contact is made regarding a particular request. Successful interactions with foreign counterparts depend on relationships that are built up over time. A 2012 report on MLA explains,

Effective MLA between countries is often heavily based on trust and effective communication between countries regarding how the requesting country will use the information and whether it will reciprocate in later requests. Therefore, one of the most important ways to reduce the long delays that sometimes occur in the MLA process is by building strong relationships and communication between law enforcement officials in different countries and between officials of different countries' central authorities. (OECD 2012, 29)

When officials have not invested the time and energy to build relationships with their counterparts in other jurisdictions, misunderstandings can easily arise during the MLA process. On the other hand, when officials know each other, they can easily pick up the phone to iron out issues before they become a crisis. Two Initiative members (Hong Kong, China; Vietnam) noted that a lack of trust or sufficient personal ties between jurisdictions may be an obstacle to MLA in some instances. Another member indicated the difficulties it has had obtaining responses to MLA requests from jurisdictions in Western Europe and opined that this was due to a lack of trust.

The good news is that there are myriad ways for counterparts in different jurisdictions to come to know each other and build these relationships. For jurisdictions that have bilateral MLATs with each other, or that regularly engage in international assistance under multilateral instruments, regular bilateral meetings can give authorities the opportunity to get to know each other and understand each other's legal and procedural frameworks for MLA (see part III.C.1 below). When such relationships do not already exist, law enforcement official meetings, such as those held under the auspices of the ADB–OECD Initiative, create opportunities for networking and exchanges of information and best practices (see part III.C.2 below; see also OECD 2012, 30–31). The meeting of the OECD Global Law Enforcement Network in December 2015 provided similar opportunities.

The process of information exchange itself should also not be forgotten. Some jurisdictions have found it helpful to have their own officials present during the execution of a request for MLA (see OECD ACN 2017). Such interactions enable the executing authority to obtain immediate answers to questions that may arise during execution and enable the requesting jurisdiction to ensure that the evidence obtained will be useable in the requesting jurisdiction. Perhaps just as importantly, however, they allow authorities from the two jurisdictions to learn from working together. Similar advantages arise from joint intelligence operations.

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. A request is most likely to be executed in a way that responds to the need if it is clear in both substance and form (OECD 2012, 37). As discussed in part I.F.1 above, a failure

to include necessary information and supporting documentation may delay a response or result in no response at all.

The problem is that personnel in many jurisdictions lack the expertise or resources (including language skills) to prepare the strongest possible request for assistance. Both requesting and receiving states can strengthen the MLA system by providing appropriate training to individuals involved in the MLA process as well as guidance regarding the legal frameworks that apply to MLA and procedural best practices for preparing strong requests.

1. Training for individuals preparing requests

Five Initiative members indicated a need for individuals involved with MLA to be properly trained on how to prepare successful requests (Australia; Bhutan; Malaysia; Sri Lanka; Vietnam). In particular, several Initiative members highlighted the challenges involved in preparing an MLA request that contains the information needed to be successful. One jurisdiction (Malaysia) highlighted that one of the most serious obstacles to its preparation of successful requests for MLA is that its investigators and prosecutors fail to collect sufficient information at the domestic level for the request to be successful in the jurisdiction to which it is submitted.

Investigators and prosecutors are important, not only in ascertaining the facts of a case that should be included in a request, but also often in drafting the request itself. They may be required to prepare a first draft to submit to the central authority of their jurisdiction, or they may even be required to prepare and approve the final request. However, investigators and prosecutors may not be knowledgeable about the peculiarities of the law of the jurisdiction from whence they seek assistance. Even at the central authority level, officials who do not regularly deal with MLA requests (especially those related to corruption crimes) may not be attuned to the thorny issues that may arise in such cases, such as the need to link shell companies to public officials or the use of technology to hide laundered funds.

Notably, five Initiative members explained that they have limited experience with MLA because of their size (Bhutan; Cook Islands; Fiji Islands; Philippines; Sri Lanka). When sending a request for MLA is an exceptional experience, officials may very well lack the tools needed to prepare a complete and sufficient request. Training can help fill in knowledge gaps, but any training must also include access to resources officials can reference at a later time when faced with particular issues.

To be successful, training and resource programmes on international assistance should address (at a minimum) the following topics:

- the legal framework for obtaining and rendering MLA in the jurisdiction, including multilateral and bilateral MLATs and domestic law;
- resources for learning about other jurisdictions' laws and procedures, including individuals and agencies that are available to provide assistance;
- procedures that govern the drafting and approval process for outgoing requests for international assistance;

- stylistic best practices for drafting requests to ensure that all necessary information is clearly elaborated and presented in a clear and understandable way, including templates that may assist in this process¹⁸;
- procedures that govern the prioritisation, transmission, and execution process for incoming requests for international assistance;
- the use of technology to assist in international cooperation (e.g., web-based forms, secure document transmission systems, case tracking software, and tele- and video-conferencing);
- relevant communication networks both within and without agency (and both domestic and abroad) to obtain appropriate assistance and follow up.

Importantly, any programme should address not only strategies and procedures for outgoing but also incoming requests (see further discussion in section D below).

Ten members of the Initiative indicated that they provide at least some training to individuals involved in the MLA request process (Australia; Fiji; Hong Kong, China; Indonesia; Japan; Korea; Macao, China; Nepal; Singapore; Thailand), although efforts vary greatly, both in terms of scope and target audience. For example, the MLA unit in the Department of Justice (DOJ) of Hong Kong, China, is staffed with 13 lawyers specialised in MLA procedures, and they receive specialised training on MLA procedures and best practices. They also have access to templates and precedents to assist them in their work and periodically attend local and overseas training seminars and conferences on MLA topics. In addition, the MLA unit provides periodic seminars on MLA to counsel of the Prosecution Division of the DOJ and investigators of law enforcement agencies, including the Independent Commission Against Corruption (ICAC). Another jurisdiction, Japan, not only provides basic lectures on MLA to all prosecutors in the early stages of their careers, but also holds an annual conference that gathers prosecutors throughout the nation who deal with MLA, so that they can share information and best practices, as well as discuss challenges. Korea's Ministry of Justice also provides training to prosecutors on the MLA process.

The other 21 jurisdictions do not appear to provide any training on international cooperation issues, although a few of them are exploring the possibility of offering such training in the future. The lack of training in many jurisdictions is likely due to a combination of available resources and likelihood of involvement in international crimes. For example, small and micro jurisdictions may have just a limited handful of investigators or prosecutors who work on the entire gamut of issues.¹⁹ These jurisdictions may benefit from sharing best practices and training opportunities with other similarly situated jurisdictions—

¹⁸ The following example illustrates the specificity that may be needed for a successful MLA request:

[W]hen requesting a search of data, the requesting country should submit detailed search criteria to guide those carrying out the request. . . . To the extent possible, the criteria should include an exhaustive list of search terms and detailed descriptions of files, corporate names and other specific criteria for those carrying out the request to follow. In some cases where banking information is solicited, the initial request could be limited to documents pertaining to the opening of the bank account and the account statements covering a pre-defined period and later requests could cover additional details about the account. . . . [I]t may also be possible to update the search criteria based on information learned during the ongoing investigation, further ensuring that the MLA response will be of the scope that is needed. (OECD 2012, 37–38)

¹⁹ For example, the Cook Islands Solicitor General's Office has just five full-time lawyers who handle everything from criminal prosecutions to civil litigation to MLA to legislative drafting.

whether as part of ad hoc bilateral or multilateral training seminars or as part of regional networks such as the ADB–OECD Initiative. International partners may also provide valuable assistance.

Box 7. A best practice: Training on MLA practices for Singaporean authorities

Singapore’s central authority conducts regular training sessions for law enforcement officers, industry regulators, policy makers, and legal officers to sensitise them on the options available for dealing with transnational crimes. One goal of these training sessions is to help officials learn about the processes and procedures of MLA, so that relevant agencies can provide appropriate facts and information to facilitate the drafting of good quality MLA requests.

All newly recruited investigators handling white-collar crime (including corruption, money laundering, and fraud) receive training on MLA and extradition processes, procedures, and law. In addition, prosecutors (especially those who handle cases involving commercial crime and corruption) attend these training sessions, so that they can become aware of the option to use MLA procedures to obtain evidence abroad to support their cases.

A few examples of recent training sessions on this topic include the following:

Activity	Participating agency	Location	Date(s)
International Law Seminar – International Co-operation in Criminal Matters	LEAs and other civil servants who deal with international co-operation issues	Civil Service College	21 Oct. 2015
Practitioners’ Workshop on MLA Requests to Law Enforcement Agencies and Prosecutors	AGC prosecutors	AGC	18 Nov. 2014
International Law Seminar – International Co-operation in Criminal Matters	LEAs and other civil servants who deal with international co-operation issues	Civil Service College	14 Oct. 2014
Presentation on MLA and Extradition Processes and Procedures	LEAs from CAD and CPIB; AGC Prosecutors	AGC	26 Sept. 2014
Presentation on MLA and Extradition Processes, Procedures and Policies	MAS officers	MAS	9 Dec. 2013

For example, Thailand suggested that OECD- or UNODC-supported capacity building programmes would enhance its ability to effectively engage in international assistance. UNODC provided one such training programme in Fiji over the 2005–2006 period. Among other things, the seminar addressed best practices for drafting MLA requests and applying for international restraining orders. The seminar also included a moot court that Cook Islands authorities characterised as “extremely beneficial to [building] knowledge and skill” in their response to the questionnaire; Cook Islands authorities recommended that the seminar be offered every five years in order to reach more personnel and cover emerging topics.

2. *Guidance for preparation of requests*

Even if officials are appropriately trained regarding how to prepare successful MLA requests, that knowledge will quickly be lost if the officials do not engage in this process regularly. Therefore, it is critical that officials who may be involved in MLA requests have access to resources they can consult as needed. Nonetheless, most Initiative members make very few written resources available for consultation during the drafting of requests, such as template or model request letters, literature on drafting techniques, or information about foreign legal requirements written in the language of the drafting official. Only six members of the Initiative—Australia, Cook Islands, Indonesia, Japan, Nepal, and Singapore—indicated that they have developed templates for officials to use when drafting outgoing requests for MLA and provide information about the legal requirements of foreign jurisdictions.

A knowledgeable central authority can be an invaluable resource to investigators and prosecutors, both in relation to outgoing and incoming requests. In relation to outgoing requests, the central authority can help to ensure “that requests contain sufficient evidence and information to comply with the demands of the requested state” (ADB & OECD 2007, 61). In this regard, a best practice would be for the central authority to have a website (perhaps an internal intranet site) that law enforcement officials could reference for information about preparing outgoing requests—including templates for requests, information about the requirements of other jurisdictions, and even links to other jurisdictions’ central authority websites.

In relation to incoming requests, the central authority is often the “visible point of contact for other countries that are seeking assistance” (ibid., 65). This part of the central authority’s role underscores the importance of the central authority having an Internet website in a widely used language (such as English) that contains the information that its own law enforcement officials, as well as those from other jurisdictions, will need to file a successful request for assistance. This includes the following information:

- the legal framework supporting international assistance in the jurisdiction, including treaties to which the state is a party and relevant laws governing assistance in the absence of a treaty (such as based on reciprocity);
- legal and procedural requirements for providing international assistance, including (i) grounds of mandatory or discretionary refusal, (ii) required form of a request, (iii) supporting information or documentation needed, (iv) languages accepted, and (v) the agency to which a request should be directed;
- sample documents, such as templates that another jurisdiction could use to prepare a request;
- procedures for submitting an urgent request, such as information about submitting a request via email, facsimile, or a secure web system, such as Interpol; and
- contact information for appropriate individuals at the central or other relevant authority.

Eighteen members of the Initiative currently have webpages in English (Australia; China, PR; Fiji Islands; Hong Kong, China; Japan; Korea; Kyrgyzstan; Macao, China; Malaysia; Pakistan; Palau; Papua New Guinea; Philippines; Samoa; Singapore; Sri Lanka; Thailand; Vietnam).²⁰ However, these webpages vary greatly in terms of what information they contain regarding MLA procedures. Some webpages contain little more than the name of the agency and its contact information.

²⁰

These websites are listed in Annex C.

Box 8. A best practice: Resources for Australian officials preparing and submitting MLA requests

Australia case officers have access to templates to assist in drafting MLA requests. The Australian International Crime Cooperation Central Authority (ICCCA) and the Commonwealth Director of Public Prosecutions (CDPP) review and update the templates at least annually to take account of changes in domestic legislation, implementation of new treaties, and procedural requirements of Australian or foreign agencies.

In addition, Australia maintains country files that contain specific information about processes and requirements in particular jurisdictions. Case officers drafting requests for MLA also consult relevant legislation and other sources, such as Australia's Mutual Assistance in Criminal Matters Act of 1987 (MACMA), Foreign Evidence Act of 1994, and bilateral and multilateral treaties. They also may seek guidance from Australian Department of Foreign Affairs or Australian Federal Police officers who are posted in the foreign jurisdiction.

New ICCCA case officers receive individual training from an experienced officer about MLA procedures and specific drafting requirements and resources. They are also encouraged to attend regularly offered internal training sessions on the MLA process, as well as external training events.

The MACMA provides that the attorney-general or his or her delegate should make any outgoing MLA request. In practice, the assistant secretary of ICCCA is generally delegated to handle outgoing requests. Accordingly, ICCCA has developed standard operation procedures (SOPs) on the appropriate clearance and approval process for all outgoing requests.

Some jurisdictions that do not provide such comprehensive guidance on preparing requests may simply lack the capacity to do so. For example, one jurisdiction (Malaysia) indicated that it has a need for capacity building resources to assist its officials in learning how to draft MLA requests and suggested that templates and overviews of foreign jurisdiction legal and procedural requirements would be helpful. Members of the Initiative may want to work together, either collectively or in partnership with neighbouring jurisdictions, to develop templates for preparing MLA requests and to collect information about each other's laws and procedures. International organisations may also provide resources to assist in this process. Consider the following example:

Box 9. The UN's MLA Request Writer Tool

The UN Office on Drugs and Crime (UNODC) has developed a MLA Request Writer Tool "to assist States to draft requests with a view to facilitate and strengthen international cooperation" (UNODC 2016). UNODC explains,

Step by step, the MLA Tool guides the casework practitioner through the request process for each type of mutual assistance, using a series of templates. Before progressing from one screen to the next, the drafter is prompted if essential information has been omitted. Finally the tool consolidates all data entered and automatically generates a correct, complete and effective request for final editing and signature.

The tool is available in Bosnian, Croatian, English, French, Montenegrin, Portuguese, Russian, Serbian, and Spanish, although translations to other languages are possible upon request. The tool is an html-based stand-alone application that does not require internet connectivity to operate, making it useful even for those in remote locations.

C. Consultations in relation to MLA requests

Article 48 of UNCAC encourages state parties to "cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat [corruption] offences," in particular, by taking measures to

... enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by [UNCAC], including, if the States Parties concerned deem it appropriate, links with other criminal activities.

...

The consultative process is an absolutely critical element of effective international cooperation. At the pre-request stage, consultation can (i) permit the exchange of preliminary information and intelligence that can support a formal request; (ii) facilitate review of a request by the recipient jurisdiction to allow for the identification and correction of “fatal flaws” (see OECD 2012, 33); (iii) alert the recipient jurisdiction of the request in advance of its receipt, so that it can ready appropriate resources; and (iv) build relationships of trust prior to execution.

Law enforcement officials have important roles to play at each stage of this process. For example, they may be able to engage in preliminary exchanges of information to support more formal MLA requests, review preliminary requests, or alert their counterparts abroad that a request is underway. When such interactions are allowed, these exchanges may also help law enforcement authorities down the road when they seek to follow up on requests they have previously made, since they will have already developed contacts among their law enforcement counterparts abroad.

Even after a response is received, law enforcement authorities may be key to initiating consultations with the other jurisdiction following the submission of a request if it is not clear. At least six members of the Initiative (Australia; Hong Kong, China; Indonesia; Korea; Malaysia; Sri Lanka) have engaged in consultation before denying a request for assistance. Depending on the law of the responding state, these consultations may involve the central authorities or may also include other law enforcement authorities. In either case, reaching out to seek consultation before the outright denial of a request helps avoid unnecessary delay and misunderstandings.²¹ Following the receipt of information in response to a request, further consultations may be needed if the material received is not sufficient or in a form admissible in court.

Regardless of the level of consultation allowed or required by law, investigators and prosecutors play an important role in following up on MLA requests. Even if they cannot follow up with their counterparts abroad because of legal or diplomatic considerations, investigators or prosecutors who have initiated MLA requests can at least follow up with their own central authority, helping to keep the central authority focused on obtaining the information needed.

D. Transmission and prioritisation

It may seem to some jurisdictions that when they submit a request for MLA that it enters a “black hole” never to return (see discussion in part I.D above). Because of the number of government bodies that may be involved in requesting or executing a request (including central authorities, judicial authorities, investigators, prosecutors, and counterparts abroad), clear procedures are essential to ensuring that requests are appropriately transmitted and prioritised (OECD 2012, 28).

²¹ At least one state’s domestic law requires consultation. Section 141 of Bhutan’s Anti-Corruption Act requires the Anti-Corruption Commission to inform a foreign state submitting a request for assistance of any reason for either not executing the request forthwith or delaying the execution of the request.

Most jurisdictions that are members of the Initiative have designated one central authority to submit and/or receive all incoming requests for MLA (see Annex C). Incoming requests are often subject to a vigorous vetting procedure, even before they are transmitted to the authorities that can execute them, as shown by the case study in Box 10.

Box 10. Case study: The MLA review and execution process in Macao, China

When Macao, China's central authority (PPO-Macao) receives an MLA request, it first examines the request for compliance with Macao's legal and procedural requirements by considering the following:

- whether the request was written in an appropriate language;
- whether an original letter of request was provided;
- whether the requesting authority had the power to issue the request;
- whether the names of the requesting and requested authorities are correct;
- whether the name(s), address(es) and other identification information of the person(s) involved were provided;
- whether the request includes a summary of the case and specific issues of the request; and
- whether the requesting party indicated relevant legal grounds for executing the request.

If the letter of request contains any missing parts or errors, PPO-Macao asks the requesting state to amend the request.

After PPO-Macao has approved execution of a request, it notifies its Office of Chief Executive (OCE) by submitting the original request, along with PPO-Macao's analysis. OCE can then grant an order to "agree and accept the request," after which the request and accompanying documents are sent to the Office of the Commissioner of the Ministry of Foreign Affairs (MFA). If MFA does not issue any instructions based on national defence, external relations, sovereignty, security or *ordre public* within 15 working days, the request may be executed. PPO-Macao then delivers the request to its Criminal Proceedings Office or to the court for execution. After execution, PPO-Macao send the results to the requesting state.

Macao's central authority has special procedures for requests that are deemed urgent by the requesting authority or PPO-Macao.²² Urgent requests may relate to (among other things) provisional arrest of a suspect, search or seizure, safe-keeping of evidence, or gaining information or intelligence about the whereabouts of a suspect and may be sent electronically.²³ Upon receiving such an urgent request, PPO-Macao will notify the OCE immediately and will prioritise the request over other work. At the same time, PPO-Macao starts the procedure of notifying the Ministry of Foreign Affairs, in accordance with the law. Generally urgent requests may be completed in a shorter time (depending on the complexity of the case). Very urgent requests, such as those involving detainees, are handled immediately. Finally, the MLA Law requires PPO-Macao's staff to keep a close watch on outstanding requests and to attempt to ascertain any reasons for delay. PPO-Macao is required to expedite execution of a request whenever possible.

A related issue is how central and other receiving authorities prioritise incoming requests to ensure that they are handled expeditiously. Unlike Macao, China, most jurisdictions do not have clear procedures for prioritising urgent requests. In fact, most jurisdictions in the Initiative do not have procedures for

²² Article 30 of Law no. 6/2006 on Mutual Legal Assistance in Criminal Matters (MLA Law).

²³ Article 6 of Law no. 3/2002 on Notification Procedures for Mutual Legal Assistance in Criminal Matters.

prioritising requests at all. The central or executing authority may prioritise requests based on an ad hoc basis (Bangladesh; Bhutan; Fiji; Indonesia; Japan; Korea; Nepal; Philippines; Sri Lanka) or based on international treaty (Hong Kong, China; Indonesia). For example, Hong Kong, China, authorities have explained that, in satisfaction of agreement obligations, requests from agreement partners take priority over requests from non-agreement jurisdictions; for requests from two or more agreement partners, the priority depends on the urgency of the request. In Australia, the case officer prioritises incoming requests by evaluating factors such as whether there is a trial date or other critical deadline set for provision of the assistance, the seriousness of the alleged offending, on-going operational matters (for example, covert action in the requesting state), and the resources likely to be required to execute the request. Some jurisdictions adhere to a “first come first served” mechanism of prioritising incoming MLA requests, although this may be subject to modification in certain circumstances. For example, Malaysia indicated that in the past it has deviated from this general principle in cases of emergency.²⁴ However, the requesting jurisdiction must flag the reason for urgency in its request, so that the nature of the urgency can be assessed and the case officer can prioritise this accordingly.

Law enforcement authorities may feel that they have little engagement in the process of reviewing and prioritising incoming requests. However, they may still play important roles in providing information and follow-up. First, if a law enforcement authority has been in contact with the requesting state (for instance, during an exchange of preliminary information) the authority may be able to assist the central authority in understanding the request and, when necessary, its urgency. A law enforcement authority may also be able to assist the requesting authority by following up with the central authority of its jurisdiction. If the law enforcement authority has good contacts in the central authority office, it may be in a better position to find out what is going on than the requesting authority and its efforts to move the request along can engender goodwill among counterpart authorities in different jurisdictions. Finally, if the law enforcement authority is likely to be the agency that executes the request, it can engage in preliminary “behind the scenes” preparatory activities to ensure that the request is expeditiously carried out once it has been transmitted to it. Of course, the ability of law enforcement authorities to engage in any of these activities depends on the legal and procedural frameworks under which they operate.

In some jurisdictions, a law enforcement authority may even be able to directly receive a request for MLA. For example, Bhutan’s law allows its Anti-Corruption Commission (ACCB) to directly receive MLA requests relating to corruption cases (see box 11 below). Since the ACCB also has the authority to execute requests, this cuts down on the time needed for an internal review process. For this system to work effectively, however, the central authority’s website must indicate that requests relating to corruption offences should be sent to this other office (preferably including a link to an English version of the anti-corruption authority’s website, which contains detailed information about submitting requests). Otherwise, requests may get misdirected and lost. In addition, the anti-corruption commission and the central authority must closely coordinate their efforts to avoid duplication and to collect accurate data on MLA requests received in the jurisdiction.

Box 11. An anti-corruption commission acting as the central authority for corruption cases

ACCB is Bhutan’s receiving *and* executing authority for requests relating to corruption offences. ACCB works in close consultation with the Ministry for Foreign Affairs and the Attorney General’s Office to determine whether an incoming request can be executed. Based on its legal review, ACCB will either execute the request or inform the requesting state of the reason it either cannot execute the request or must delay execution of the request.

²⁴ Its current prioritisation process is in a state of flux, however, since Malaysia’s cabinet approved a new mechanism of handling informal information on mutual assistance in early 2016.

E. Monitoring requests

Closely related to the issue of efficiently transmitting and prioritising requests is the need to monitor requests—both incoming and outgoing. Several Initiative members undertake regular efforts to follow up on requests involving their jurisdiction. For example, Pakistan’s National Accountability Bureau issues monthly reports on all outstanding incoming and outgoing requests. Hong Kong, China’s central authority circulates progress reports monthly to team leaders and counsel to monitor the progress on their cases. A best practice for communications of this type, however, is to bring together both law enforcement and central authorities to discuss their outstanding requests and needs with each other and to address any problems that may be occurring in the review, transmission, and execution process.

Modern technology permits the use of electronic platforms for managing incoming and outgoing MLA requests. This could be an electronic document that is shared among relevant agencies or could be a more sophisticated software package that allows for the compilation of statistics and data about cases and trends over time. Several members of the Initiative that responded to the questionnaire indicated that they have some type of case management system for incoming MLA requests. For example, a software package maintained by Bangladesh’s Anti-Corruption Commission tracks all relevant data to any incoming request, including the source of the request, the level of review completed in Bangladesh, the appointment of executing and supervising officer, the submission of a report regarding execution to the ACC and ACC’s final decision on whether the request can be executed. Fiji; Hong Kong, China; Japan; Macao, China; and Malaysia have similar case management systems for incoming requests.

Box 12. Best practices: Case management in Australia and Singapore

Australia. Australia’s case management system was designed specifically for monitoring casework, including MLA requests. The system allows individual users to create cases and record details about each case—including the type of assistance requested, the offence type, and actions taken. Individuals can also set reminders for future actions to be taken and search current and previous requests. Access to the database is limited to International Crime Cooperation Central Authority (ICCCA) officers and selected Attorney-General’s Department officers requiring access to case work data.

Singapore. Singapore relies on technology to support the processing of MLA requests. In addition to having an electronic case management system, the Enterprise Legal Management System (ELMS), the central authority has developed standard operating procedures, guidelines on timelines for processing requests, and monitoring mechanisms to prioritise and manage the inbound and outbound MLA requests. When a case is flagged as urgent in ELMS, it is marked and displayed at the top of each officer’s ELMS desktop. The reason for urgency and the required timeline are stated within.

An enhanced module for the International Legal Co-operation Team (ILCT) was launched on ELMS in April 2015. This module automatically captures the status and progress of all MLA and extradition matters handled by ILCT, so that users have a holistic view of the progress of each case. Specific enhancements included in the module include the ability to generate case reports, status reports, and reminder alerts to allow team leaders from the central authority to closely monitor requests. The module also includes new functions and data fields to maintain standardisation and consistency among data captured on ELMS. This aids greatly in the maintenance of statistics, such as the turnaround times and the number of requests relating to particular offences.

In other jurisdictions, case management occurs primarily via in-person contacts. For example, Indonesia’s central authority hosts an inter-agency annual meeting with all relevant domestic and foreign authorities to discuss outstanding MLA requests. Similarly, Sri Lanka’s central authority monitors incoming requests by seeking periodic updates from the executing agencies.

The ideal approach to case management combines these two approaches. Having a centralised electronic record of incoming and outgoing requests provides a way for individuals from the various agencies with an interest in the request to track its status. On the outgoing side, this could include the central authority that issued the request as well as the investigator or prosecutor who ultimately needs the information or evidence. On the incoming side, this could include the central authority that is in primary communication with the requesting state as well as the individuals or agencies that are undertaking actions to fulfil the request. It can also prevent a loss of momentum or knowledge if personnel changes occur in the course of a case.

At the same time, though, no spreadsheet or software system can replace individual accountability when it comes to ensuring that a request is followed through. For the MLA process to work, the individuals involved in the process should engage in regular discussions, both in their respective agencies and on an interagency basis, to make sure requests do not fall through the cracks. It may be helpful for agencies involved in MLA to set forth a delegation of responsibility, so that the various players in the process are aware of their duties at each stage of the process—and who they are accountable to if they do not fulfil those responsibilities. For example, in some cases, the central authority or MLA counsel for the case manages follow up of outgoing requests for MLA (e.g., in PR China; Hong Kong, China), while in other cases the prosecutor handling the case is responsible for follow up (see ADB & OECD 2007, 62). If neither authority recognises this as its duty, follow up may not occur and the assistance may be delayed.

III. PRACTICAL TOOLS FOR FACILITATING EFFECTIVE MLA

A. Direct law enforcement cooperation

Submitting a formal MLA request and obtaining a response can be a time-consuming, bureaucratic process. Accordingly, law enforcement agencies have developed increasingly more means of directly reaching out to counterparts in other jurisdictions to obtain informal assistance under certain circumstances. Often, such cooperation occurs through working level contact points in a counterpart agency, based on reciprocity and good faith or through more structured memorandums of understanding (MOUs) or memorandums of cooperation (MOCs). Members of the Initiative who view direct cooperation favourably noted that it is often more efficient than traditional MLA, which can lead to more immediate prosecution of pending cases.

Generally, law enforcement agencies use such informal cooperation mechanisms to obtain information and intelligence prior to engaging in the formal MLA process. Accordingly, direct cooperation is generally used only to exchange background information or other information relating to non-coercive measures, although the type of information that may be provided varies significantly among jurisdictions. Some examples of the types of assistance that may be rendered include the following:

- Legal advice about the process and procedures for obtaining MLA (Fiji; Thailand);
- Preliminary information about a case (Thailand);
- Company records (Singapore);
- General information about persons or companies (Hong Kong, China; Malaysia);
- Preservation of documents (India);
- Information needed to facilitate a witness interview (Hong Kong, China; Singapore);
- Information about the ownership of property (Singapore);
- Exchanges of information between FIUs (India; Japan);
- Exchanges of investigative findings (Singapore);
- Identification or seizure of bank accounts (India; Singapore);
- Assistance locating a witness or suspect through intelligence means (India; Malaysia);
- Assistance with cross-border police investigations or operations (Macao, China; Singapore);
- Interviews with witnesses conducted on a voluntary basis (Hong Kong, China);
- Information about the travel plans of an accused person (Bhutan); and
- Recording of a witness statement (Singapore).

The law enforcement agencies that can engage in such direct cooperation in a particular jurisdiction depends on the laws, regulations, and practices of the state. Five members of the Initiative (Bhutan; Hong Kong, China; Indonesia; Malaysia; Thailand) reported that anti-corruption bodies from their jurisdictions

have used direct cooperation with counterparts in other jurisdictions as a way to obtain information or intelligence in a corruption case. For example, the Anti-Corruption Commission of Bhutan (ACCB) has engaged in direct communications with Thailand's National Anti-Corruption Commission (NACC) per provisions in a bilateral agreement between the two governments concerning the investigation and instruments of crime. On one occasion, ACCB asked NACC to provide information related to an embezzlement case involving a Bhutanese public servant working in Thailand in the year 2013. NACC's cooperation and assistance enabled ACCB to successfully and timely conclude the case. Similarly, Indonesia's anti-corruption commission (KPK) has directly coordinated with a number of counterpart agencies abroad without the involvement of Indonesia's central authority. The Alstom/Tarahan case was successfully concluded as a result of such direct cooperation, as were other cases involving the repatriation of fugitives from abroad.

Box 13. Case example: Anti-corruption agency cooperation

A company's supply manager was convicted in country C of wire fraud, money laundering, and other corruption offences, sentenced to 12 months + 1 day imprisonment, and ordered to pay approximately US\$ 4.46 million in restitution. Singapore's Corrupt Practices Investigation Bureau (CPIB) learned about the conviction through a media article and reached out to its counterparts in country C in order to conduct joint investigations on a related bribery allegation. These joint investigations led to CPIB obtaining the following information, which it was able to use in a subsequent court case in Singapore:

1. full particulars about the supply manager and his wife;
2. a copy of the manager's passport and travel records;
3. a business profile of company A in the foreign jurisdiction;
4. copies of quotations submitted by Singapore manufacturers to company A;
5. a record of payments made to Singapore manufacturers based on purchase orders;
6. copies of email correspondence relating to bribe payments related to the Singaporean manufacturers;
7. documentary evidence tracking illegal profits;
8. copies of an interview with and recorded statements by the manager; and
9. documentation relating to the manager's conviction in the foreign jurisdiction.

Based on this evidence, law enforcement authorities in Singapore were able to convict two individuals of bribery offences related to the supply manager's activities. Another three individuals have been charged. This was in spite of the fact that critical witnesses were in different jurisdictions.

The two jurisdictions' close cooperation meant that much of the information could be shared without the need for authorities to make formal MLA requests. The quick pace of the investigations and prosecution prevented the dissipation of the criminal proceeds in the foreign jurisdiction.

In addition to direct cooperation between the investigative units of anti-corruption authorities, other, more general law enforcement agencies are often well positioned to assist in international cooperation in relation to corruption cases. For example, the FIU is another law enforcement agency that is in a unique position to engage in direct cooperation in relation to corruption cases, or at least in relation to suspicious financial transactions. Twenty-two members of the Initiative are members of the Egmont Group.²⁵ The Egmont Group's Secure Web (ESW) allows FIUs in different jurisdictions to immediately and confidentially exchange of information about suspicious financial transactions. For example, Japan related that its FIU

²⁵

See table 4 in subsection C.2 below.

provided spontaneous information relating to one case in 2012 and received information about another case from a foreign FIU in 2013. Singapore’s experience with FIU exchanges illustrates the effectiveness of this form of cooperation:

Box 14. FIU exchanges and on-going investigations in Singapore

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.

Other, law enforcement agencies that may be involved in informal, direct cooperation efforts may include police forces, tax authorities, or prosecution authorities. The Initiative’s LEN can encourage such cooperation by facilitating contacts between jurisdictions. For example, if a law enforcement agency seeks assistance from another Initiative member, the body can reach out to its counterparts in the Network. Those counterparts can assist the requesting body to identify the appropriate law enforcement agency to assist with its request and may even be able to facilitate the contact.

Box 15. Case example: Coordination of multi-jurisdictional money laundering investigation to prevent the dissipation of assets

In February 2014, Singapore received an MLA request in relation to person P, the director of a state organisation in country C. P was alleged to have embezzled funds amounting to approximately US\$ 38.7 million, some of which were held in Singapore bank accounts. While Singapore authorities were still reviewing the request, in May 2014, country C informed Singapore's Commercial Affairs Department (CAD), part of the national police force, that a third country D was also investigating P in relation to funds held in accounts there.

In order to prevent the dissipation of funds by P because of the unilateral actions of any of the jurisdictions, a joint operation was mounted and coordinated actions were made by three jurisdictions to seize P's assets simultaneously. CAD seized about US\$ 13.28 million of suspected criminal proceeds in Singapore. Singapore's investigation into domestic money laundering offences is on-going, but the assets in Singapore at the time the investigation was commenced were secured.

Nonetheless, in spite of the many advantages of direct law enforcement cooperation, members of the Initiative do not regularly use this tool for international cooperation. Hong Kong and Singapore were the only two jurisdictions that indicated that they regularly use direct cooperation measures. Japan indicated that its FIU uses direct cooperation about six times per year on average. Other jurisdictions engage in direct cooperation much less frequently: Bhutan's Anti-Corruption Commission has done so only once, and Fiji has done so "not very often." Seven jurisdictions that responded to the questionnaire (Australia; Bangladesh; Fiji; Macao, PR China; Nepal; Philippines; Sri Lanka) indicated that they have never used direct law enforcement cooperation measures in a corruption case.

In some jurisdictions (such as Australia), direct cooperation to obtain admissible evidence is simply not allowed under the law; requests for international cooperation in corruption cases must always go through the central authority. In other jurisdictions, direct cooperation may not be considered a serious option because the information obtained in that manner is often inadmissible in court. Singapore was the only Initiative member that indicated that it is able to introduce information obtained through direct cooperation in court to support a conviction, insofar as this is permissible by domestic law. In other jurisdictions, direct cooperation must generally be followed by a formal MLA request in order to obtain useable evidence.²⁶

When legally allowed, though, direct cooperation can often lead to valuable intelligence to further an investigation, for example, by helping to freeze assets, identify witnesses, or learn about the procedure for filing a formal MLA request. Nonetheless, it is not a panacea:

Direct communication at the law enforcement level is likely the quickest means of communicating information, but it is not without drawbacks. It may be unworkable for countries with numerous law enforcement authorities, since a requesting state may not know whom to contact. The law enforcement and prosecutorial authorities in the requested state may not be informed about factors that affect the decision to cooperate, such as the political relations between the requesting and requested states, the level of civil and human rights in the requesting state etc. The economies of scale and concentration of knowledge that central authorities offer may

²⁶

Bhutan; Hong Kong, China; Macao, China; Malaysia; and Thailand indicated that information obtained through direct law enforcement cooperation is not admissible in court absent a formal MLA request.

be lost. There is an increased risk of duplicate requests being made in the same case. Some of these concerns could be lessened if a central authority exists in parallel to direct communication between law enforcement. However, this solution is effective only if the law enforcement agencies involved diligently keep the central authorities apprised of every request and development. (ADB & OECD 2007, 67)

In this regard, the LEN is a useful tool. In order to avoid duplication of efforts, the authority in one member of the Initiative could directly contact its law enforcement counterpart in another member of the Initiative. If the counterpart were not the right person to assist with a request, that counterpart could assist by forwarding the request to the right agency or at least informing the requesting state of where it should go to obtain the required assistance.

B. Spontaneous exchanges of information

Historically, information relating to a criminal case was only shared with other jurisdictions upon request. However, 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.²⁷ For example, UNCAC article 46 provides,

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. . . .

UNODC (2013, 4) has explained that such spontaneous transmissions of information have “repeatedly been considered in international forums as a good practice that reflects the cooperation between States” and has recognized that a number of state parties to UNCAC engage in such transmissions.²⁸

Law enforcement authorities are critical to such spontaneous exchanges of information, especially because in some jurisdictions the central authority either does not normally exchange spontaneous information with another jurisdiction (e.g., in Hong Kong, China) or is expressly prohibited from spontaneously providing information to another jurisdiction (e.g., in Australia). For example, although Hong Kong, China’s central authority does not normally spontaneously exchange information relating to a corruption case with another

²⁷ For example, in relation to the 2013 Conference of the States Parties to UNCAC, Belgium recommended that UNCAC state parties undertake increased efforts to spontaneously exchange information through law enforcement channels (Kingdom of Belgium 2013).

²⁸ Other multilateral instruments contain similar provisions (see e.g., COE 2001, art. 11).

jurisdiction, such exchanges do occur at the law enforcement level. Malaysia's MACC even has a platform dedicated to receiving and providing spontaneous information about corruption offences.

Networks related to law enforcement generally (rather than corruption specifically) are also useful tools for facilitating spontaneous exchanges of information. Police networks such as Interpol or Europol allow law enforcement authorities to exchange information that might be relevant to counterparts in other jurisdictions, and Australia noted that it has taken advantage of these networks. FIUs are often well-positioned to discover information relating to corruption offences and to share that with counterparts abroad through systems such as the Egmont Secure Web. For example, Japan's FIU has received information relating to a foreign bribery case through the FIU network.

Box 16. Case example: Sharing spontaneous information about financial crimes in Asia-Pacific jurisdictions

On 9 November 2010, Singapore's Corrupt Practices Investigation Bureau (CPIB) received a suspicious transaction report (STR) from Singapore's Suspicious Transaction Reporting Office (STRO) stating that company A had received a suspicious remittance of US\$ 3 599 972.85 from company B (which was registered in country X). Within a month, A had remitted the funds to a third company (C) through a bank account in Singapore belonging to a politically exposed person (PEP) from another Asia-Pacific jurisdiction. Acting on this information, CPIB commenced investigations against the directors of A and seized funds from various bank accounts in Singapore.

In the course of investigations, CPIB found that the payments were linked to a community college project in the other AP jurisdiction. CPIB spontaneously shared information about its investigation with the law enforcement authority of that jurisdiction and also obtained information about the project there. The information was shared with the lead investigator in the other jurisdiction on an informal basis. Even though the other jurisdiction's investigative team was later disbanded, CPIB was able to complete its investigation based on the information it had informally obtained from the other jurisdiction.

On 22 July 2016, the two directors of company A were each found guilty on one count of falsification of accounts and five counts of transferring the benefits of criminal conduct. Subsequently, on 1 September 2016, one of them was sentenced to five years of imprisonment and the other was sentenced to five years and 10 months of imprisonment.

Several Initiative members have never received or provided spontaneous information about a corruption offence (including Bangladesh; Fiji; Macao, China; Nepal; the Philippines; and Sri Lanka). All Initiative members may want to review their domestic laws to find ways to engage in spontaneous communications with other jurisdictions when facts concerning a corruption offence come to their knowledge.

C. Using international networks to facilitate assistance

1. Periodic meetings with other jurisdictions

Ten Initiative members indicated in their responses to the questionnaire that they have periodic bilateral meetings with other jurisdictions to discuss international cooperation issues (Australia; Hong Kong, China; India; Indonesia; Japan; Macao, China; Malaysia; Singapore; Sri Lanka; Thailand). These meetings may occur on a bilateral or multilateral basis. For example, Hong Kong, China, holds periodic consultation meetings with several jurisdictions with which it has bilateral cooperation agreements in order to discuss on-going cases, and it indicated that it would be open to holding similar meetings with other jurisdictions if needed. On an annual basis, China's Guangdong Province, Hong Kong, and Macao meet together to discuss MLA issues.

Such meetings are important for several reasons. Certainly, they allow counterparts in discuss concerns and questions about their respective needs for assistance in specific corruption case. They also give counterparts in different jurisdictions the opportunity to share idiosyncrasies in their international assistance and MLA laws before the need for international assistance arises. This means that when a situation arises requiring immediate assistance, the authorities in both jurisdictions may not need to spend as much time in consultations prior to the submission of a formal request. While such consultations are important, they can also delay the process of execution of an MLA request. Finally, and perhaps most importantly, they allow law enforcement and judicial authorities to build relationships with their foreign counterparts. When officers working on these issues know and trust each other, they can work together more efficiently and effectively.

Box 17. Best practice: Cooperation among regional anti-corruption agencies

Singapore's Corrupt Practices Investigation Bureau (CPIB) regularly cooperates with anti-corruption agencies in the region to exchange information and intelligence and to engage in joint operations. In this regard, CPIB has worked with the Malaysian Anti-Corruption Commission (MACC), the Brunei Anti-Corruption Bureau (BACB), Indonesia's Corruption Eradication Commission (KPK) and the Independent Commission against Corruption (ICAC) of Hong Kong, China, as well as with other foreign law enforcement agencies, such as the US Federal Bureau of Investigation (FBI), the Australian Federal Police (AFP), and the UK Serious Fraud Office (SFO).

CPIB also regularly engages in bilateral meetings with these agencies. For example, CPIB has established a bilateral working group with MACC to more effectively share intelligence and conduct joint operations. Singapore's Commercial Affairs Department (CAD), the white collar crime unit of the national police, also actively engages its foreign counterparts to discuss issues relating to money laundering and other suspicious fund flows into or out of Singapore.

Similarly, Thailand's NACC has memorandums of understanding with foreign counterparts regarding law enforcement cooperation and occasionally holds bilateral meetings to discuss on-going issues that arise. In particular, NACC Thailand and MACC hold an annual working group meeting between the Thai and Malaysian border provincial offices for purpose of international cooperation.

2. *Involvement in international or regional networks and organisations*

Myriad international networks facilitate international cooperation in relation to the investigation and prosecution of crimes of corruption. The LEN is an important network in the context of the Asia-Pacific region. Through this network law enforcement officials from Asia-Pacific jurisdictions can share challenges and best practices in investigating and prosecuting corruption cases. In this way, they can create regional solutions to pressing law enforcement needs. For example, Network members could pool resources to provide training on MLA best practices, to create guidance for outside agencies seeking international cooperation, or even to address more practical needs (such as creating joint platforms for activities such as teleconferencing or sharing information). Perhaps most importantly, the Network's annual meetings and other activities create an opportunity to build relationships of trust among Initiative members.

Other international groups help law enforcement authorities connect with counterparts in other jurisdictions, but do not exclusively deal with corruption issues. For example, the Interpol network links law enforcement authorities regarding criminal activities generally; the Egmont Group links financial intelligence units (FIUs) in relation to money laundering and terrorist financing issues. These networks are often based on electronic platforms, allowing for immediate, confidential exchanges of information in relation to crimes, so that individuals can quickly be detained and property can be sequestered or seized.

Some networks exist primarily in cyberspace; thus, a disadvantage of such networks is that they do not always allow for the formation of the personal relationships that can facilitate effective cooperation over the long term.

Box 18. Use of Interpol to facilitate cooperation

In order to assist with investigations in Asia-Pacific country A, in May 2011, Singapore's FIU provided its findings of an investigation of suspect S through Interpol. Among the information it posted were asset screenings (property, casino accounts, bank accounts), brief facts of the case, and statements from S and his wife.

In October 2013, authorities of country A submitted an MLA request to Singapore asking it to take steps against S and to freeze his assets in Singapore. Based on this request and following domestic investigations, Singapore froze assets of S and his wife totalling approximately US\$ 3.5 million.

Singapore then sent an MLA request to country A to seek evidence to support a domestic prosecution in relation to the stolen property in Singapore. This request sought assistance to facilitate the attendance of a witness to give evidence at the domestic trial in Singapore. Country A provided evidence in respect of the accused's predicate embezzlement offences committed in country A by way of bank documents, fund remission receipts as well as statements of witnesses. Asia-Pacific country A also sent its key investigator to testify against the accused in the criminal proceedings in Singapore.

Singapore authorities received information from Interpol that the accused, who had been residing in Singapore, had allegedly embezzled funds amounting to approximately SGD 18 million from the government of Asia-Pacific country A, where he was a top civil servant in the finance bureau. Singapore authorities immediately commenced domestic money laundering investigations against the accused, based on information received from Asia-Pacific country A.

The accused was charged in Singapore for offences in relation to the stolen property laundered in Singapore. In July 2014, the accused was convicted, and his and his wife's assets totalling approximately SGD 3.5 million, consisting of cash in bank and casino accounts, were seized and restrained. CAD has also lodged a caveat against residential property purchased for SGD 1.4 million. Singapore is now waiting for Asia-Pacific country A to issue a final confiscation order for the assets. The accused has served his sentence and returned to Asia-Pacific country A to face criminal charges.

Other groups, like the LEN, are specifically geared towards creating opportunities for members to develop the personal relationships that can facilitate effective exchanges of information. For example, law enforcement authorities from five members of the Initiative (Australia; Hong Kong, China; Indonesia; Malaysia; Singapore) belong to the Economic Crime Agencies Network (ECAN), a formal network of law enforcement agencies from various jurisdictions involved primarily with the investigation and prosecution of economic crimes, including fraud, bribery, and corruption.²⁹ The strategic objective of the network is to encourage practical cooperative action among members to disrupt, prevent, investigate and prosecute economic crimes, including cross-jurisdictional economic crimes. Members meet annually to discuss issues of mutual concern and to share experiences and knowledge.

²⁹ The law enforcement bodies that are members of ECAN include the Australian Federal Police, Hong Kong, China's Independent Commission against Corruption, Indonesia's Corruption Eradication Commission, Malaysia's Anti-Corruption Commission, New Zealand's Serious Fraud Office, Singapore's Corrupt Practices Investigation Bureau, Nigeria's Economic and Financial Crimes Commission, the UK Serious Fraud Office, the City of London Police, the US Federal Bureau of Investigation, and the European Anti-fraud Office (OLAF).

In addition to law enforcement networks, Initiative members are involved in a number of international organisations, including the Commonwealth of Nations, the Commonwealth of Independent States, OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD ACN), OECD Working Group on Bribery, and the Pacific Islands Forum (see also ADB & OECD 2007, 33). These organisations often host meetings to gather officials together to discuss issues of importance in the fight against corruption. For example, the OECD Global Law Enforcement Network gathered together a group of law enforcement officials from over 50 jurisdictions in December 2015 to discuss enforcement of the offence of foreign bribery among member and non-member states. In December 2016, OECD ACN engaged in a similar discussion of the topic of MLA in corruption cases. Engagement in events hosted by such organisations allows for the exchange of information with jurisdictions outside of the Initiative about individual requirements and best practices, as well as the formation of personal relationships that can help facilitate international cooperation.

Table 4. Involvement of Initiative members in law enforcement networks and international organisations

	APEC ACT-NET ³⁰	ASEANAPOL ³¹	Asia/Pacific Group on Money Laundering ³²	Commonwealth of Nations ³³	Commonwealth of Independent States ³⁴	Egmont Group ³⁵	Interpol ³⁶	OECD ACN ³⁷	OECD WGB ³⁸	PAC MLA Group ³⁹	Pacific Islands Forum ⁴⁰	SEA-PAC ⁴¹	Shanghai Cooperation Organisation
Afghanistan			X			X	X						X ⁴²
Australia	X		X	X		X	X		X	X	X		
Bangladesh			X	X		X	X			X ⁴³			
Bhutan			X				X			X ⁴⁴			
Cambodia		X	X			X	X			X ⁴⁵		X	X ⁴⁶
China, PR	X		X				X		X ⁴⁷	X			X
Cook Islands			X			X					X		
Fiji Islands			X	X		X	X				X		
Hong Kong, China	X		X			X	X			X			

³⁰ Information about the Anti-Corruption and Transparency Working Group of the Asia Pacific Economic Cooperation (APEC) and its affiliated APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) is at <http://www.apec.org/groups/som-steering-committee-on-economic-and-technical-cooperation/working-groups/anti-corruption-and-transparency.aspx>.

³¹ Information about ASEANAPOL, the organisation of ASEAN police agencies, is at <http://www.aseanapol.org/home>.

³² Information about APGML is at <http://www.apgml.org>.

³³ Information about the Commonwealth is at <http://thecommonwealth.org>.

³⁴ Information about the Commonwealth of Independent States is at <http://www.cisstat.com/eng/cis.htm>.

³⁵ Information about the Egmont Group of Financial Intelligence Units is at <http://www.egmontgroup.org>.

³⁶ Information about Interpol is at <http://www.interpol.int>.

³⁷ Information about the OECD Anti-Corruption Network for Eastern Europe and Central Asia is at <http://www.oecd.org/corruption/acn/>.

³⁸ Information about the OECD Working Group on Bribery in International Business Transactions is at <http://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyininternationalbusinesstransactions.htm>.

³⁹ Information about the Pacific Accreditation Cooperation is at <http://www.apec-pac.org/content/home>.

⁴⁰ Information about the Pacific Islands Forum is at <http://www.forumsec.org>.

⁴¹ Information about the South East Asia Parties against Corruption is at <http://www.sea-pac.org>.

⁴² Dialogue partner only.

⁴³ Associate member.

⁴⁴ Corresponding member.

⁴⁵ Associate member.

⁴⁶ Observer only.

⁴⁷ Observer only.

	APEC ACT-NET ³⁰	ASEANAPOL ³¹	Asia/Pacific Group on Money Laundering ³²	Commonwealth of Nations ³³	Commonwealth of Independent States ³⁴	Egmont Group ³⁵	Interpol ³⁶	OECD ACN ³⁷	OECD WGB ³⁸	PAC MLA Group ³⁹	Pacific Islands Forum ⁴⁰	SEA-PAC ⁴¹	Shanghai Cooperation Organisation
India			X	X		X	X			X			X ⁴⁸
Indonesia	X	X	X			X	X		X ⁴⁹	X		X	
Japan	X		X			X	X		X	X			
Kazakhstan					X		X	X		X			X
Korea	X		X			X	X		X	X			
Kyrgyzstan					X	X	X	X		X			X
Macao, China			X			X	X						
Malaysia	X	X	X	X		X	X		X ⁵⁰	X		X	
Mongolia			X			X	X			X			X ⁵¹
Nepal			X			X	X						X ⁵²
Palau			X								X		
Pakistan			X	X			X			X			X ⁵³
Papua New Guinea	X		X	X			X			X ⁵⁴	X		
Philippines	X	X	X			X	X			X		X	
Samoa			X	X		X	X				X		
Singapore	X	X	X	X		X	X			X		X	
Solomon Islands			X	X									
Sri Lanka			X	X		X	X			X			X ⁵⁵
Thailand	X	X	X			X	X		X ⁵⁶	X		X	
Timor-Leste			X				X						
Vanuatu			X	X		X					X		
Vietnam	X	X	X				X			X		X	

⁴⁸ Accessing state.

⁴⁹ Observer only.

⁵⁰ Observer only.

⁵¹ Observer only.

⁵² Observer only.

⁵³ Accessing state.

⁵⁴ Associate member.

⁵⁵ Observer only.

⁵⁶ Observer only.

In spite of the resources offered by such networks and organisations, some Initiative members may be members of these international networks in name only. In some instances, this may be due to a lack of resources—whether financial or personnel—to participate in real exchanges through these networks. This may be particularly keenly felt in jurisdictions far removed from major international hubs, such as Pacific island states. In other instances, this may be due to a lack of interest. Several Initiative members indicated in response to the questionnaire that they very seldom request MLA from another jurisdiction or receive requests for assistance from abroad. If the need to obtain or provide international assistance does not figure highly in a jurisdiction’s law enforcement work, the thought may be that building such relationships through the international community is unnecessary.

Because of these concerns, Initiative members may want to consider less disruptive means of sharing information regarding international cooperation. For example, online forums or meetings conducted through electronic means may permit more remote members to learn about the value of international cooperation in a way that does not require the resources needed to travel abroad. While such strategies can in no way replace the value of personal contacts, they may help overcome the hurdles of resource capacity and ambivalence present among some Initiative members.

3. *Liaison officers stationed abroad*

A few Initiative members have indicated that they keep law enforcement personnel posted abroad to help facilitate international cooperation. This could include posting police officers or prosecutors at foreign embassies or at international organisations such as Interpol. Although these personnel usually are not responsible for conveying formal requests for assistance, they can be an invaluable resource to foreign officials seeking informal cooperation or preparing more formal requests, as they are familiar with their own jurisdiction’s laws and also may have knowledge about potential pitfalls that may arise because of differences between the two jurisdictions’ laws, procedural frameworks, or cultures.

Members of the Initiative that indicated that they post liaison officers in other jurisdictions include Australia; China, PR; Hong Kong, China; India; Japan; Macao, China; and Malaysia. For example, Australia has Australian Federal Police and Department of Foreign Affairs and Trade officers stationed in several other jurisdictions. In addition, the Australian Attorney-General’s Department has officers posted in a number of Australia’s overseas diplomatic posts, for example, in Indonesia and Thailand. These officers provide in-country assistance to foreign agencies involved in making MLA requests to Australia and are a liaison point for ICCCA case officers (see also ADB & OECD 2007, 71–72).

CONCLUSION AND RECOMMENDATIONS

This report highlights some of the challenges faced by members of the ADB/OECD Initiative when engaging in MLA and other types of legal assistance measures in relation to corruption cases. As well, it sets forth case studies and best practices gathered from Initiative members as part of the survey that formed the basis of this report. Based on the members' responses to the questionnaire, a few general observations can be highlighted:

First, this study suggests a need for further efforts to strengthen the legal framework—particularly at the domestic level—for international cooperation. Some members of the Initiative believe challenges are presented by the lack of an appropriate legal basis for rendering MLA or other forms of international assistance—whether in their own jurisdiction or in the jurisdiction with which cooperation is desired. Most Initiative members adhere to a number of multilateral agreements, including notably UNCAC, CIS conventions, and the ASEAN Treaty, so this concern is a bit puzzling. It could be attributable to one of the following phenomena: (i) some Initiative members have not become parties to a treaty that would allow them to engage in international cooperation with particular jurisdictions from which they seek cooperation; (ii) some jurisdictions requesting cooperation from Initiative members have not become parties to treaties that would allow the Initiative member to render the cooperation sought; (iii) some Initiative members may have become parties to key international treaties, but either may not have passed necessary implementing legislation or may not have entered into necessary bilateral treaties required before assistance can be provided; and/or (iv) some practitioners may not be aware that multilateral agreement provide a legal basis for rendering MLA. Efforts to encourage states, both within and without the Asia-Pacific region, to join international cooperation agreements (whether multilateral or bilateral), and to pass any necessary implementing legislation in domestic law, should continue. In the meantime, investigating and prosecuting authorities should explore other options for obtaining international cooperation when needed, for example, based on reciprocity or through direct law enforcement channels.

Second, some of the greatest challenges faced by members of the Initiative with respect to MLA and other forms of international assistance tend to be practical, rather than legal. That is, “traditional” grounds for refusing MLA seldom appear to come into play in member jurisdictions. However, Initiative members face on-going, pressing challenges when it comes to resource allocation. This issue permeates into nearly all other obstacles to effective MLA, from developing staff capabilities and resources to obtaining appropriate language assistance to efficiently transmit and execute requests to engaging in critical case management. This issue is a problem that needs to be considered from two angles. On the one hand, some jurisdictions lack the financial or manpower resources to develop the tools needed for effective MLA. On the other hand, often these same jurisdictions simply do not receive or submit as many MLA requests as their neighbours. When resources are already spread thin, it may be hard to justify devoting substantial resources to an activity that forms a small (albeit important) part of a prosecutor general office's responsibilities.

Finally, the use of MLA as a means of gathering evidence in relation to the investigation and prosecution of complex crimes is increasing. This trend is unlikely to slow in the near future, as crimes become more complex and cross-border transactions become ever easier.

Solutions to the pressing challenges of international cooperation in corruption cases need to be found at three levels. First, at the law enforcement level, investigators and prosecutors should consider taking certain steps to help facilitate effective cooperation in relation to the individual cases they are handling. Second, at the national level, agencies and central authorities need to consider ways to address the systemic challenges presented by their legal and procedural frameworks, as well as the resources available to them.

Finally, international organizations and other networks should together consider ways to help individual jurisdictions overcome their hurdles to cooperation. Working together, jurisdictions may be able to leverage their strengths to help overcome some of the resource and bureaucratic hurdles that can impede the successful exchange of information, intelligence, and evidence across borders. The following sections set forth recommendations at these three levels:

Recommendations at the individual law enforcement level

1. Prior to preparing any request for MLA:
 - a) Gather all possible information regarding the evidence or assistance sought, including names of implicated individuals, location of evidence or witnesses, bank account information, and so forth;
 - b) If possible under local law, consult with a counterpart in the foreign jurisdiction from which assistance is desired to find out what evidentiary or other background information is required for such a request;
 - c) As appropriate, consider whether the information could be obtained outside of the formal MLA process (e.g., through police, anti-corruption, financial intelligence, tax, or customs authorities); and
 - d) When considering the legal basis for any MLA request, keep in mind multilateral MLATs such as UNCAC, as well as bilateral MLATs and domestic law.
2. Resources for preparing requests: Consult the following sources for assistance in drafting any request for MLA:
 - a) Your jurisdiction's central authority;
 - b) Your jurisdiction's liaison officer posted in the embassy of the foreign jurisdiction;
 - c) International tools, such as the UN MLA Writer Tool; and
 - d) Contact points at international organizations and networks (such as Interpol liaison officers).
3. Informal consultation prior to submitting requests: Whenever possible under local law, use informal channels (whether diplomatic or through law enforcement) to establish initial contacts with counterparts in the foreign jurisdiction and to do the following:
 - a) Verify that foreign law requirements have been met (including evidentiary thresholds);
 - b) Understand and comply with procedural requirements (including language requirements);
 - c) Identify the appropriate authority to receive the request; and
 - d) Submit a copy of the request to the foreign jurisdiction, to identify potential challenges early on and to obtain assistance in overcoming these challenges.
4. Submitting requests: If possible, make informal contact with the likely executing authority in the foreign jurisdiction at the same time that the request is formally submitted to the central authority, in order to alert the executing authority of the request and allow for more efficient

monitoring of its handling. (Alert the central authority that you have done so, if required by law or diplomacy.)

5. Execution of requests: Where appropriate:
 - a) Consider requesting that a law enforcement official from your jurisdiction be present for the execution of any MLA request in a foreign jurisdiction.
 - b) Consider inviting law enforcement officials from other jurisdictions to be present when a request from their jurisdiction is executed in your jurisdiction; and
 - c) Take proactive measures to follow up on the execution of your request, for example, by correspondence, telephone calls, diplomatic channels, or on-site visits.

Recommendations at the agency and national level

6. Relationship building
 - a) Encourage law enforcement officials to attend and contribute to regional initiatives such as LEN;
 - b) Support investigators and prosecutors working on cross-border cases to attend seminars and other events regarding best practices for engaging in international cooperation, including international and regional meetings of law enforcement officials;
 - c) Consider working together with law enforcement agencies in other jurisdictions to develop and present workshops dedicated to the topic of international cooperation in corruption cases; and
 - d) Consider posting liaison officers abroad in the embassies of jurisdictions where international cooperation is often sought or from whence cooperation is often desired.
7. Training
 - a) Develop (perhaps in connection with other jurisdictions) a training programme for individuals (investigators, prosecutors, and central authority officials) who are involved in drafting requests for MLA that addresses: (i) the legal framework for obtaining and rendering MLA in the jurisdiction, including multilateral and bilateral MLATs and domestic law; (ii) resources for learning about other jurisdictions' laws and procedures, including individuals and agencies that are available to offer assistance; (iii) procedures that govern the drafting and approval process for outgoing requests for international assistance; (iv) stylistic best practices for drafting requests to ensure that all necessary information is clearly elaborated and presented in a clear and understandable way, including templates that may assist in this process; (v) procedures that govern the prioritisation, transmission, and execution process for incoming requests for international assistance; (vi) the use of technology to assist in international cooperation (e.g., web-based forms, secure document transmission systems, case tracking software, and tele- and video-conferencing); and (vii) relevant communication networks both within and without agency (and both domestic and abroad) in order to obtain appropriate assistance and follow up; and

- b) Develop a list of good practices and lessons learned in the area of international cooperation that can be used in trainings with investigators, prosecutors, judges, and other law enforcement personnel.
8. Resource allocation and prioritisation
- a) Consider whether additional resources could be provided to central authorities, law enforcement authorities, and other bodies involved in international cooperation to assist in international cooperation, including technology, personnel, and language assistance;
 - b) Develop clear procedures regarding the transmission of incoming requests to executing authorities, including delegations of responsibility at various stages of the execution process;
 - c) Review and/or adopt procedures for prioritising incoming MLA requests based on importance and urgency; and
 - d) Consider adopting guidelines for the submission of urgent requests, including criteria for submitting urgent requests and procedures for submitted requests after business hours, on weekends, and during holidays; make these guidelines publicly available.
9. Case management: Review and/or adopt a case management system that is accessible by *both* the central authority and relevant law enforcement authorities and does the following:
- a) Monitors incoming and outgoing requests for international cooperation to help ensure timely execution;
 - b) Allows for classification of requests and the use of statistics in order to analyse best practices; and
 - c) Assigns personal responsibility for each stage of the outgoing and incoming request process, including lines of accountability if requests are not processed in a timely manner.
10. Legal and procedural framework:
- a) Explore the possibility of negotiating additional bilateral and/or multilateral MLA and/or law enforcement arrangements, placing priority on (i) agreements with jurisdictions not party to key multilateral instruments and (ii) agreements with neighbouring and other jurisdictions where assistance is most likely to be sought;
 - b) Review and adopt substantive laws to ensure that legal assistance can be provided to other jurisdictions to the fullest extent possible;
 - c) Review or adopt laws allowing for information obtained through direct law enforcement cooperation to be used in court proceedings;
 - d) If not in place, consider creating a viable legislative basis for the spontaneous transmission of information and intelligence relating to corruption crimes to foreign law enforcement officials’;
 - e) Explore the possibility of creating more legal channels for direct communication and exchanges of information between law enforcement authorities, including financial

intelligence units, securities regulators, tax authorities, customs authorities, liaison officers posted abroad, international aid organisations, and others;

- f) Review or consider adopting guidelines requiring (i) law enforcement or central authority officials preparing requests for international cooperation to attempt to consult with the receiving foreign authority prior to submitting any request for international cooperation (if such consultation has not already occurred at the law enforcement level); and (ii) central authorities to consult with requesting authorities prior to denying a request for international cooperation; and
- g) If not already available, develop a publicly available internet website for each central authority that contains (i) the legal framework supporting international assistance in the jurisdiction, including treaties to which the state is a party and relevant laws governing assistance in the absence of a treaty (such as based on reciprocity); (ii) legal and procedural requirements for providing international assistance, including grounds of mandatory or discretionary refusal, required form of a request, supporting information or documentation needed, languages accepted, and the agency to which a request should be directed; (iii) sample documents, such as templates that another jurisdiction could use to prepare a request; (iv) procedures for submitting an urgent request, such as information about submitting a request via email, facsimile, or a secure web system, such as Interpol; and (v) contact information for appropriate individuals at the central or other relevant authority.

Recommendations at the international level

11. Members of the Initiative are encouraged to do the following:

- a) Study the findings regarding implementation of UNCAC chapter IV, which are set forth in the first review cycle of the Mechanism for the Review of Implementation of the Convention and which provide a solid body of knowledge about technical assistance needs, and use these findings to enhance the capacity of members of the Initiative—as well as other state parties to UNCAC—to better use international cooperation mechanisms, in line with the requirements of the UNCAC; and
- b) Use the Initiative itself as a forum for addressing ongoing challenges in international cooperation in corruption cases, including by seeking ways to provide assistance to mutually develop and enhance each other's capacity for engaging in MLA and other types of international cooperation.

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ANNEX A TYPES OF MLA REQUESTED AND RENDERED

Types of MLA Requested and Rendered by ADB/OECD initiative jurisdictions in relation to corruption cases

In preparation for this study, the Initiative’s secretariat requested that all members submit information about incoming and outgoing MLA requests *in relation to corruption cas s* for the 2010–2015 period. For the purpose of this study, the term “corruption” is defined to include the following crimes covered by 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).

Table 5. Types of MLA requested by ADB/OECD Initiative members in corruption cases, 2010–2015

	Australia	Bangladesh	Bhutan	Hong Kong, China ⁵⁷	India	Indonesia	Korea	Macao, China	Malaysia	Sri Lanka	Thailand	Vietnam
Taking evidence or statements from persons (including via video-link)	X		X	X	X	X	X	X	X		X	
Service of documents						X	X	X				
Executing searches and/or seizures						X	X					X
Examining objects/sites					X	X					X	X
Providing information, evidentiary items and/or expert evaluations		X			X	X	X			X	X	
Providing originals or certified copies of government, bank, financial, corporate, business, and/or other records	X				X		X					
Identifying or tracing proceeds of crime, property, instrumentalities and/or other things for evidentiary purposes		X				X						
Freezing, confiscating and/or disposing of assets, including the proceeds of crime (but not by the FIU)						X	X	X				
Administrative freezing of a suspicious transaction by the FIU												
Facilitating the voluntary appearance of persons in your jurisdiction												
Preserving evidence (including digital evidence)						X					X	
Engaging in electronic surveillance												
Assistance with undercover or covert operations												
Monitoring or providing information about bank accounts and/or banking transactions	X	X				X				X		
Assistance as part of a joint investigative team												
Other	X ⁵⁸					X ⁵⁹						

⁵⁷ For Hong Kong, China, this chart references the main types of requests for assistance only, as Hong Kong, China, does not keep precise statistics in each case.

⁵⁸ Request for materials in the possession of law enforcement.

⁵⁹ Assistance identifying and locating a person.

Table 6. Types of MLA provided by ADB/OECD Initiative members in corruption cases, 2010–2015

	Australia	Bangladesh	Cook Islands	Hong Kong, China ⁶⁰	India	Indonesia	Korea	Macao, China	Malaysia	Sri Lanka	Thailand	Vietnam
Taking evidence or statements from persons (including via video-link)	X	X	X	X	X		X	X	X	X	X	
Service of documents	X	X	X			X	X	X		X	X	
Executing searches and/or seizures	X					X					X	
Examining objects/sites		X								X		X
Providing information, evidentiary items and/or expert evaluations		X	X		X		X	X		X	X	X
Providing originals or certified copies of government, bank, financial, corporate, business, and/or other records	X	X	X	X	X		X	X		X		X
Identifying or tracing proceeds of crime, property, instrumentalities and/or other things for evidentiary purposes		X	X							X		
Freezing, confiscating and/or disposing of assets, including the proceeds of crime (but not by the FIU)		X	X				X	X			X	
Administrative freezing of a suspicious transaction by the FIU			X									
Facilitating the voluntary appearance of persons in your jurisdiction										X		
Preserving evidence (including digital evidence)						X					X	
Engaging in electronic surveillance												
Assistance with undercover or covert operations												
Monitoring or providing information about bank accounts and/or banking transactions								X		X		
Assistance as part of a joint investigative team			X					X				
Other	X ⁶¹									X		X ⁶²

⁶⁰ For Hong Kong, China, this chart references the main types of requests for assistance only, as Hong Kong, China, does not keep precise statistics in each case.

⁶¹ Request for material in the possession of law enforcement.

⁶² Request for transfer of the case for criminal prosecution by the requesting country.

ANNEX B OUTGOING AND INCOMING MLA REQUESTS

Outgoing and incoming MLA requests in relation to corruption cases

In preparation for this study, the Initiative’s secretariat requested that all members submit information about incoming and outgoing MLA requests in relation to corruption cases for the 2010–2015 period. For the purpose of this study, the term “corruption” is defined to include the following crimes covered by 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).

Table 7. MLA requests sent from ADB/OECD Initiative members, 2010–2015

	Australia							Bangladesh							Bhutan						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	6	2	6	4	0	2	20	10	7	6	7	4	2	36	0	0	0	1	0	0	1
Requests executed (cooperation received)	5	2	6	3	NA	0	16	10	7	6	7	0	0	30	0	0	0	0	0	0	0
Requests still pending	1	0	0	1	NA	2	4	0	0	0	0	4	2	6	0	0	0	NA	0	0	0
Requests rejected	0	0	0	0	NA	0	0	0	0	0	0	0	0	0	0	0	0	NA	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Cook Islands							Fiji Islands							Hong Kong, China						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	0	1	0	2	0	1	4	0	0	0	0	0	0	0	3	4	13	6	3	9	38
Requests executed (cooperation received)	0	1	0	2	0	1	4	0	0	0	0	0	0	0	2	3	10 ⁶³	4	3	2	24
Requests still pending	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	2	0	4	8
Requests rejected	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1	0	0	3	6

⁶³ One request was only partially executed.

	India							Indonesia							Japan						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	11	11	27	19	21	28	117	2	16	0	4	8	8	38	3	4	4	2	6	5	24
Requests executed (cooperation received)	6	5	8	2	0	1	22	2	16	0	4	8	8	38	3	3	4	2	5	4	21
Requests still pending	4	6	16	17	21	27	77	0	0	0	0	0	0	0	0	1	0	0	1	1	3
Requests rejected	1	0	3	0	0	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	15	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Korea							Macao, China							Malaysia						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	8	10	12	9	17	19	75	2	1	4	3	1	0	11	2	1	0	0	1	3	7
Requests executed (cooperation received)	7	7	9	6	7	15	51	1	1	4	2	1	0	9	2	1	0	0	0	0	3
Requests still pending	1	2	1	2	9	3	18	¹⁶⁴ 0	0	0	0	0	0	0	0	0	0	0	1	3	4
Requests rejected	0	0	0	0	1	0	1	0	0	0	¹⁶⁵ 0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	1	1	1	0	1	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Singapore							Sri Lanka							Thailand						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	0	0	4	5	5	25	39	0	0	0	0	2	28	30	1	0	0	2	1	4	8
Requests executed (cooperation received)	0	0	1	4	1	0	6	0	0	0	0	0	1	1	0	0	0	0	0	0	0
Requests still pending	0	0	0	0	0	0	0	0	0	0	0	2	27	29	1	0	0	2	1	4	8
Requests rejected	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	1	0	1	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0

⁶⁴ A revised letter of request was submitted in accordance with a suggestion from the responding state. Macao, China, is still awaiting reply.

⁶⁵ The request concerned the repatriation of assets owned by the suspect in the territory of responding state. Because those particular assets were not mentioned in the Macao court's judgement, the request was denied.

	Vietnam						
	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	2	0	1	1	1	1	6
Requests executed (cooperation received)	2	0	0	1	1	0	4
Requests still pending	0	0	0	0	0	0	0
Requests rejected	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0

Table 8. MLA requests received by ADB/OECD Initiative members, 2010–2015

	Australia							Bangladesh							Bhutan							
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	
Total requests	8	22	3	9	11	2	55	0	1	0	0	0	3	4	0	0	0	0	0	0	0	0
Requests executed (cooperation provided)	8	21	2	7	5	1	44	0	1	0	0	0	3	4	0	0	0	0	0	0	0	0
Requests still pending	0	0	0	2	6	1	9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests rejected	0	1	1	0	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Cook Islands							Fiji Islands							Hong Kong, China						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	3	5	1	4	1	0	14	0	0	0	0	0	0	0	12	14	20	17	19	22	104
Requests executed (cooperation provided)	3	5	1	4	1	0	14	0	0	0	0	0	0	0	12	7	9	10	4	4 ⁶⁶	42
Requests still pending	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	8	5	14	18	50
Requests rejected	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	3	2	1	0	8

⁶⁶ Three of these were only partially executed.

	India							Indonesia							Japan						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	1	2	3	2	0	3	11	0	0	0	1	3	1	5	4	8	3	5	9	13	42
Requests executed (cooperation provided)	1	2	2	2	0	2	9	0	0	0	1	2	1	4	4	8	3	5	9	12	41
Requests still pending	0	0	0	0	0	1	1	0	0	0	0	1	0	1	0	0	0	0	0	1	1
Requests rejected	0	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Korea							Macao, China							Malaysia						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	6	8	18	6	4	6	15	2	4	1	1	4	3	15	0	0	0	0	0	3	3
Requests executed (cooperation provided)	4	6	15	6	4	2	7	2	1	0	0	3	1	7	0	0	0	0	0	3	3
Requests still pending	2	2	3	0	0	4	8	0	3 ⁶⁷	1 ⁶⁸	1 ⁶⁹	1 ⁷⁰	2 ⁷¹	8	0	0	0	0	0	0	0
Requests rejected	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

⁶⁷ The requesting states were asked to provide an original letter of request, but this document has not yet been provided.

⁶⁸ The requesting states were asked to provide an original letter of request, but this document has not yet been provided.

⁶⁹ The requesting states were asked to amend the request, but the amendments have not yet been provided.

⁷⁰ The requesting states were asked to amend the request, but the amendments have not yet been provided.

⁷¹ The requesting states were asked to amend the request, but the amendments have not yet been provided.

	Singapore							Sri Lanka							Thailand						
	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	0	31	31	63	54	0	179	0	0	0	0	82	73	155	1	5	0	1	2	0	9
Requests executed (cooperation provided)	0	28	25	47	32	0	132	0	0	0	0	71	64	135	0	1	0	0	1	0	2
Requests still pending	0	0	0	0	0	0	0	0	0	0	0	11	9	20	0	3	0	0	0	0	3
Requests rejected	0	0	0	3	3	0	6	0	0	0	0	0	0	0	1	1	0	1	1	0	4
Requests withdrawn	0	15	3	3	5	0	26	0	0	0	0	0	0	0	0	0	0	0	0	0	0

	Vietnam						
	2010	2011	2012	2013	2014	2015	TOTAL
Total requests	2	0	1	1	1	1	6
Requests executed (cooperation received)	2	0	0	1	1	0	4
Requests still pending	0	0	0	0	0	0	0
Requests rejected	0	0	0	0	0	0	0
Requests withdrawn	0	0	0	0	0	0	0

ANNEX C CENTRAL AUTHORITIES AND LAW ENFORCEMENT CONTACTS

Central authorities and law enforcement contacts for selected members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

The information below has been provided by certain members of the Initiative on a voluntary basis. Please contact the jurisdictions or agencies directly if there are any questions.

Australia	
Central authority for MLA	Assistant Secretary International Crime Cooperation Central Authority Attorney-General's Department Robert Garran Offices 3-5 National Circuit Barton Act 2600, Australia Tel: +61 2 6141 3280 or +61 2 6141 3322 Fax: +61 2 6141 5457 Email: iccca@ag.gov.au
Law enforcement contact	Australian Federal Police AFP National Media National Headquarters Barton Act 2600, Australia Tel: +61 2 6275 7100 Website: https://www.afp.gov.au (in English)
China, People's Republic of	
Central authority for MLA	<p><i>Without a treaty:</i></p> <p>Ministry of Foreign Affairs No. 2 Nandajie, Chaoyangmen Chaoyang District Beijing 100701, China Tel: +86 10 6596 1114 Website: http://www.fmprc.gov.cn/mfa_eng/ (in English)</p> <p><i>Under a treaty (except UNCAC):</i></p> <p>Ministry of Justice No.10 Nandajie, Chaoyangmen Chaoyang District Beijing 100020, China Tel: +86 10 8313 9065 Fax: +86 10 8313 9051 Email: worldlawin@yahoo.com.cn Website: http://english.moj.gov.cn (in English and Chinese)</p> <p><i>Under UNCAC:</i></p> <p>Supreme People's Procuratorate 147 Beiheyuan Dajie Dongcheng District Beijing 100726, China</p>

	<p>Tel: +86 10 65252000 / +86 10 65592000 Email: web@spp.gov.cn Website: http://www.spp.gov.cn (in Chinese)</p>
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Cook Islands

Central authority for MLA	<p>Attorney-General's Office Rarotonga, Cook Islands Tel: +682 29 337 Fax: +682 20 839 / 23 725</p>
Law enforcement contact(s)	<p>Cook Islands Police National Headquarters PO Box 101 Rarotonga, Cook Islands Tel: +682 22 499 Fax: +682 21 499</p>

Fiji Islands

Central authority for MLA	<p>Attorney-General and Minister for Justice Box 2213, Government Buildings Level 7, Suvavou House, Victoria Parade Suva, Fiji Tel: +679 3309 866 Fax: +679 3302 404 Website: http://odpp.com.fj/mutual-assistance/ (in English)</p>
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Hong Kong, China

Central authority for MLA	<p>Department of Justice Mutual Legal Assistance Unit, International Law Division 47th Floor, High Block, Queensway Government Offices 66 Queensway, Hong Kong, China Tel: +852 2867 4748 Fax: +852 2523 7959 Email: ild@doj.gov.hk Website: http://www.doj.gov.hk/eng/index.html (in English)</p>
Law enforcement contact(s)	<p>Investigation Branch 4, Operations Department Independent Commission against Corruption 20/F, 303 Java Road, North Point, Hong Kong, China Tel: +852 2826 4030 Fax: +852 2521 9402</p> <p>Liaison Bureau, Hong Kong Police Force 16/F Arsenal House, West Wing, Police Headquarters Arsenal Street, Wan Chai, Hong Kong, China Tel: +852 2860 2109 Fax: +852 2529 3166 / 2294 0016</p>

India

Central authority for MLA	<p><i>Under MLA treaties with Mongolia and Thailand:</i></p> <p>Ministry of Home Affairs North Block, Central Secretariat New Delhi 110 001, India Tel.: +91 11 2309 2011 or +91 11 2309 2161 Fax: +91 11 2309 3750 or +91 11 2309 2763</p> <p><i>All other requests:</i></p> <p>Diplomatic channels</p>
Law enforcement contact(s)	<p>Central Bureau of Investigation (Interpol Wing) Assistant Director (Interpol) Block No. 4, CGO Complex New Delhi 110 003, India Tel.: +91 11 2436 4000 Fax: +91 11 2436 4070 or 2439 2170 Email: interpol@nda.vsnl.net.in / adipol@cbi.gov.in Website: http://cbi.nic.in (in English)</p>

Indonesia

Central authority for MLA	<p>Directorate of International Law Directorate General of General Administration of Law Department of Law and Human Rights of the Republic of Indonesia Tel: +62 21 5221619 Fax: +62 21 5221619</p>
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Japan

Central authority for MLA	<p><i>Under treaties:</i></p> <p>Ministry of Justice International Affairs Division 1-1-1 Kasumigaseki, Chiyoda-ku, Tokyo 100-8977, Japan Tel: +81 3 3592 7049 Fax: +81 3 3592 7063 Email: infojp@i.moj.go.jp Website: http://www.moj.go.jp/ENGLISH/index.html (in English)</p> <p><i>Other requests (not under a treaty):</i></p> <p>Via the diplomatic channel</p>
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Kazakhstan

Central authority for MLA	Diplomatic channels
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Korea, Republic of

Central authority for MLA	Ministry of Justice Building #1, Gwacheon Government Complex Jungang-dong 1 Gwacheon-si, Gyeonggi-do, Republic of Korea Tel: +82 2 503 7058 Website: http://www.moj.go.kr/HP/ENG/index.do (in English)
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Kyrgyzstan

Central authority for MLA	General Prosecutor's Office of the Republic of Kyrgyzstan Website: http://prokuror.gov.kz/eng (in English)
Law enforcement contact(s)	International Legal Cooperation Department Kyrgyz Republic, Bishkek City Tel: +996 312542875 Fax: +996 312542865

Macao, China

Central authority for MLA	<i>Under UNCAC:</i> Office of the Secretary for Administration and Justice Sede do Governo da RAEM Avenida da praia Grande Macao Special Administrative Region, People's Republic of China Website: https://www.gsj.gov.mo/pt/ <i>For SFO and MLA:</i> Office of the Prosecutor General of the MSAR Alameda de Dr. Carlos D'Assumpção, nos. 335–341 Edifício Hotline, 16 ^o andar, NAPE Macao Special Administrative Region, People's Republic of China Tel: +853 2878 6666 Fax: +853 2875 3231 Email: info@mp.gov.mo Website: http://www.mp.gov.mo/en/main.htm (in English)
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Malaysia

Central authority for MLA	<i>Under the Southeast Asian MLAT:</i> Attorney General of Malaysia c/o International Affairs Division, Attorney General's Chambers Level 6, Block C3, Federal Government Administrative Centre 62512 Putrajaya, Malaysia Tel: +60 3 8885 5000 Fax: +60 3 8888 3518 / +60 3 8888 6368 Webpage: http://www.agc.gov.my/ (in English) <i>Other requests:</i> The Attorney General of Malaysia through the diplomatic channel
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Mongolia

Central authority for
MLA

Under the India-Mongolia treaty:
General Prosecutor's Office

Other requests:

Foreign Relations and Cooperation Department
Ministry of Justice and Home Affairs
Ulaanbaatar-46, Khudaldaani gudamj 61A, Mongolia
Tel: +976 1 325225
Fax: +976 1 325225
Website: <http://mojha.gov.mn> (in Mongolian)

Nepal

Central authority for
MLA

Via the diplomatic channel:
Ministry of Law, Justice and Parliamentary Affairs
Singhadurbar, Kathmandu, Nepal
Tel: +977 4211987
Fax: +977 4211684
Email: infolaw@moljpa.com.np
Website: <http://www.moljpa.gov.np>

Law enforcement
contact(s)

Via the diplomatic channel:
Ministry of Home Affairs
Singhdurbar, Kathmandu, Nepal
Phone: +977- 4211208, 4211214
Fax No. : +977- 4211257
Email: gunaso@moha.gov.np
Website: <http://www.moha.gov.np>

Pakistan

Central authority for
MLA

National Accountability Bureau
Attaturk Avenue G-5/2
Islamabad, Pakistan
Tel: +92 051 920 2182
Fax: +92 051 921 4502 03
Email: chairman@nab.gov.pk; infnab@nab.gov.pk
Website: <http://www.nab.gov.pk> (in English)

Palau

Central authority for MLA	<i>Via the diplomatic channel to:</i> Office of the Attorney General PO Box 1365 Koror, Palau 96940 Tel: +680 488 2481 Fax: +680 488 3329 Website: http://palaugov.pw/executive-branch/ministries/justice/office-of-the-attorney-general/ (in English)
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Papua New Guinea

Central authority for MLA	Ministry of Justice Website: http://www.justice.gov.pg (in English)
Law enforcement contact(s)	Department of Police of Papua New Guinea Police Headquarters PO Box 85 Konedobu Port Moresby, NCD, Papua New Guinea Tel: +675 322 6100 Fax : +675 322 6113

Philippines

Central authority for MLA	<i>Under a bilateral treaty:</i> Office of the Chief State Counsel Department of Justice Padre Faura Street Manila, Philippines Tel: +63 2 525 0764 / +63 2 521 6264 Fax: +63 2 525 2218 Website: www.doj.gov.ph (in English) <i>In corruption cases in the absence of a treaty:</i> Office of the Ombudsman Agham Road, North Triangle Diliman, Quezon City 1101, Philippines Tel: +63 2 926 9032-50 Fax: +63 2 926 8776 Email: omb1@ombudsman.gov.ph Website: www.ombudsman.gov.ph (in English)
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Law enforcement contact(s)	National Bureau of Investigation NBI Building, Taft Avenue, Ermita Manila, Philippines 1000 Tel: +63 523-8231 to 38 Fax: +63 526-1216, 523-7414
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Samoa

Central authority for MLA	Office of the Attorney General Tel: +685 20 295 Fax: +685 22 118 Email: attorney.general@samoa.ws Website: http://www.samoagovt.ws/tag/attorney-general/ (in English)
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Singapore

Central authority for MLA	Attorney General of Singapore International Affairs Division 1 Upper Pickering Street Singapore 058288 Republic of Singapore Fax: +65 6702 0513 Email: AGC_CentralAuthority@agc.gov.sg Website: https://www.agc.gov.sg (in English)
Law enforcement contact(s)	Corrupt Practices Investigation Bureau 2 Lengkok Bahru Singapore 159047 Fax: +65 6270 0320 Email: CPIB_Info@cpib.gov.sg Website: www.cpib.gov.sg (in English)

Sri Lanka

Central authority for MLA	<i>Through the diplomatic channel to:</i> The Secretary to the Minister of Justice Superior Courts Complex Colombo 12, Sri Lanka Tel: +94 1 2449 959 / 2323 979 Fax: +94 1 2445 447 Email: justices@sri.lanka.net Website: http://www.justiceministry.gov.lk/index.php?lang=en (some parts in English)
Law enforcement contact(s)	Sri Lanka Police Service Interpol Unit Criminal Investigation Department Tel: +94 1 2320 570 Website: http://www.police.lk (some parts in English)

Thailand

Central authority for MLA	<p><i>Under a treaty:</i></p> <p>Attorney General of the Kingdom of Thailand Office of the Attorney General Rajaburi Direkridhhi Building, Government Complex Chaeng Watthana Road, Lak Si, Bangkok 10210 Tel: +662 142 1654 Fax: +662 143 9791 E-mail: inter@ago.go.th Website: www.inter.ago.go.th</p> <p><i>Other requests:</i></p> <p>The diplomatic channel</p>
Law enforcement contact(s)	<p>Office of the National Anti-Corruption Commission of Thailand (NACC) 361 Nonthaburi Road, Thasaai, Muang, Nonthaburi 11000, Thailand Tel: +66 2 528 4930 Fax: +66 2 528 4930 Website: http://www.nacc.go.th/tacc</p>

Vanuatu

Central authority for MLA	<p>The Attorney-General c/o The State Law Office PMB 9048 Port Vila, Vanuatu Tel: +678 22362 Fax: + 678 25473</p>
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Vietnam

Central authority for MLA	<p><i>Under the Law on Mutual Legal Assistance of Viet Nam of 2007:</i></p> <p>Prosecutor-General of the People's Supreme Procuracy Department for International Cooperation and Mutual Legal Assistance in Criminal Matters No. 44 Ly Thuong Kiet Street Ha Noi, Viet Nam Tel: +84 4 38255058, extensions 103, 104, and 105 Fax: +84 4 62702157 Email: tttp_mla@vks.gov.vn</p>
	<p><i>Under the Southeast Asian MLAT:</i></p> <p>Ministry of Public Security International Cooperation Department No. 60 Nguyen Du</p>

Hanoi, Vietnam
Tel: +84 4 0694 0197
Fax: +84 4 4942 4381
Website: <http://www.mps.gov.vn/web/guest/english> (limited information in English)

Other requests:

Ministry of Justice
56-58-60 Tran Phu
Hanoi, Vietnam
Tel: +84 4 7336 213
Fax: +84 4 8431 431
Website: <http://moj.gov.vn/en/Pages/home.aspx> (in English)