

PROMOTING EFFECTIVE INTERNATIONAL COOPERATION TO COMBAT TRANSNATIONAL CORRUPTION: A SINGAPORE PERSPECTIVE

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I. INTRODUCTION

Singapore sits at the crossroads of global trade and financial flows. Apart from the movement of people and goods, Singapore sees a significant flow of funds from the region and the world. Just as businesses and individuals are attracted to carry out legitimate business in Singapore, criminals and their syndicates are similarly keen to exploit Singapore's business and banking networks for unlawful gain.

Singapore takes its membership in the global community in the fight against corruption seriously. As a financial hub, the Singapore authorities receive numerous requests for assistance in both investigating transnational corruption and the seizing of assets representing the proceeds of corruption. Where we have received such requests, we have promptly responded.

This paper provides a broad overview of the Mutual Legal Assistance ("MLA") legal framework in Singapore and discusses some of the practical challenges relating to MLA requests and responses that Singapore has adopted. The latter section of this paper sets out some of the avenues through which Singapore and its agencies provide and receive mutual legal assistance, and highlights instances of successful international cooperation in combating transnational corruption.

II. THE MLA FRAMEWORK IN SINGAPORE

A. Overview

The primary governing legislation for the provision of MLA is the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed) ("MACMA"). The objective of MACMA is to facilitate the provision and obtaining of international assistance by Singapore in criminal matters, including, among other forms of assistance, the provision and obtaining of evidence, the recovery, forfeiture, or confiscation of property in respect of offences, and the service of documents.¹ Singapore can provide MLA to another jurisdiction on the basis of bilateral agreements and, where there is no MLA agreement or arrangement in force between Singapore and the requesting State, on the basis of reciprocity (i.e., upon a reciprocity undertaking furnished by the Government of the requesting State).

The key actors involved in the processing and execution of an MLA request are:

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¹ See section 3 of MACMA.

- (a) The Attorney-General’s Chambers (“AGC”), which is the Central Authority for MLA and Extradition. Specifically, the International Affairs Division, International Legal Cooperation Team (email: AGC_CentralAuthority@agc.gov.sg) receives MLA and extradition requests;
- (b) The Ministry of Law; and
- (c) Operational and Law Enforcement Agencies (“LEAs”) such as the Singapore Police Force (“SPF”), the Corrupt Practices Investigation Bureau (“CPIB”) and the Commercial Affairs Department (“CAD”).

The AGC, as the Central Authority, receives MLA requests and consults the requesting State, various agencies, and where appropriate, the Ministry of Law. In respect of MLA requests that fall within the ambit of the MACMA, the AGC and/or the relevant LEAs execute these MLA requests after the Ministry of Law gives instructions to accede to the same. Depending on the assistance sought in the MLA request, it may be necessary to apply for and obtain a Court order. Thereafter, where applicable, the requested material sought in the MLA request is transmitted to the requesting State.

B. The MLA Request: Requirements, Grounds of Refusal and Processing Time

Section 19(2) of the MACMA prescribes the requirements regarding the contents of an MLA request to Singapore. These requirements include the following:

- (a) The purpose of the request and nature of the assistance sought.² In this regard, it would be helpful to provide a description of how the evidential material sought is specifically relevant to the criminal investigations or trial, or how the assistance sought will provide substantial value to investigations.
- (b) The identity of the requesting person or authority.³
- (c) A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws.⁴
- (d) A description of the offence to which the criminal matter relates, including its maximum penalty.⁵

The MLA request should also enclose the documentation, information and requisite undertakings required by the MACMA, including legislation (criminal offences and penalties), reciprocity undertaking (if required), mandatory assurances and undertakings, and the procedure to be followed.

There are several grounds for refusing an MLA request, which are set out in section 20 of the MACMA. These grounds include the following:

- (a) Failure to comply with the terms of the applicable MLA treaty, memorandum of understanding or agreement between Singapore and the requesting State.⁶
- (b) The MLA request relates to an offence of a political character.⁷
- (c) It is contrary to public interest to provide the assistance.⁸

² Section 19(2)(a), MACMA.

³ Section 19(2)(b), MACMA.

⁴ Section 19(2)(c)(ii), MACMA.

⁵ Section 19(2)(c)(iv), MACMA.

⁶ Section 20(1)(a), MACMA.

⁷ Section 20(1)(b), MACMA.

⁸ Section 20(1)(i), MACMA.

- (d) The provision of assistance could prejudice a criminal matter in Singapore.⁹
- (e) The provision of assistance would, or would be likely to, prejudice the safety of any person in Singapore or elsewhere.¹⁰
- (f) The provision of assistance would impose an excessive burden on the resources of Singapore.¹¹

The time required to process and execute an MLA request can vary significantly depending on, among other things, the nature and complexity of the request. The average reported turnaround time for incoming MLA requests calculated from the date of receipt of the request was 9 months in 2013 and 8.3 months in 2014.¹² Once the requesting State has provided sufficient information, non-urgent requests requiring court orders may take up to four months, whereas non-coercive assistance would take a significantly shorter time.¹³

C. Practical Challenges Relating to MLA Requests and Responses

In this section, two specific practical challenges relating to MLA requests and their associated responses are discussed.

The first challenge pertains to the increasing number of MLA requests received by Singapore in recent years. AGC is projected this year to have to deal with approximately 46 per cent more incoming MLA requests than it did three to four years ago. Correspondingly, there has in recent years also been an increasing number of requests that Singapore has made to other States. This is unlikely to be an isolated trend in an increasingly globalized world with both businesses and criminal enterprises operating globally. Significant increases in MLA requests pose challenges to Central Authorities around the world which must cope with a greater workload which may not be matched with a proportionate increase in manpower and resources. The need to address inefficiencies in the MLA process is therefore paramount.

One modest step that AGC has taken to reduce inefficiencies is to put up template MLA request forms on the Central Authority webpage (<https://www.agc.gov.sg/our-roles/international-law-advisor/mutual-Legal-assistance>). The template forms are annotated with prompts or reminders on the relevant information that Singapore law requires. They were introduced after it was observed that a considerable amount of time and effort was expended by the Singapore Central Authority going back and forth with its counterparts to fill information gaps in the MLA requests that it received. The use of template forms has not only helped to reduce the time and effort involved in this regard, but it has also reduced the time spent by AGC officers processing the requests in extracting relevant information since the template already arranges such information in a structured manner. Apart from the availability of template request forms, pre-MLA consultations for complex cases are also possible. Requesting States may submit a draft request to the Central Authority for consultation, and a case officer from the Central Authority will be assigned to handle the request.

⁹ Section 20(1)(l), MACMA.

¹⁰ Section 20(2)(b), MACMA.

¹¹ Section 20(2)(c), MACMA.

¹² Financial Action Task Force (FATF) and Asia / Pacific Group on Money-Laundering (APG) (2016), *Anti-money-laundering and counter-terrorist financing measures - Singapore*, Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney at p 125; available online at: www.fatf-gafi.org/publications/mutualevaluations/documents/mer-singapore-2016.html.

¹³ Ibid.

To further reduce the time and effort for internal processing of MLA requests, Singapore is currently looking into further streamlining and automation of the process. In this regard, Singapore is exploring the use of software to auto-extract information submitted and auto-populate draft documents required for internal processing, such as court forms and affidavits to be used in court proceedings. These innovations will likely help to improve the efficiency of processing MLA requests, and reduce the incidence of human error.

The second challenge relates to language barriers which may hinder quick and efficient international cooperation. The laws of some States require MLA requests to be submitted in their language, and for a requesting State, it may be difficult to obtain translations of its requests into less common languages. This exercise is, in any event, likely to take a significant amount of time and effort.

Although it may be neither proper nor realistic to call on States to review their language requirements, there are nonetheless practical steps that can be considered to facilitate the translation process. For example, in the case of a less common language, the translation capacity of the requesting and requested States is often asymmetrical. One State is usually better equipped than the other to undertake the necessary translation. Both sides may therefore wish to consider whether an arrangement can be made for translations in such cases to be undertaken by the better equipped State, even if it is not the requesting State, with suitable arrangements for the defraying of costs, if required. Such an arrangement can be formalized in a protocol between the States concerned.

In addition to arrangements between States regarding the translation of MLA-related documents, technology may possibly be harnessed to mitigate the inefficiencies due to language barriers. In March 2018, Microsoft researchers reported that their machine translation system could translate news articles from Chinese to English with the same quality and accuracy as a person, without human intervention (and presumably faster than a human translator).¹⁴ Technology is likely to be close to a point where machine translation, improved by machine learning, is, for at least the more common language-to-language pairings, sufficiently accurate that States can use them on their own for authoritative translations with significantly reduced, if any, human verification.

The heightened demand for MLA between States in an increasingly globalized world means that States can hardly afford to stand still and deploy old methods and approaches in processing and executing MLA requests. Although there is no quick panacea to address the various practical challenges relating to MLA requests, States can and should consider harnessing technology and implementing practical measures in close collaboration with each other to improve the efficiencies of their MLA processes.

III. BEYOND MACMA: OTHER FORMS OF ASSISTANCE AND INTERNATIONAL COOPERATION

Beyond the formal MACMA legal framework, Singapore and its law enforcement agencies also provide other forms of assistance to requesting States and their agencies, recognizing that transnational crime, including corruption, cannot be fought alone. This

¹⁴ Alison Linn (14 March 2018), *Microsoft reaches a historic milestone, using AI to match human performance in translating news from Chinese to English*, available online at: <https://blogs.microsoft.com/ai/chinese-to-english-translator-milestone/>.

section discusses various forms of informal assistance involving non-coercive measures, and agency to agency cooperation, together with some case examples of successful international cooperation.

In relation to informal assistance involving non-coercive measures, these may take the following forms:

- (a) Witness statements: If witnesses provide their consent, Singapore authorities may assist requesting foreign authorities to record statements or obtain affidavits from these witnesses in Singapore.
- (b) Obtaining publicly available records: For example, business profile records maintained by the Accounting and Corporate Regulatory Authority of Singapore. These records contain information on the shareholders and directors of Singapore-registered companies, which may lead to the identification of suspects. Singapore authorities may assist foreign authorities to obtain such records.
- (c) Obtaining documents disclosed voluntarily by persons.
- (d) Voluntary repatriation of funds.

An example of successful international cooperation resulting in the voluntary repatriation of funds to the requesting State relates to a transnational bribery case involving a government-linked aviation company of Country A. In 2015, the Singapore authorities received information that bribes were given to officials of a government-linked aviation company of the requesting Country A in return for securing contracts for the provision of aircrafts and aftermarket service of the aircraft engines. Investigations identified one of these officials to be Subject X, Vice-President of Asset Management, at the material time. Pursuant to their investigations, the Singapore enforcement authorities seized cash and bonds/equities from Subject X's bank accounts in Singapore that constituted proceeds of the corruption offences involving Subject X. The Singapore authorities worked together with the authorities of requesting Country A on the disposal of the seized assets. The account holder of the seized assets had given consent to voluntarily surrender the equivalent of US\$ 1,235,845.90 of the seized funds to Country A. On this basis, the Singapore authorities repatriated the said funds to Country A in September 2020.

Singapore's Financial Intelligence Unit ("FIU"), the Suspicious Transaction Reporting Office ("STRO"), is housed within the CAD and plays an important institutionalized role in agency-to-agency cooperation. The STRO is the central agency for receiving, analysing and disseminating suspicious transaction reports, cash movement reports, and cash transaction reports. The STRO turns the data in these reports into financial intelligence to detect money-laundering, terrorism financing and other criminal offences, including corruption. Working arrangements are in place to facilitate the dissemination of financial intelligence to relevant law enforcement agencies and/or competent authorities.

In addition, in the course of investigations, CPIB regularly cooperates with anti-corruption agencies in the region, such as the Malaysian Anti-Corruption Commission, Anti-Corruption Bureau (Brunei), Corruption Eradication Commission (Indonesia) and Independent Commission against Corruption (Hong Kong), as well as other foreign law enforcement agencies, such as the FBI (US), Australian Federal Police (Australia), Serious Fraud Office (UK), in the exchange of information, intelligence and joint operations.

Singapore has also sought to build trust between law enforcement agencies by its participation in international enforcement networks like the International Anti-Corruption Coordination Centre (“IACCC”), which coordinates global law enforcement responses to allegations of corruption. Singapore has been a part of IACCC since July 2017.

In 2017, CPIB received information from the IACCC that three UK-incorporated companies were believed to be laundering monies for politically exposed persons. One of the companies received funds from two companies that were incorporated in Singapore. CPIB commenced investigations, and it was established that a foreigner had set up shell companies and bank accounts in Singapore with the use of nominee directors to conceal the ultimate beneficial owners. These nominee directors were charged in court for cheating the bank in relation to the disclosure of beneficial ownership and were convicted.

In 2021, CPIB provided informal assistance to the IACCC which was useful to bribery and money-laundering investigations undertaken by two countries. CPIB has received positive feedback from IACCC for Singapore’s efforts.

A further instance of successful international cooperation that Singapore has engaged in is a parallel investigation with the US for a corruption case. In 2013, CPIB received information from the US Naval Criminal Investigative Service (“NCIS”) that a company incorporated in Singapore was the focus of bribery and fraud investigations in the US. The Singapore company provided ship-husbanding services to the US Navy in various ports in the Pacific and South-East Asia. (Ship husbandry is the provision of services to a ship at port, including services such as customs formalities, fuelling, supplies and repairs.) The Chief Executive Officer (“CEO”) of the company bribed, among others, an employee of the US government who worked in Singapore as a lead contract specialist for the US Navy. The employee was a Singapore citizen. In return for the bribes, she provided the CEO with classified information in connection with the scheduling of ships. The CEO then used the information and bribed US Navy personnel to divert the US Navy vessels to ports where the company had a presence and secured lucrative contracts to supply the vessels. The US investigations uncovered the largest and most extensive bribery and fraud conspiracy in the history of the US Navy. The bribery took place in various ports around the world.

The CEO and the victim (the US Navy) were in the US. However, given that part of the corruption took place in Singapore, Singapore’s CPIB commenced domestic investigations on the suspects residing in Singapore. This started an informal parallel investigation arrangement with the NCIS, where the US and Singapore were able to separately pursue their own investigations, and at the same time share valuable intelligence that assisted each other’s investigations. This enabled the US extradition requests for two suspects from Singapore to be reviewed and approved expeditiously. Valuable evidence could be quickly secured and the investigations scoped, leading to a successful prosecution of the suspects in the US and Singapore.

IV. CONCLUSION

Modern corruption often assumes a transnational character. The corrupt are no longer content with perpetrating their corrupt acts within their borders. Advances in technology and the interconnected nature of global finance bring both promise of shared prosperity,

but also risk abuse by the corrupt who use these systems to conduct their illicit activities and transfer their benefits of criminal conduct across multiple jurisdictions.

To combat transnational corruption, States must embrace and harness technological advances, streamline their MLA processes, and work closely together across geography and legal systems to bring perpetrators and their syndicates to justice.