

INTERNATIONAL COOPERATION: MUTUAL LEGAL ASSISTANCE AND EXTRADITION IN MYANMAR

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I. INTRODUCTION

Myanmar acceded to the Convention against Transnational Organized Crime on 31 March 2004. In this Convention, Mutual Legal Assistance (MLA) and Extradition are important provisions for the state parties. To be in line with and to implement the provision of MLA, Myanmar enacted ‘The Mutual Assistance in Criminal Matters Law’ on 28 April 2004 and promulgated the Mutual Assistance in Criminal Matters Rules on 14 October 2004.

Section 5 of said law provided that the Government shall form the Central Authority for rendering assistance among States in criminal matters, comprising the following persons;

- (a) Minister, Ministry of Home Affairs, Chairman
- (b) Deputy Minister, Ministry of Home Affairs, Vice Chairman
- (c) Deputy Minister, Ministry of Foreign Affairs, Member
- (d) Deputy Minister, Ministry of Finance and Revenue, Member
- (e) Deputy Minister, Ministry of Immigration and Population, Member
- (f) Deputy Chief Justice, Member
- (g) Deputy Attorney General, Member
- (h) A Representative from the Ministry of Defense, Member
- (i) Director General, General Administration Department, Member
- (j) Director General, Myanmar Police Force, Secretary
- (k) Chief of Police, General Staff Myanmar Police Force, Joint Secretary

The functions and duties of the Central Authority are mentioned in Section 6 as follows:

- (a) Granting or refusing to provide assistance after scrutiny of the request;
- (b) Giving opinions to the Government with respect to entering into agreements between States on mutual assistance in criminal matters;

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- (c) Laying down necessary training programmes for personnel from relevant departments and organizations for enhancement of skill and technology in implementation of this law;
- (d) Liaising and coordinating, as may be necessary, if requested issue is also involved with another State;
- (e) Coordinating with the relevant government departments, organizations and persons in respect of the requested issue;
- (f) Informing the relevant government department and organization to carry out matters related to the request and handing over the performances of the relevant government department and organization to the Requesting State;
- (g) Requesting and obtaining assistance from a foreign State in criminal matters.

Therefore, the Central Authority is the main responsible agency and organization for MLA Matters.

1. The conditions and requirements to request MLA in Myanmar regarding with necessity of a treaty basis, the procedure to be followed by a requesting state, assurance of reciprocity, and dual criminality are mentioned in the relevant provisions.

Section 2 of the Law mentioned that this law shall apply to providing assistance in criminal proceedings with States parties to an international convention or regional agreement to which the Union of Myanmar is a State party or with the State that has entered into bilateral agreement or with the State that will provide reciprocal assistance though not a State party to the international convention or regional agreement or bilateral agreement with respect to investigation, prosecution and judicial proceedings in criminal matters.

Concerning the necessity of a treaty basis, the States parties to an international convention or regional agreement or bilateral agreement to which Myanmar is a State party shall be provided MLA.

If the State is not a party to the above-mentioned agreements, MLA will be provided upon the assurance of reciprocity.

Regarding dual criminality, Section 3(a) provides that Offence means the offence, punishable with imprisonment for a term of one year and above under any existing law. The imprisonment for a term of one year and above under the law of any requesting foreign State;

2. The scope of offences for which MLA can be granted has no classification of offences. But the request may be refused under Section 18 of the law. The severity of offences is punishable with imprisonment for a term of one year and above under any existing law.

3. Available types of assistance are provided in Section 11. Any foreign State may, in making a request under Section 10, with respect to investigation, prosecution and judicial proceedings in criminal matters, include and request the following matters:

- (a) Taking evidence or a statement from any person;

- (b) Rendering service so that judicial documents shall have effect;
- (c) Examining objects and sites;
- (d) Identifying or tracing money or property to be used for evidentiary purposes relevant to the offence;
- (e) Executing searches, seizures, control, issuing restraining orders and confiscation of exhibits;
- (f) Obtaining information, documents to be used for evidentiary purposes, records and expert opinions;
- (g) Providing originals or certified copies of relevant documents and records to be used for evidentiary purposes;
- (h) Exposing the residential address of an offender, location of the exhibit and other necessary information;
- (i) Other matters in respect of which the Central Authority has agreed to give assistance.

4. Grounds for refusal of MLA are provided in Section 18. The Central Authority shall not refuse the request of any foreign State on the ground that it is a bank or on the ground of financial-institution secrecy. Provided that if it is found on scrutiny that it infringes one of the following facts, the request may be refused in whole or in part:

- (a) Not being in conformity with the stipulations of this Law;
- (b) Encroaching on the sovereignty of the State, its security prevalence of law and order or public interests;
- (c) There being cause to believe that the race, sex, religion, nationality, ethnic origin, political opinion or personal stand of any individual is encroached;
- (d) There being a prohibition of conducting investigation, prosecution and judicial proceedings of an offence similar to the offence requested, under the existing law of the Union of Myanmar;
- (e) Being an offence of military nature actionable under the Defence Services Act, 1959;
- (f) The subject matter relating to the request being contrary to the laws of Myanmar;
- (g) Being a request incidental to matters reserved in an international convention to which the Union of Myanmar is a State Party.

5. Confidentiality of the request and provided information regarding Section 22 of the Law, the Central Authority shall:

- (a) if there are matters that are to be kept confidential among the information and evidence to be sent by one's own State with respect to matters that are given assistance by the Union of Myanmar, inform the Requesting State to keep the same confidential;
 - (b) if there is no intention of handing over documents, records or property in their entirety to the Requesting State, mention to return the same without delay to the Union of Myanmar after completing performance of the request.
6. The internal procedure for requesting MLA is concerned with Section 10 of the Law, and any foreign State requesting assistance of Myanmar in criminal matters shall:
- (a) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is a State Party or the State which has bilateral agreement with the Union of Myanmar, request assistance directly from the Central Authority;
 - (b) if it is the State Party to the international convention or regional agreement to which the Union of Myanmar is not a State Party or the State that has not entered into bilateral agreement with the Union of Myanmar, request assistance from the Central Authority through diplomatic channels.

In the Mutual Assistance in Criminal Matters Rules, the request form was mentioned and is called Form-1. (This form is mentioned in Annex-1)

7. Other informal methods of law enforcement cooperation are provided in Section 13 of the Law. The requesting State may, in urgent circumstances, make a request orally by telephone, facsimile, electronic mail or other electronic means including computer networks. In making such requests, the original letter of request shall be sent to the Central Authority without delay.

8. Regarding Mutual Legal Assistance, Myanmar is a State Party to the Convention Against Transnational Organized Crime and the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT). Myanmar has only concluded a bilateral agreement with India on this matter. In most of the ASEAN countries, the focal points of MLA are Offices of the Attorney General, but in Myanmar, the Central Authority was established and led by the Minister of Home Affairs. Most of the MLA requests were carried out in informal ways between Myanmar and China, Myanmar and Thailand.

9. Regarding extradition, Myanmar enacted the Extradition Act in 1903 which still exists but does not apply in practice. It is not in line with the current situation, and we are trying to promulgate a new law for extradition. At present, Myanmar has not concluded any bilateral agreement between other States. Therefore, we have no presentation on extradition.

II. CONCLUSION

In conclusion, as a member of the United Nations, ASEAN and other international and regional organizations, Myanmar is actively taking part in Mutual Legal Assistance with other countries, especially with neighboring countries.