

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

MUTUAL LEGAL ASSISTANCE, EXTRADITION AND RECOVERY OF PROCEEDS OF CORRUPTION IN ASIA AND THE PACIFIC

Frameworks and Practices in 27 Asian and Pacific Jurisdictions

Thematic Review – Preliminary Report

Australia – Bangladesh – Cambodia – P.R. China – Cook Islands – Fiji Islands – Hong Kong, China – India – Indonesia – Japan – Republic of Kazakhstan – Republic of Korea – Kyrgyz Republic – Malaysia – Macao, China – Mongolia – Nepal – Pakistan – Palau – Papua New Guinea – Philippines – Samoa – Singapore – Sri Lanka – Thailand – Vanuatu – Vietnam

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Abbreviations and Acronyms

ADB	Asian Development Bank
ASEAN	Association of Southeast Asian Nations
ASEANPOL	ASEAN Chiefs of National Police
CIS	Commonwealth of Independent States
FIU	financial intelligence unit
FJD	Fijian dollar
ICAC	Independent Commission Against Corruption (Hong Kong, China)
INTERPOL	International Criminal Police Organization
KPK	Corruption Eradication Commission (Indonesia)
MLA	mutual legal assistance in criminal matters
MLAT	mutual legal assistance in criminal matters treaty
MOU	memorandum of understanding
NZD	New Zealand dollar
OECD	Organisation for Economic Co-operation and Development
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention against Transnational Organised Crime
USD	United States dollar

Foreword

The deterrent effect of penal provisions against corruption depends essentially on the effectiveness of law enforcement. As people and assets cross borders with ever greater ease, law enforcement officials in corruption cases increasingly depend on international cooperation to gather evidence and apprehend fugitives to bring the corrupt to justice. Effective international cooperation is ever more crucial to recover the proceeds of corruption.

Countries worldwide recognize that the existing mechanisms for mutual legal assistance (MLA), extradition and the recovery of proceeds of corruption are inadequate. The members of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific resolved to address and overcome these weaknesses as early as 2005. At the Initiative's 6th Steering Group meeting in April 2005, its members identified the issue as a priority of common concern. The 5th Regional Anti-Corruption Conference for Asia-Pacific, held in September 2005, dedicated a workshop to the topic. In March 2006, the Initiative conducted a high-level technical seminar on Denying Safe Haven to the Corrupt and the Proceeds of Corruption and, as a result of the findings of the seminar, the Steering Group decided in May 2006 to conduct an in-depth thematic review on mutual legal assistance, extradition and the recovery of proceeds of corruption.

The Steering Group began the thematic review in November 2006 with a comprehensive, cross-regional discussion on the frameworks and practices for requesting and granting MLA, extradition and the recovery of proceeds of corruption in the Initiative's 27 member economies. The review analyzed policies, legislation and institutions involved in MLA and extradition in corruption cases, as well as the mechanisms for international cooperation in these areas and their application in practice. The next round of the review, to be undertaken in the course of 2007, will consist in discussing country specific reports that will support the cross-regional thematic review. It will highlight strengths as well as weaknesses, and will provide policy guidance to address these challenges to assist the Initiative's members in designing policies and procedures to enhance international cooperation in corruption cases.

This publication is the outcome of the review that took place in November 2006: It presents an overview of the policies, legislation and institutions involved in MLA and extradition in corruption cases in the Initiative's members. The study covers three main areas: the legal basis and preconditions for extradition and MLA; procedures and measures that facilitate international cooperation; and the

mechanisms for recovering proceeds of corruption. The report is based primarily on independent research, information that members of the Initiative provided in writing to the Secretariat, and on the findings of the March 2006 technical seminar on Denying Safe Haven to the Corrupt and the Proceeds of Corruption and the November 2006 Steering Group meeting, during which the draft report was discussed and adopted.

The final report of the thematic review, which will include both a cross-regional analysis and country-specific reports, is expected to be available by end 2007. However, the Initiative's members have decided to release this preliminary report to make the information gathered so far available to a large audience of experts, policymakers and practitioners. All reasonable care has been taken in preparing the report, but it should be stressed that the information presented in this publication is not always complete. It should also be noted that, in a rapidly and continuously evolving legal environment, some of the information in the report may require updating.

This publication is the result of the collective efforts of many individuals. The Secretariat of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific wishes to express its gratitude to the many experts from the Initiative's 27 member economies as well as to other specialists who took part in the discussions of both the technical seminar held in Kuala Lumpur in March 2006 and the Steering Group meeting held in Bangkok in November 2006 and provided their expertise, including Charles Caruso, then Regional Anti-Corruption Advisor for the ABA Asia Law Initiative; Rita O'Sullivan, Senior Counsel, Office of the General Counsel, Asian Development Bank; Kimberly Prost, then Chief, Legal Advisory Section within the Division of Treaty Affairs of the UN Office on Drugs and Crime; Bernard Rabatel, French Liaison Magistrate in the United Kingdom; and Jean-Bernard Schmid, Investigating Magistrate, Financial Section, in Geneva, Switzerland. The report was prepared at the OECD Secretariat, Anti-Corruption Division, Directorate for Financial and Enterprises Affairs, by William Y.W. Loo, Legal Analyst, under the supervision of Frédéric Wehrlé, Coordinator Asia-Pacific, with the assistance of Joachim Pohl, Project Coordinator, Anti-Corruption Initiative for Asia-Pacific, OECD.

The findings, interpretations, and conclusions expressed in this report do not necessarily represent the views of ADB's Board and members nor those of the OECD and its member countries. The ADB and OECD do not guarantee the accuracy of the data included in this publication and accept no responsibility whatsoever for the consequences of their use. The term "country" in this report refers also to territories and areas; the designations employed and the presentation of the material do not imply the expression of any opinion whatsoever concerning the legal status of any country or territory on the part of ADB's Board and members and the OECD and its member countries.

Executive Summary

As with other regions in the world, the fight against corruption in Asia-Pacific has taken on an international dimension. Countries in this region increasingly need to gather evidence abroad and to seek the return of fugitives in corruption cases. Many also seek to repatriate proceeds of corruption that have been exported. Extradition and mutual legal assistance (MLA) are therefore more important now than ever.

Asia-Pacific countries have adopted different types of legal frameworks to address the need for effective extradition and MLA in corruption cases. Some are based on bilateral treaties, of which there are over 60 among member countries of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. More recently, Asia-Pacific countries have placed greater emphasis on multilateral instruments. A growing number of countries have signed and/or ratified the United Nations Convention against Corruption. Three members of the Initiative are parties to the OECD Convention against the Bribery of Foreign Public Officials in International Business Transactions. Several countries are also signatories to the regional Treaty on Mutual Legal Assistance in Criminal Matters signed by member countries of ASEAN. In addition, Asia-Pacific countries have enacted domestic legislation that complements these treaty-based arrangements. For example, most member countries of the Initiative that are also part of the Commonwealth have designated other Commonwealth countries as extradition partners without treaties. Member countries of the Pacific Islands Forum have done likewise. In the absence of treaties or standing arrangements based on legislation, most countries will consider requests for cooperation on a case-by-case basis.

Whether based on treaties or legislation, these schemes of cooperation often appear sufficiently broad to cover most corruption and related offences. For example, when the severity of the offence is a prerequisite for cooperation, the threshold is relatively low. Most countries only require the crime to be punishable by one year imprisonment in the requesting and/or requested state; this would cover most corruption and related offences. As well, although many countries require dual criminality for extraditions and MLA, most arrangements use a conduct-based definition of dual criminality which enhances the range of offences eligible for assistance.

There are also commonalities among Asia-Pacific countries in terms of the grounds for denying international cooperation. Under many arrangements, an Asia-Pacific country may refuse cooperation that would impair its "essential

interests". Since that term is not well-defined, it is conceivable that a requested state may take into account factors such as considerations of public order, national economic interest, the potential effect upon relations with another state and the identity of the parties involved. This would in turn reduce the effectiveness of extradition and MLA. Similarly, almost all extradition arrangements and many MLA arrangements deny cooperation in cases involving political offences, but the definition of such offences is not always clear. To address this uncertainty, some arrangements expressly state that corruption can never constitute a political offence.

In terms of procedure, many schemes for cooperation in Asia-Pacific include features that expedite cooperation in corruption cases. To promote effective oversight and to maximize economies of scale, many members of the Initiative use central authorities to send, receive and handle requests for assistance. In urgent cases, some requested states will accept oral requests for assistance and/or communication outside normal channels. Several members of the Initiative also offer simplified means of extradition, such as endorsement of arrest warrants and extradition by consent. Others try to attain the same goal by reducing or eliminating evidentiary requirements so as to avoid protracted hearings. However, members report that these features may have reduced but have not eliminated delay in international cooperation.

In addition to streamlined procedures, several Asia-Pacific jurisdictions have taken practical measures to facilitate international cooperation. Some of the Initiative's members have appointed liaison personnel to provide advice and to act as additional contact points. These measures could significantly improve the efficiency and effectiveness of international cooperation. Some members allow officials of a requesting state to attend the execution of MLA requests, which could prove useful in corruption cases that have complex financial aspects. Many members also state that they will accept requests for assistance in English, which could make it easier for a requesting state to seek cooperation.

In many respects, the framework in Asia-Pacific for tracing, seizing and confiscating proceeds of corruption is similar to other forms of MLA. The legal basis for doing so is found in many bilateral and multilateral treaties, as well as domestic legislation. Many of these arrangements were created recently. Some include fairly modern features to expedite assistance, such as allowing the direct registration of foreign freezing and confiscation orders. Less common are provisions to share and repatriate confiscated assets. Most arrangements require the requesting and requested states to negotiate on a case-by-case basis and thus provide little guidance.

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Finally, although frameworks for international cooperation are largely in place in most members of the Initiative, they have not been used extensively in many instances. Most members have received relatively few incoming requests. In many cases, the number of outgoing request is even lower. Very few requests involve corruption offences. Given the relatively low level of practice, it may be difficult to thoroughly evaluate these frameworks' effectiveness in practice at this time.

Introduction

Corruption in Asia-Pacific, like many other crimes, has taken on an international dimension in recent years. It is now common for corrupt public officials to hide or launder bribes or embezzled funds in foreign jurisdictions, or for them to seek safe haven in a foreign country. Bribers may keep secret slush funds in bank accounts abroad, or they may launder the proceeds of corruption internationally. Bribery of foreign public officials has also become a widespread phenomenon in international business transactions, including trade and investment, as well as humanitarian aid. Consequently, Asia-Pacific countries increasingly recognize the need for international cooperation to fight and repress corruption more effectively.

Extradition and mutual legal assistance in criminal matters (MLA) are two essential forms of such international cooperation. Extradition is the surrender by one state, at the request of another, of a person who is accused of or has been sentenced for a crime committed within the jurisdiction of the requesting state. MLA is a formal process to obtain and provide assistance in gathering evidence for use in criminal cases, transfer criminal proceedings to another State or execute foreign criminal sentences. In some instances, MLA can also be used to recover proceeds of corruption. Both extradition and MLA are indispensable means of international cooperation in criminal law enforcement.

The purpose of this report is to provide an overview of the legal and institutional framework for extradition and MLA in corruption cases in the 27 jurisdictions which have endorsed the Anti-Corruption Action Plan for Asia-Pacific of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific: Australia; Bangladesh; Cambodia; P.R. China; the Cook Islands; the Fiji Islands; Hong Kong, China; India; Indonesia; Japan; Kazakhstan; Korea; the Kyrgyz Republic; Macao, China; Malaysia; Mongolia; Nepal; Pakistan; Palau; Papua New Guinea; Philippines; Samoa; Singapore; Sri Lanka; Thailand; Vanuatu; and Vietnam.

That international cooperation is a priority for the Initiative's members is evidenced by their recent activities in this area. Australia has undertaken a review of its extradition and MLA legislation. Many Pacific Island states recently introduced new legislation in the area. P.R. China has also made significant efforts to seek the return of fugitive and assets in corruption cases.

This report is structured as follows. Section I of the report examines the legal basis and preconditions for rendering extradition and MLA. Section II considers some procedures and measures that facilitate international cooperation. Section III focuses on the confiscation and repatriation of the proceeds of corruption, a subject which has received particular attention recently in Asia-Pacific.

I. The Legal Framework for Extradition and MLA

A. The Legal Basis for Rendering Extradition and MLA

Asia-Pacific countries may seek or provide extradition and MLA in corruption cases through different types of arrangements, including bilateral treaties, multilateral treaties, domestic legislation and letters rogatory. A country may rely on one or more of these bases to seek or provide cooperation, depending on the nature of the assistance sought and the country whose assistance is requested.

1. Treaty-based Cooperation

The Initiative's members have created a network of extradition and MLA bilateral and multilateral treaties that may be used in corruption cases (see Annexes A and B for an overview). There are several advantages to treaty-based cooperation. A treaty obliges a requested state to cooperate under international law. Treaties usually contain detailed provisions on the procedure and parameters of cooperation, and thus provide greater certainty and clarity than most non-treaty based arrangements. Treaties may also provide for forms of cooperation that are otherwise unavailable.

a. Bilateral Treaties

Among themselves, the Initiative's members have signed and ratified at least 38 and 26 bilateral extradition and MLA treaties respectively. Many of the treaties were concluded recently. Bilateral treaties have the advantage that they can be designed to meet the needs of the signatories. They are also easier to amend to meet future needs. On the other hand, negotiating treaties requires a significant amount of time and resources, which could limit the number of treaties that a country can negotiate.

b. Multilateral Treaties

In recent years, Asia-Pacific countries have increasingly resorted to multilateral treaties in international cooperation. This is possibly a response to the cost and time required to negotiate bilateral instruments. The various members of the Initiative are signatories to five multilateral conventions that provide MLA and/or extradition in corruption cases.

i. United Nations Convention against Corruption

A growing number of Asia-Pacific countries have ratified the United Nations Convention against Corruption (UNCAC), which came into force on 14 December 2005. As of 11 December 2006, seven members of the Initiative have signed and ratified the UNCAC: Australia; P.R. China; Indonesia; Kyrgyzstan; Mongolia; Philippines; and Sri Lanka. P.R. China has declared that the UNCAC applies to Hong Kong, China and Macao, China. Ten others have signed but have yet to ratify: India; Japan; Korea; Malaysia; Nepal; Pakistan; Papua New Guinea; Singapore; Thailand; and Vietnam.

The UNCAC requires States Parties to criminalize (or consider criminalizing) a number of corruption-related offenses, including the bribery of domestic and foreign public officials. In addition, it provides the legal basis for extradition in three ways. First, offenses established in accordance with the Convention are deemed to be included in any existing bilateral extradition treaty between States Parties. States Parties must also include these offenses in any future bilateral extradition treaties that they sign. Second, if a State Party requires a treaty as a precondition to extradition, it may consider the UNCAC as the requisite treaty. Third, if a State Party does not require a treaty as a precondition to extradition, it shall consider the offenses in the UNCAC as extraditable offenses.

The UNCAC also provides a legal basis for MLA. States Parties are obliged to afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by the Convention. If two States Parties are not bound by a relevant MLA treaty or convention, then the UNCAC operates as such a treaty. To deal with these cases, the UNCAC details the conditions and procedure for requesting and rendering assistance. These provisions are comparable to those found in most bilateral treaties.

ii. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Another relevant multilateral instrument is the OECD Convention on Combating Bribery of Foreign Public Officials in International Business

Transactions. Three members of the Initiative (Australia; Japan; and Korea) are parties to the OECD Convention. As its title suggests, the OECD Convention requires its signatories to criminalize the bribery of foreign public officials in international business transactions. The reach of the OECD Convention is thus more limited than that of the UNCAC because it does not cover areas such as bribery of domestic officials, corruption in the private sector or bribery not involving international business transactions.

The OECD Convention contains provisions on both extradition and MLA. Bribery of foreign public officials is deemed an extradition offense under the laws of the Parties and in extradition treaties between them. As for MLA, a Party is required to provide prompt and effective assistance to other Parties to the fullest extent possible under its laws and relevant treaties and arrangements. A requested Party must inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request.

iii. Southeast Asian Mutual Legal Assistance in Criminal Matters Treaty

The third relevant multilateral instrument is the regional Treaty on Mutual Legal Assistance in Criminal Matters signed by member countries of ASEAN (Southeast Asian MLAT). Among the countries in the Initiative, Malaysia, Singapore, and Vietnam have signed and ratified the treaty. Cambodia, Indonesia, the Philippines, and Thailand have signed but not ratified it. The Treaty obligates parties to render to one another the widest possible measure of MLA in criminal matters, subject to a requested state's domestic laws. The Southeast Asian MLAT provides for many forms of MLA that are commonly found in bilateral treaties, such as the taking of evidence, search and seizure, confiscation of assets etc.

iv. United Nations Convention against Transnational Organized Crime

The United Nations Convention against Transnational Organized Crime (UNTOC) could also be relevant in corruption cases. The following eight members of the Initiative have signed and ratified (or acceded to) the UNTOC: Australia; Cambodia; P.R. China; Cook Islands; Kyrgyzstan; Philippines; Sri Lanka; and Vanuatu. (Malaysia has also ratified the Convention, but it has declared that it does not take the Convention as the legal basis for extradition with other States Parties. It will instead continue to rely on its domestic legislation.) P.R. China has declared that the UNTOC applies to Hong Kong, China and Macao, China. Ten other members of the Initiative have signed but have not ratified the UNTOC: India; Indonesia; Japan; Kazakhstan; Korea; Nepal; Pakistan; Singapore; Thailand; and Vietnam.

The UNTOC requires States Parties to criminalize bribery of their officials where the offense is transnational in nature and involves an organized criminal group. As for international cooperation, the UNTOC provides the legal basis for extradition and MLA in relation to offenses established in accordance with the Convention. It does so in the same manner as the UNCAC, *i.e.* by acting as a treaty between Parties States or by supplementing existing bilateral treaties and arrangements (see above).

v. Commonwealth of Independent States Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters

Members of the Commonwealth of Independent States (CIS) have signed two multilateral Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters dated 22 January 1993 and 7 October 2002. The Conventions contain provisions that regulate extradition, criminal prosecution and MLA in criminal cases. Kazakhstan has signed and ratified both Conventions. Kyrgyzstan has signed both but has only ratified the former.

2. Non-treaty Based Arrangements

Though multilateral and bilateral treaties are useful, their negotiation can be costly and time-consuming. Practically speaking, it is not possible to enter into treaties with every country in the world. One means of overcoming these difficulties is to dispense with the requirement of a treaty as a precondition for cooperation.

a. Cooperation Based on Domestic Law

Several members of the Initiative have passed legislation to provide MLA and/or extradition to countries with which it has no treaty relations.

Table 1: Members of the Initiative with Legislation Allowing Extradition and MLA without a Treaty

Extradition		MLA	
Australia	Kazakhstan	Australia	Kazakhstan
Bangladesh	Korea	P.R. China	Korea
P.R. China	Macao, China	Cook Islands	Macao, China
Cook Islands	Malaysia	Fiji	Malaysia
Fiji	Pakistan	Hong Kong, China	Palau
India	Palau	India	Singapore
Indonesia	Thailand	Indonesia	Thailand
Japan	Vanuatu	Japan	Vanuatu

Under these schemes, the legislation of the requested state usually prescribes the procedure for sending, receiving, considering and executing requests. The procedure is often similar to those in treaty-based schemes, though some additional conditions may apply. A country may designate a foreign state as

eligible for receiving assistance, or it may consider each incoming request on a case-by-case basis.

There are pros and cons to cooperation based on domestic legislation. Such schemes are often quicker and cheaper to implement than treaties. On the other hand, unlike treaties, domestic legislation does not create binding obligations under international law. A state which enacts such legislation has no international obligations to assist a foreign state. In the same vein, foreign states are not obliged to render assistance to countries which have enacted such legislation. In many cases, a requested state will cooperate without a treaty only if the requesting state provides an undertaking of reciprocity (see Section I.B.3). In practice, however, the absence of treaty-based obligations does not necessarily result in less cooperation.

b. Cooperation among Commonwealth Countries

Ten member countries of the Initiative are also members of the Commonwealth: Australia; Bangladesh; Fiji; India; Malaysia; Papua New Guinea; Samoa; Singapore; Sri Lanka; and Vanuatu. Because of their common law legal tradition, many Commonwealth countries have adopted alternate schemes for international cooperation based on domestic legislation rather than treaties. These arrangements have been consolidated into the London Scheme for Extradition within the Commonwealth (1966) and the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (the Harare Scheme) (1990).

These Schemes, however, are not binding legal instruments or treaties *per se*. They are merely a set of guidelines to encourage Commonwealth states to adopt legislation and practices that will foster a high level of cooperation. The Schemes must still be implemented by each Commonwealth country through domestic legislation. Not all have done so. For instance, Malaysia has not designated all Commonwealth countries as non-treaty based extradition partners. Papua New Guinea will extradite only to Commonwealth countries with which it has a treaty (unless the requesting state is a member of the Pacific Islands Forum).

c. Cooperation among Member Countries of the Pacific Islands Forum

Seven countries in the Initiative are also members of the Pacific Islands Forum: Australia; Cook Islands; Fiji; Palau; Papua New Guinea; Samoa; and Vanuatu. Most of them have agreed to extradite to one another through

domestic legislation and without treaties. In most cases, extradition is implemented via a system of endorsement of warrants (see Section II.A.3).

d. Judicial Assistance and Letters Rogatory

Letters rogatory is one of the oldest means of seeking formal international assistance in criminal matters in Asia-Pacific. It remains useful today, particularly between countries with no MLA treaties. In its most traditional form, a letter rogatory is a request for assistance issued by a judge in the requesting state to a judge in the requested state. The process is founded upon the comity of nations and aims to enable judges in different jurisdictions to assist one another. In most instances, a judge may also be willing to issue letters rogatory on behalf of the police or a prosecutor to gather evidence for a case.

There are drawbacks to letters rogatory compared to other frameworks of assistance. The scope of assistance available is generally much more restricted, *e.g.* often limited to service of documents or obtaining testimony and documents from a witness. This is particularly so if the requested state is a common law country where judges are generally not involved in an investigation. Letters rogatory may also be more cumbersome and time-consuming since it may involve applications to a court and/or transmission through diplomatic channels. Unlike a request under a treaty, a requested state has no obligation to assist.

Some members of the Initiative have legislation specifically regulating letters rogatory requests, sometimes found outside of statutes on MLA or criminal procedure: Hong Kong, China; Malaysia. To ensure consistency with formal MLA procedures, some Asia-Pacific countries now require all letters rogatory to be forwarded to an attorney general or minister of justice for execution in the same manner as a regular MLA request: Australia; Cook Islands; Fiji; Papua New Guinea; and Vanuatu.

3. MLA in Extradition Treaties and Legislation

One interesting feature is the inclusion of MLA features in some extradition arrangements in Asia-Pacific. Many extradition treaties and legislation permit the requested state to search for and seize evidence relevant to the corruption offense that underlies an extradition request. The requested state may then send the evidence to the requesting state, sometimes even if the person sought is not ultimately surrendered. Some arrangements go further by also allowing search, seizure and transmission of property acquired by the person sought as a result of the offense. These provisions could conceivably be used to recover the proceeds of corruption.

Table 2: Extradition Legislation and Treaties in Asia-Pacific Which Permit Search, Seizure and Transmission of Evidence and Property Derived from Corruption and Related Offences

Legislation			
Australia	Hong Kong, China	Macao, China	Papua New Guinea
Bangladesh*	India*	Malaysia*	Philippines
P.R. China	Kazakhstan	Mongolia	Singapore*
Cook Islands	Korea	Pakistan*	Sri Lanka*
Fiji	Kyrgyzstan	Palau	Vanuatu
Treaties			
Australia-Hong Kong, China	Fiji-Thailand**	Indonesia-Philippines	
Australia-Indonesia	Hong Kong, China-India	Indonesia-Thailand	
Australia-Korea	Hong Kong, China-Indonesia	Japan-Korea	
Australia-Philippines	Hong Kong, China-Malaysia*	Korea-India	
Australia-Thailand**	Hong Kong, China-Philippines	Korea-Mongolia	
Bangladesh-Thailand	Hong Kong, China-Singapore*	Korea-Philippines	
Cambodia-Thailand	Hong Kong, China-Sri Lanka	Korea-Thailand	
P.R. China-Korea	India-Mongolia	Korea-Vietnam	
P.R. China-Mongolia	India-Philippines*	Malaysia-Thailand**	
P.R. China-Philippines	Indonesia-Malaysia	Philippines-Thailand	
P.R. China-Thailand			

* Transmission of evidence only

** Transmission of "stolen property" and evidence only

In addition to transmitting evidence and proceeds of crime, the India-Mongolia extradition treaty uniquely provides for MLA in general terms. The treaty requires the contracting states to afford each other "the widest possible measure of mutual legal assistance in criminal matters in connection with the offence for which extradition has been requested." However, the treaty does not provide any details on how this provision is implemented, such as the procedure for requesting MLA. It is also silent on the grounds for denying assistance. India and Mongolia could thus conceivably demand MLA under this provision even if it is not entitled to assistance under the India-Mongolia MLA treaty.

B. Legal Limitations and Preconditions to Cooperation

All legal frameworks for international cooperation in Asia-Pacific generally prescribe conditions for granting extradition or MLA. The following are particularly relevant in corruption cases.

1. Extradition of Nationals

Many Asia-Pacific countries may refuse to extradite their nationals in corruption cases. These prohibitions may be found in legislation or treaties. They may be mandatory or discretionary. Under some arrangements, when a country

refuses to extradite because of nationality, the requested state may prosecute the person sought for the crimes in question. The decision to prosecute in place of extradition may be mandatory or discretionary. In some cases, prosecution may be conditional upon the request of the state seeking extradition and/or whether the requested state has jurisdiction over the crime.

Table 3: Extradition of Nationals among Members of the Initiative

	Refusal to Extradite		Decision to Prosecute			
	Mandatory	Discretionary	Mandatory	Discretionary	Jurisdiction to Prosecute	Upon Request
Legislation						
Australia		X		X		
P.R. China	X					
Cook Islands		X		X		
Fiji ²		X		X		
Hong Kong, China ¹		X				
Indonesia		X		X		
Japan ³	X					
Kazakhstan ⁴	X					X
Korea		X				
Macao, China ⁴	X			X		
Malaysia		X			X	
Mongolia	X					X
Palau ⁵		X	X			
Papua New Guinea ²		X		X		
Treaties						
Australia-Hong Kong, China ¹		X		X		X
Australia-Indonesia		X		X		X
Australia-Korea		X		X		
Australia-Philippines		X		X		X
Australia-Thailand		X				
Bangladesh-Thailand		X				X
Cambodia-Thailand		X				X
P.R. China-Korea		X				X
P.R. China-Mongolia	X					X
P.R. China-Philippines		X		X		
P.R. China-Thailand		X				X
Fiji-Thailand		X				
Hong Kong, China-India ¹		X		X		
Hong Kong, China-Indonesia ¹		X		X		
Hong Kong, China-Malaysia ¹		X		X		
Hong Kong, China-Philippines ¹		X		X		
Hong Kong, China-Singapore ¹		X		X		
Hong Kong, China-Sri Lanka ¹		X		X		
India-Mongolia	X		X			
Indonesia-Malaysia		X			X	X
Indonesia-Philippines		X			X	X
Indonesia-Thailand		X			X	X
Japan-Korea		X	X			
Korea-India		X				X

Table 3: Extradition of Nationals among Members of the Initiative (cont.)

	Refusal to Extradite		Decision to Prosecute			
	Mandatory	Discretionary	Mandatory	Discretionary	Jurisdiction to Prosecute	Upon Request
Korea-Mongolia	x					x
Korea-Philippines		x		x		
Korea-Thailand		x		x		
Korea-Vietnam		x				x
Malaysia-Thailand		x				
OECD		x	x			
Philippines-Thailand		x			x	x
UNCAC		x				x
UNTOC		x				x

- 1 For Hong Kong, China, the prohibition applies to nationals of P.R. China.
- 2 The prohibition does not apply when extradition is requested by a member of the Pacific Islands Forum.
- 3 Subject to treaty.
- 4 The prohibition applies to (1) nationals of P.R. China who are not resident in Macao, China, and (2) residents of Macao, China, unless extradition is sought by the country of the fugitive's nationality.
- 5 Mandatory prohibition for persons who may face the death penalty and who are of Palauan nationality or ancestry; discretionary prohibition in other cases.

Other factors may also come into play. As a matter of practice, Thailand will extradite its nationals only if required to do so under a treaty or if the requesting state provides an assurance of reciprocity (see Section I.B.3). As well, some Asia-Pacific countries will extradite a national for trial on the condition that the national will be returned to serve any sentence upon conviction. The legislation of the following countries contains such a provision: Cook Islands; Fiji; Papua New Guinea; and Vanuatu.

Finally, the India-Nepal Treaty (1953) stands out as an exception in its treatment of nationals: a requested state is only bound to extradite its nationals; the treaty does not apply to extradition of non-nationals.

2. Extradition and MLA Offenses – Severity and Dual Criminality

Most extradition and MLA arrangements in Asia-Pacific restrict cooperation to certain types of offenses. Whether a particular corruption offense qualifies for cooperation may depend on two criteria: first, whether the offence in question is sufficiently serious to justify international cooperation (severity); and second, whether the conduct underlying the request for assistance is criminalized in both states (dual criminality).

a. Severity

The traditional approach in Asia-Pacific for implementing the severity criterion is to list the qualifying offenses in the relevant treaty and legislation. In other words, for cooperation to be given in a corruption case, the conduct in question must constitute one of the listed offenses. The list approach has its limits since it is sometimes difficult to categorize conduct into types of offenses. A list also may not cover new types of offenses that develop over time. Some extradition treaties in Asia-Pacific address this problem by providing discretion to extradite for an offense that is not on the list but which constitutes a crime in the requesting and requested states.

To overcome the disadvantages of the list approach, more recent treaties and legislation in Asia-Pacific adopt a minimum-penalty approach, *i.e.* the conduct in question must be punishable by a certain length of imprisonment. Others employ a hybrid approach: parties will cooperate only if the underlying offense falls within a list of crimes *and* is punishable by a certain minimum penalty.

Table 4: Extradition Treaties and Legislation with a Severity Criterion

	List	Minimum Penalty	Hybrid
Legislation			
Australia ¹		x	
Bangladesh ²			x
P.R. China		x	
Cook Islands		x	
Fiji		x	
Hong Kong, China			x
India ⁴	x		
Japan ⁵		x	
Korea		x	
Macao, China		x	
Malaysia		x	
Pakistan ²	x		
Palau		x	
Papua New Guinea		x	
Singapore (non-Commonwealth)	x		
Singapore (Commonwealth) ³			x
Sri Lanka (Commonwealth)			x
Thailand ⁷		x	
Vanuatu		x	

(cont. next page)

Table 4: Extradition Treaties and Legislation with a Severity Criterion (cont.)

	List	Minimum Penalty	Hybrid
Treaties			
Australia-Hong Kong, China			x
Australia-Korea		x	
Australia-Indonesia ²			x
Australia-Philippines		x	
Australia-Thailand ⁸	x		
Bangladesh-Thailand		x	
Cambodia-Thailand		x	
P.R. China-Korea		x	
P.R. China-Mongolia		x	
P.R. China-Philippines		x	
P.R. China-Thailand		x	
Fiji-Thailand ⁸	x		
Hong Kong, China-India			x
Hong Kong, China-Indonesia			x
Hong Kong, China-Malaysia ³			x
Treaties			
Hong Kong, China-Philippines ²			x
Hong Kong, China-Singapore ²			x
Hong Kong, China-Sri Lanka			x
India-Philippines		x	
India-Mongolia		x	
Indonesia-Malaysia ^{2,3}	x		
Indonesia-Philippines ^{2,3}			x
Indonesia-Thailand ^{2,3}	x		
Japan-Korea		x	
Korea-India		x	
Korea-Mongolia		x	
Korea-Philippines		x	
Korea-Thailand		x	
Korea-Vietnam		x	

For treaties and arrangements that take the minimum penalty or hybrid approach, the minimum penalty threshold is one year except where noted. Whether an arrangement covers a particular corruption case will depend on the applicable penalty for the particular offence in question.

For treaties and arrangements that take the list or hybrid approach, the list includes corruption and related offenses except where noted.

- 1 Two years for Commonwealth countries, one year for others
- 2 List includes corruption offences but not money laundering
- 3 List includes corruption offences but not false accounting
- 4 Non-treaty states
- 5 Three years
- 6 Parties have discretion to extradite for crimes which can be granted in both states
- 7 Subject to treaty
- 8 List does not include corruption or related offences, but the requested state has discretion to extradite for "any other crime for which, according to the law of both Contracting States for the time being in force, the grant can be made."

The severity requirement is generally more relaxed for MLA than for extradition in Asia-Pacific, ostensibly because MLA does not impinge upon an individual's liberty. Several bilateral treaties in Asia-Pacific do not impose such a requirement at all: Australia-Hong Kong, China; Australia-Korea; P.R. China-Thailand; Hong Kong, China-Korea; India-Thailand; Korea-Thailand. The legislation of some countries imposes the requirement only for more intrusive types of assistance. Hence, search and seizure is available in the following countries only if the underlying offense is punishable by at least 1 year imprisonment in the requesting state: Australia; Malaysia; Papua New Guinea; and Vanuatu. In Hong Kong, China, the requirement is 2 years. In the Cook Islands, the requirement is

1 year imprisonment or a NZD 5,000 fine for all types of assistance. In Fiji, the threshold is 6 months or a FJD 500 fine.

As with extradition, some MLA arrangements impose a severity requirement through a list approach (which includes corruption and related offenses): Hong Kong, China-Philippines; Singapore legislation. The Hong Kong, China-Singapore treaty permits a requested state to deny assistance if “the offence to which the request relates is not an offence of sufficient gravity”.

b. Dual Criminality

Dual criminality is required in most extradition arrangements in Asia-Pacific. Thus, arrangements with lists of offenses generally require the conduct underlying an extradition request to constitute an offense on the list in both the requesting and requested states. Arrangements with the minimum-penalty approach require the subject conduct be punishable by the minimum penalty in both states. But there are exceptions. For instance, extradition between Malaysia and Singapore does not require dual criminality.

Some approaches to implementing the dual criminality test tend to be more restrictive, such as matching the names or the essential elements of the offences in the two states. To avoid these problems, many treaties and arrangements in Asia-Pacific take a more modern, conduct-based approach. In other words, the question is whether the conduct underlying the extradition request is criminal in both states. The question is not whether the conduct is punishable by the same offense in the two states, or whether the offences in the two states have the same elements.

Table 5: Extradition Legislation and Treaties with a Conduct-Based Definition of Dual Criminality

Legislation			
Australia	Fiji	Macao, China	Singapore
Bangladesh	Hong Kong, China	Pakistan	Sri Lanka
P.R. China	Japan	Palau	Thailand
Cook Islands	Kazakhstan	Papua New Guinea	Vanuatu
Treaties			
Australia-Korea	P.R. China-Thailand	Japan-Korea	
Australia-Hong Kong, China	Hong Kong, China-India	Korea-India	
Australia-Indonesia	Hong Kong, China-Indonesia	Korea-Mongolia	
Australia-Philippines	Hong Kong, China-Malaysia	Korea-Philippines	
Cambodia-Thailand	Hong Kong, China-Philippines	Korea-Thailand	
P.R. China-Korea	Hong Kong, China-Singapore	Korea-Vietnam	
P.R. China-Mongolia	Hong Kong, China-Sri Lanka	UNCAC	
P.R. China-Philippines	India-Mongolia		

Like the severity requirement, dual criminality is less commonly required for MLA than extradition in Asia-Pacific. Some arrangements state that dual

criminality is not required. Others require dual criminality but expressly give the requested state discretion to waive the requirement in certain circumstances. Some legislation is silent on dual criminality and hence does not necessarily preclude a requested state from considering this factor.

Table 6: MLA Arrangements and Dual Criminality

	Not required	Mandatory	Discretionary	Silent
Legislation				
Australia			x	
P.R. China				x
Cook Islands		x		
Fiji				x
Hong Kong, China		x		
India				x
Indonesia			x	
Kazakhstan				x
Japan		x		
Treaties				
Australia-Hong Kong, China		x		
Australia-Indonesia			x	
Australia-Korea			x	
Australia-Philippines			x	
P.R. China-Indonesia	x			
P.R. China-Korea			x	
P.R. China-Philippines			x	
Korea-Mongolia			x	
Korea-Philippines			x	
Korea-Thailand			x	
Korea-Vietnam			x	
Korea		x		
Kyrgyzstan				x
Macao, China ¹			x	
Malaysia		x		
Palau		x		
Papua New Guinea				x
Singapore		x		
Thailand ³		x		
Vanuatu			x	
P.R. China-Thailand			x	
Hong Kong, China-Korea		x		
Hong Kong, China-Philippines		x		
Hong Kong, China-Singapore		x		
India-Korea				x
India-Mongolia		x		
India-Thailand		x		
OECD ²		x		
Southeast Asian MLAT				x
UNCAC ⁴				x
UNTOC				x

- 1 Macao, China may waive the dual criminality requirement for extradition or MLA if the purpose of the request is to demonstrate "the illicit nature of an act" or "the guilt of an individual".
- 2 Dual criminality is deemed to exist whenever the offence for which MLA is sought falls within the scope of the treaty.
- 3 Subject to treaty.
- 4 Discretionary for coercive forms of MLA. For non-coercive forms of MLA, where consistent with the basic concepts of its legal system, a State Party must render assistance even in the absence of dual criminality.

Dual criminality could possibly be an issue for members of the Initiative that have not criminalized transnational bribery. Parties to the UNCAC and the OECD Convention are required to criminalize bribery of foreign public officials in international business transactions. States Parties to the UNTOC must also consider doing so. A state that has created this offence may thus prosecute its citizens for bribing an official of an Initiative's member. If the foreign state seeks cooperation

from the Initiative's member but the latter has not created the offence of bribery of foreign public officials, then there is arguably no dual criminality. However, a conduct-based approach to dual criminality could address this concern. From the requested state's perspective, the conduct in question is bribery of its own official (*i.e.* domestic, not foreign bribery), which is presumably a crime. The specific offence under which the briber is charged in the requesting state is irrelevant. In any event, because of a lack of practice, the Initiative's members that have not criminalized foreign bribery are not certain how this issue would be dealt with: Hong Kong, China; Indonesia; Macao, China; Mongolia; and Thailand.

A similar issue could arise in cases involving "illicit enrichment". This offence occurs when there is "a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income". Many members of the Initiative have not criminalized "illicit enrichment" *per se* and it may be argued that these members could not cooperate in such cases because there is no dual criminality. However, a conduct-based definition of dual criminality may circumvent this problem, since the conduct that gives rise to the illicit enrichment may amount to an offence (*e.g.* accepting a bribe) that satisfies dual criminality. Nevertheless, because of a lack of practice, it is also not certain how the members of the Initiative that have not criminalized illicit enrichment will deal with these cases. Japan and Pakistan state that they will take the approach described above. Mongolia states that, because of a lack of practice, it is unable to determine whether a conduct-based approach to dual criminality would alleviate any problems. Indonesia states that it can provide MLA *viz.* illicit enrichment if there is proof that the enrichment arose from criminal activities and that "the subject conduct destroyed or harmed the public or society".

Finally, dual criminality could raise obstacles when the target of an investigation is a legal person. Some countries do not recognize the criminal liability of legal persons and may thus refuse to cooperate in these cases. One method of addressing this problem is to rely on illegal conduct that was committed by a natural person in the case to satisfy dual criminality. Japan states that it will take this approach. Thailand states that it would handle these cases in the same manner as those involving natural persons. Macao, China states that this problem would be alleviated if the requesting state indicated that the conduct underlying the request can be attributed to a natural person. Indonesia states that this issue is the subject of on-going discussion.

3. Reciprocity

An assurance of reciprocity is a promise by a requesting state that it will provide the same type of cooperation to the requested state in a similar case in the future. Generally, extradition and MLA treaties in Asia-Pacific implicitly embody this principle. The Southeast Asian MLAT expressly requires reciprocity.

For non-treaty based cooperation, Asia-Pacific countries often require a requested state to expressly provide an assurance of reciprocity. The following countries require such an assurance before it will extradite without a treaty: P.R. China; Japan; Korea. For MLA, reciprocity is a mandatory requirement in the legislation of some jurisdictions and discretionary in others (see below). However, reciprocity may be required in a particular case even if the legislation in the requested state is silent on the issue. It is always open to the requested state to demand an assurance of reciprocity before acceding to a request for cooperation. For example, this is Thailand's general practice when extraditing an individual without a treaty.

Table 7: MLA Legislation which Requires Reciprocity

	Mandatory	Discretionary
P.R. China	x	
Hong Kong, China	x	
Indonesia	x	
Japan	x	
Korea	x	
Macao, China*	x	
Malaysia		x
Palau		x
Singapore	x	
Thailand	x	

* Except where the assistance is for the benefit of an accused or a resident of Macao, China or where the assistance relates to a serious offence

4. Evidentiary Tests

Many extradition and MLA arrangements in Asia-Pacific also require a requesting state to produce some evidence of the alleged crime in order to receive cooperation. This requirement may derive from legislation or from a treaty. The amount of evidence required depends on the jurisdiction in question and the nature of cooperation that is sought. Assistance of a more intrusive nature generally requires more supporting evidence.

There are two common evidentiary tests for extradition in Asia-Pacific. Some countries impose the *prima facie* evidence test. In other words, there must be evidence which would justify a person to stand trial had the conduct been committed in the requested state. A number of extradition arrangements in Asia-Pacific impose a *probable cause* evidence test. In other words, there must be "sufficient information as would provide reasonable grounds to suspect ... that the person sought has committed the offense".

Table 8: Evidentiary Tests in Extradition

	Prima Facie Case	Probable Cause		Prima Facie Case	Probable Cause
Legislation			Malaysia ²	x	
Australia (Commonwealth only)	x		Pakistan	x	
Bangladesh	x		Palau ³		x
Cook Islands ¹	x		Philippines	x	
Fiji ¹	x		Sri Lanka	x	
Hong Kong, China	x		Singapore	x	
India	x		Thailand	x	
Japan		x	Vanuatu ¹	x	
Korea		x			
Treaties					
Australia-Fiji	x		Hong Kong, China-Philippines	x	
Australia-Hong Kong, China	x		Hong Kong, China-Singapore	x	
Australia-Korea		x	Hong Kong, China-Sri Lanka	x	
Australia-Thailand	x		India-Nepal (1953)	x	
Bangladesh-Thailand	x		Japan-Korea		x
Cambodia-Thailand	x		Korea-India		x
P.R. China-Thailand	x		Korea-Mongolia		x
Fiji-Thailand	x		Korea-Philippines		x
Hong Kong, China-India	x		Korea-Thailand		x
Hong Kong, China-Indonesia	x		Korea-Vietnam		x
Hong Kong, China-Malaysia	x		Malaysia-Thailand	x	

1 Some Commonwealth countries only

2 Subject to a relevant treaty

3 Unless the requesting state applies the *prima facie* case test in its extradition hearings, in which case the *prima facie* case also applies to proceedings in Palau

The purpose of evidentiary tests in extradition schemes is ostensibly to protect the interests of an individual sought for extradition. By requiring some evidence of the underlying crime, an individual presumably will not be extradited based on groundless allegations or requests made in bad faith. On the other hand, the requirement of evidence is frequently cited as a cause for delay. Requesting states often have difficulty producing sufficient admissible evidence because of differences in legal systems and evidentiary rules. For example, Hong Kong, China reports that requesting states with civil law systems have had difficulties in meeting the *prima facie* evidence test. Furthermore, judicial hearings in a requested state to determine whether an evidentiary test has been met (and appeals of the courts' rulings) can cause additional delay.

When evidentiary tests are used, the extradition process can be further prolonged if the person sought can also tender evidence to challenge the allegation that he/she committed the offence. The resulting inquiry could involve a lengthy examination of foreign law and evidence. The extradition process

would become a trial in the requested state, rather than an expedited process to determine whether a trial should take place in the requesting state.

Members of the Initiative have taken different approaches on this issue. The legislation of some members expressly allows the person sought to tender evidence relevant to technical matters (e.g. identity) but not to challenge the allegations against him/her: Australia; Cook Islands; Fiji; Papua New Guinea; Thailand; and Vanuatu. Malaysia's extradition legislation provides the opposite: it obliges the extradition court to receive evidence tendered by the person sought to show that he/she "did not do or omit to do the act alleged to have been done or omitted by him". The legislation in other Asia-Pacific countries is more vague. For example, legislation in Singapore, Sri Lanka and P.R. China expressly allows the person sought to tender evidence without saying in relation to what issue. Similarly, the legislation of Japan and Korea allows a court to examine a witness and to order an appraisal, interpretation or translation. Additional regulations in Korea allow the Chief Judge of the Supreme Court to order the parties to the proceedings to submit additional materials. Yet, there is no indication on what issue must the evidence relate. Legislation in Bangladesh; India; Nepal; and Pakistan expressly permits the person sought to tender evidence, including evidence in relation to whether the offence in question is a political or an extradition offence. The legislation does not expressly exclude evidence beyond these areas.

To avoid difficulties posed by evidentiary tests, some extradition arrangements in Asia-Pacific require little or no evidence of the underlying offence (though information about the offence may still be necessary). A requesting state need only provide certain documents, such as a copy of a valid arrest warrant, materials concerning the identity of the accused and a statement of the conduct constituting the offence that underlies the extradition request. Evidence of the underlying crime is not necessary. The following extradition arrangements in Asia-Pacific take this approach: Australia (legislation, except certain Commonwealth countries); Australia-Indonesia; Australia-Philippines; Cook Islands (legislation, except certain Commonwealth countries); Fiji (legislation, except certain Commonwealth countries); Papua New Guinea (legislation); Vanuatu (except certain Commonwealth countries). Jurisdictions that use a system of endorsing warrants may also dispense with evidentiary tests (see Section II.A.3).

Evidentiary requirements are also sometimes imposed for MLA to prevent "fishing expeditions". Nevertheless, like dual criminality and severity, evidentiary requirements are usually more relaxed for MLA than for extradition, particularly for less intrusive measures such as the taking of evidence or production of documents. For more intrusive measures such as search and seizure, the

legislation in the following Asia-Pacific countries requires reasonable grounds to believe that evidence is located in the requested state: Australia; Cook Islands; Fiji; Hong Kong, China; Malaysia; Papua New Guinea; Singapore; Thailand; and Vanuatu. In Palau, the test is whether there is probable cause to believe that evidence may be found. Japan requires the requesting state to indicate “the necessity of the evidence sought” when seeking compulsory measures such as search and seizure. The following MLA treaties also contain evidentiary tests for search and seizure: Southeast Asian MLAT; Hong Kong, China-Singapore; India-Thailand (a statement indicating the basis for the belief). Under the P.R. China-Philippines treaty, MLA may be refused if “the assistance requested lacks substantial connection with the case”.

5. Specialty and Use Limitation

Specialty (also known as speciality) is the principle that an extradited person will only be tried or punished by the requesting state for conduct in respect of which extradition has been granted, or conduct that is committed after his/her extradition. Most extradition arrangements in Asia-Pacific expressly require specialty but only Palau’s legislation specify how the requirement can be met (namely via an affidavit). Thailand states that, in practice, the requirement can be satisfied by an undertaking from the attorney general of the requesting state. Pakistan would accept assurances from the judicial or diplomatic authorities of the requesting state.

Table 9: Extradition Legislation and Treaties which Require Specialty

Legislation			
Australia	Fiji**	Macao, China	Papua New Guinea**
Bangladesh	Hong Kong, China	Malaysia	Singapore
P.R. China	India	Pakistan	Sri Lanka
Cook Islands*	Korea	Palau	Vanuatu**
Treaties			
Australia-Hong Kong, China	Fiji-Thailand		Indonesia-Philippines
Australia-Indonesia	Hong Kong, China-India		Indonesia-Thailand
Australia-Korea	Hong Kong, China-Indonesia		Japan-Korea
Australia-Philippines	Hong Kong, China-Malaysia		Korea-India
Australia-Thailand	Hong Kong, China-Philippines		Korea-Mongolia
Bangladesh-Thailand	Hong Kong, China-Singapore		Korea-Philippines
Cambodia-Thailand	Hong Kong, China-Sri Lanka		Korea-Thailand
P.R. China-Korea	India-Mongolia		Korea-Vietnam
P.R. China-Mongolia	India-Nepal (1953)		Malaysia-Thailand
P.R. China-Philippines	India-Philippines		Philippines-Thailand
P.R. China-Thailand	Indonesia-Malaysia		

* Outgoing requests only

** For extradition requested by non-Pacific Islands Forum countries

The principle of use limitation is similar to specialty but applies to MLA. Under some MLA arrangements in Asia-Pacific, the requesting state may use information acquired under the arrangement only in the case or investigation referred to in the request for assistance.

Table 10: MLA Legislation and Treaties which Impose Use Limitation

Legislation	Macao, China	Malaysia	Singapore
Indonesia			
Treaties			
Southeast Asian MLAT		P.R. China-Philippines	India-Thailand*
Australia-Hong Kong, China		Hong Kong, China-Korea	Korea-Mongolia
Australia-Indonesia		P.R. China-Thailand	Korea-Philippines
Australia-Korea		Hong Kong, China-Philippines	Korea-Thailand
Australia-Philippines		Hong Kong, China-Singapore*	Korea-Vietnam
P.R. China-Indonesia		India-Korea	UNCAC*
P.R. China-Korea		India-Mongolia	UNTOC*

* Case-by-case basis

6. Grounds for Denying Cooperation

Almost all MLA and extradition arrangements in Asia-Pacific allow a requested state to deny cooperation on certain enumerated grounds. The following are some that could be relevant in corruption cases.

a. *Essential and Public Interests*

Several jurisdictions in Asia-Pacific deny cooperation that would prejudice their “essential interests”. The meaning of essential interests is not always well-defined, but may include sovereignty, security and national interests. It could also include the safety of any persons or an excessive burden on the resources of the requested state.

Asia-Pacific extradition arrangements refer to “essential interests” in different ways. Some treaties permit the denial of extradition which affects the interests of the requested state in matters of defense or foreign affairs: Hong Kong, China-Malaysia; Hong Kong, China-Singapore. Under the extradition legislation of Hong Kong, China, the government of P.R. China may instruct the Chief Executive of Hong Kong, China to take or not take an action in an extradition case on grounds that P.R. China’s interest in defense or foreign affairs would be significantly affected. Korea’s legislation broadly states that its Minister of Justice may deny extradition “to protect the interests” of Korea. For extradition to non-Pacific Islands Forum countries, Fiji, Papua New Guinea and Vanuatu will consider “the national interest ... including [their] interests in effective international cooperation to combat crime”.

The same issue may arise with MLA. Many treaties and legislation may deny the provision of MLA that would prejudice the sovereignty, security, public order, national interests, essential interests or “public interest”. The treaties and legislation usually do not give precise meaning to these terms.

Table 11: MLA Legislation and Treaties in which Essential Interests Are Considered

Legislation			
Cook Islands	Korea	Malaysia	Singapore
Fiji	Kazakhstan	Mongolia	Thailand
Hong Kong, China*	Kyrgyzstan	Palau	Vanuatu
Indonesia	Macao, China	Papua New Guinea	
Treaties			
Southeast Asian MLAT	P.R. China-Philippines		India-Thailand
Australia-Hong Kong, China*	P.R. China-Thailand		Korea-Mongolia
Australia-Indonesia	Hong Kong, China-Korea*		Korea-Philippines
Australia-Korea	Hong Kong, China-Philippines*		Korea-Thailand
Australia-Philippines	Hong Kong, China-Singapore*		Korea-Vietnam
P.R. China-Indonesia	India-Korea		UNCAC
P.R. China-Korea	India-Mongolia		UNTOC

* MLA may be denied if cooperation impairs the essential interests of Hong Kong, China or the sovereignty, security or public order of P.R. China

The concept of essential interests could affect the effectiveness of international cooperation. The lack of a clear definition allows a requested state to consider a wide range of factors when deciding whether to cooperate. International instruments such as the OECD Convention have recognized that the investigation and prosecution of corruption cases can sometimes be affected by “considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.” If a requested state includes these factors as part of its essential interests in deciding whether to cooperate with another state, then the effectiveness of extradition and MLA could suffer.

Of the 27 countries reviewed, only Thailand has elaborated on the definition of “essential interests.” It has reported that, in corruption cases, the concept involves a consideration of factors such as “the extent of the damage caused, the number of victims, and whether it affects the sovereignty, security or national interest of the requested state.”

Thailand has a special procedure for dealing with incoming and outgoing MLA requests that may affect its essential interests. In particular, Thailand’s MLA legislation creates a special Board comprising representatives from the Office of the Attorney General, the Ministries of Defence, Foreign Affairs, Interior and Justice, and up to four other “distinguished people”. The purpose of the Board is to advise the central authority in considering and determining whether the rendering of MLA would affect Thailand’s “national sovereignty or security,

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crucial public interests, international relation, or relate to a political or military offence." Disagreements between the Board and the central authority are resolved by the Prime Minister.

b. Political Offences

Most, if not all, Asia-Pacific jurisdictions deny extradition for political offenses or offenses of a political character. Although the concept of political offences is found in many arrangements, the definition of such offenses is usually nebulous. There is no consensus about its scope, and hence the application of this doctrine is unclear. What is clear, however, is that it could conceivably cover corruption offences in some cases.

Table 12: Extradition Legislation and Treaties which Allow Denial of Cooperation for Political Offences

Legislation				
Australia	Fiji*	Macao, China	Palau	Sri Lanka
Bangladesh	India	Malaysia	Papua New Guinea*	Thailand
P.R. China	Japan	Nepal	Singapore	Vanuatu*
Hong Kong, China	Korea	Pakistan		
Treaties				
Australia-Korea		Fiji-Thailand		Indonesia-Philippines
Australia-Hong Kong, China		Hong Kong, China-India		Indonesia-Thailand
Australia-Indonesia		Hong Kong, China-Indonesia		Korea-India
Australia-Philippines		Hong Kong, China-Malaysia		Korea-Mongolia
Australia-Thailand		Hong Kong, China-Philippines		Korea-Philippines
Bangladesh-Thailand		Hong Kong, China-Singapore		Korea-Thailand
Cambodia-Thailand		Hong Kong, China-Sri Lanka		Korea-Vietnam
P.R. China-Korea		India-Nepal (1953)		Malaysia-Thailand
P.R. China-Philippines		India-Philippines		Philippines-Thailand
P.R. China-Thailand		Indonesia-Malaysia		

* Where the requesting state is not a member of the Pacific Islands Forum

Table 13: MLA Legislation and Treaties which Allow Denial of Cooperation for Political Offences

	Mandatory	Discretionary		Mandatory	Discretionary
Legislation					
Australia	x		Malaysia	x	
Hong Kong, China*	x		Papua New Guinea	x	
Indonesia	x		Singapore	x	
Japan	x		Thailand		x
Korea		x	Vanuatu	x	
Treaties					
Australia-Hong Kong, China	x		India-Korea		x
Australia-Indonesia	x		India-Thailand		x
Australia-Korea		x	Japan-Korea		x
P.R. China-Indonesia		x	Korea-Mongolia		x

Table 13: MLA Legislation and Treaties which Allow Denial of Cooperation for Political Offences (cont.)

	Mandatory	Discretionary		Mandatory	Discretionary
P.R. China-Korea		x	Korea-Philippines		x
P.R. China-Philippines	x		Korea-Thailand		x
P.R. China-Thailand		x	Korea-Vietnam	x	
Hong Kong, China-Korea	x		Macao, China	x	
Hong Kong, China-Philippines	x		Southeast Asian MLAT	x	
Hong Kong, China-Singapore	x				

* Also applies to assistance through letters rogatory

Some members of the Initiative elaborated on their definition of "political offense." Thailand states that "the main consideration is whether the acts are committed for purposes of overthrowing the government." Pakistan states that the concept does not cover "a politician or a person having held or holding political office [who] misuses his/her authority or indulges in corruption, and if the case is proven in a court." Vietnam states that it will not cooperate if the purpose of a prosecution in the requesting state is to eliminate a political opponent. Hong Kong, China states that judicial decisions provide further guidance.

To deal with the nebulous definition of political offences, the UNCAC and the Australia-Philippines MLA treaty provide a "negative" definition by stating that corruption and related offences can never be political offenses. Palau's definition of political offences likely excludes most cases of corruption: political offences means "any charge or conviction based on a person's political beliefs or affiliation where the conduct involved does not otherwise constitute a violation of that country's criminal laws."

Obligations under multilateral instruments may also affect the application of the political offence exception. For instance, the Australia-Korea and Japan-Korea extradition treaties state that the concept of political offenses does not include "an offense in respect of which the Contracting Parties have the obligation to establish jurisdiction or extradite by reason of a multilateral international agreement to which they are both parties". It is arguable that this would include the offense of bribery of foreign public officials under the OECD Convention, to which Australia, Japan and Korea are parties. Other arrangements contain similar provisions and may have similar effect on parties to other multilateral instruments such as the UNCAC.

Table 14: Extradition Legislation and Treaties which Exclude the Political Offences Exception Due to Obligations under Multilateral Instruments

Legislation					
Australia	Fiji	Korea	Macao, China	Papua New Guinea	Vanuatu
Treaties					
Southeast Asian MLAT			Hong Kong, China-Philippines		Korea-Mongolia
Australia-Hong Kong, China			Japan-Korea		Korea-Philippines
Australia-Korea			Korea-India		Korea-Thailand
Hong Kong, China-Sri Lanka					

c. *Double Jeopardy/On-going Proceedings and Investigations in the Requested State*

Many extradition and MLA arrangements in Asia-Pacific refer to the principle of double jeopardy. A requested state will deny cooperation if the person sought has been acquitted or punished for the conduct underlying the extradition request. Under some arrangements, cooperation may also be denied if there are on-going proceedings or investigations in the requested state concerning the same crime. In some rare instances, some Asia-Pacific countries may refuse extradition if it has decided not to prosecute the person sought for the conduct underlying an extradition request; a conviction or an acquittal by a court is not required.

Table 15: Legislation and Treaties which Deny Extradition on Grounds of Double Jeopardy and/or Concurrent Proceedings

Legislation			
Australia	Japan	Nepal	Singapore
Bangladesh	Korea	Pakistan	Sri Lanka
P.R. China	Kazakhstan	Palau	Thailand
Fiji*	Kyrgyzstan	Papua New Guinea*	Vanuatu*
Hong Kong, China	Macao, China		
Treaties			
Australia-Korea**	Fiji-Thailand		Japan-Korea
Australia-Indonesia**	Hong Kong, China-India		Korea (legislation)
Australia-Philippines	Hong Kong, China-Philippines		Korea-India
Australia-Thailand	Hong Kong, China-Singapore		Korea-Mongolia
Bangladesh-Thailand	Hong Kong, China-Sri Lanka		Korea-Philippines
Cambodia-Thailand	India-Mongolia		Korea-Thailand
P.R. China-Korea**	India-Nepal (1953)		Korea-Vietnam
P.R. China-Mongolia	India-Philippines		Malaysia-Thailand
P.R. China-Philippines	Indonesia-Malaysia		Philippines-Thailand
P.R. China-Thailand	Indonesia-Thailand		

* For non-Pacific Islands Forum countries

** May also refuse extradition if requested state has decided "in the public interest to refrain from prosecuting the person" for the offense in question

Table 16: Legislation and Treaties which Deny MLA on Grounds of Double Jeopardy

Legislation				
Australia	Indonesia	Macao, China	Papua New Guinea	Vanuatu
Hong Kong, China	Korea	Malaysia	Singapore	
Treaties				
Southeast Asian MLAT		P.R. China-Philippines*		Hong Kong, China-Singapore
Australia-Hong Kong, China		P.R. China-Thailand*		India-Korea
Australia-Indonesia		Hong Kong, China-Korea		Korea-Philippines
Australia-Korea*		Hong Kong, China-Philippines		Korea-Vietnam
Australia-Philippines				

* Discretionary ground of refusal

Table 17: Legislation and Treaties which Deny or Delay MLA Because of On-going Proceedings in the Requested State

Legislation			
Cook Islands	Malaysia	Papua New Guinea	Thailand
Fiji	Macao, China	Singapore	Vanuatu
Indonesia	Palau		
Treaties			
Southeast Asian MLAT		P.R. China-Philippines	India-Thailand
Australia-Hong Kong, China		P.R. China-Thailand	Korea-Mongolia
Australia-Indonesia		Hong Kong, China-Korea	Korea-Philippines
Australia-Korea		Hong Kong, China-Philippines	Korea-Thailand
Australia-Philippines		Hong Kong, China-Singapore	Korea-Vietnam
P.R. China-Indonesia		India-Korea	UNCAC
P.R. China-Korea		India-Mongolia	UNTOC

The issues of double jeopardy and concurrent proceedings could conceivably arise in corruption cases. For instance, a corrupt official who has sought safe haven in a foreign country could be prosecuted by that country for related offences, such as laundering his/her ill-gotten gains. These foreign proceedings could impede a prosecution for corruption in the official's home country.

These issues could also arise in cases of bribery of foreign public officials such as those that fall under the OECD Convention and the UNCAC. A country which outlaws such conduct may prosecute an individual found in its territory for bribing an official of another country. Meanwhile, the country of the bribed official could also prosecute the same individual for bribery of its official. The result is concurrent proceedings against the briber in both states, which may prevent or delay extradition and/or MLA. If the briber is tried and convicted/acquitted in one of the two states, the doctrine of double jeopardy could further impede extradition and/or MLA. In these cases, Thailand states that it may postpone rendering MLA if doing so may interfere with an on-going investigation and prosecution in Thailand. Hong Kong, China states that it will decide whether to cooperate on a case-by-case basis, depending on factors such as the strength of the evidence and the location of the offence.

There may also be concurrent proceedings in transnational corruption cases when one country prosecutes the briber (for bribing a foreign public official) and a second country prosecutes its official (for accepting a bribe). In such a case, Malaysia states that if it prosecutes its official for accepting the bribe and the official is acquitted, then it may refuse to provide MLA to a country that prosecutes the briber.

d. Offense Committed Wholly or Partly in the Requested State

Some Asia-Pacific countries may also refuse extradition if the subject conduct constitutes an offence committed wholly or partly in their territory. In some cases, however, the requested state must undertake to prosecute the accused in place of extradition.

Table 18: Legislation and Treaties which May Deny Extradition for an Offense Committed Wholly or Partly in the Requested State

Legislation			
Fiji ¹	Korea	Palau	Vanuatu ¹
Kazakhstan	Macao, China	Papua New Guinea ¹	
Treaties			
Australia-Fiji	Bangladesh-Thailand	Indonesia-Thailand	Korea-Philippines
Australia-Indonesia	P.R. China-Korea ²	Japan-Korea	Korea-Thailand
Australia-Japan ³	Indonesia-Malaysia	Korea-India ²	Korea-Vietnam
Australia-Korea	Indonesia-Philippines	Korea-Mongolia	Philippines-Thailand

1 Where the requesting state is not a member of the Pacific Islands Forum

2 Upon the request of the requesting state, the requested state must prosecute the accused in place of extradition

3 For extraditions from Australia to Japan only

Table 19: Legislation and Treaties which May Deny Extradition for an Offense over which the Requested State Has Jurisdiction to Prosecute

Legislation		
Kyrgyzstan	Macao, China	
Treaties		
Cambodia-Thailand*	P.R. China-Mongolia	Hong Kong, China-Sri Lanka
P.R. China-Philippines*	Hong Kong, China-Indonesia	India-Mongolia*
P.R. China-Thailand*	Hong Kong, China-Malaysia*	India-Philippines*

* Requested state must in fact prosecute the person sought

As with double jeopardy, this issue could arise in transnational bribery. A person who bribes a foreign official may have committed part of the offense in the requested state, *e.g.* by offering a bribe to the official over the telephone while in his/her home country and eventually delivering the bribe in the official's country. Other arrangements approach this issue from the perspective of jurisdiction, *i.e.* extradition may be refused if the requested state has jurisdiction to prosecute the offense.

Only Pakistan and Thailand have described how they will handle this ground of refusal in transnational bribery cases. Pakistan states that it will decide whether to prosecute or extradite on a case-by-case basis, having regard to factors such as the importance of the case to Pakistan and the requesting state, the gravity of the crime and whether the requesting state would extradite to Pakistan under the same circumstances. Thailand cites one example in which it had an international criminal case over which it had jurisdiction, but because it lacked evidence to prosecute, the Thai government extradited the suspects to face trial elsewhere.

e. *Nature and Severity of Punishment*

Some Asia-Pacific countries may refuse to cooperate in a corruption case if the offence is punishable in the requesting state by a severe penalty, such as death. Many countries also deny extradition where an accused may face torture or cruel and unusual punishment, which could conceivably be raised in death penalty cases.

Table 20: Legislation and Treaties which Deny Extradition Because of the Death Penalty (Unless the Requesting State Provides Assurances)

Legislation			
Australia	Fiji ¹	Macao, China	Sri Lanka ³
Cook Islands ¹	Hong Kong, China	Palau ²	Vanuatu ¹
Treaties			
Australia-Korea	Hong Kong, China-Indonesia		India-Mongolia ³
Australia-Hong Kong, China	Hong Kong, China-Malaysia		India-Philippines ³
Australia-Indonesia	Hong Kong, China-Philippines		Indonesia-Philippines ³
Australia-Philippines	Hong Kong, China-Sri Lanka		Korea-Philippines
Hong Kong, China-India			

- 1 Non-Pacific Islands Forum countries only
- 2 Palau will not extradite its nationals or persons of Palauan ancestry regardless of whether the requesting state provides assurances
- 3 Only if the requested state does not permit the death penalty for the same offence

Table 21: Legislation and Treaties which Deny Extradition Because of Torture or Cruel, Inhuman or Degrading Punishment

Legislation				
Australia ¹	Cook Islands ³	Hong Kong, China ²	Palau	Vanuatu ³
P.R. China	Fiji ¹	Macao, China	Papua New Guinea ³	
Treaties				
Australia-Indonesia		Australia-Philippines ⁴		

- 1 Australia's Extradition (Torture) Regulations, which cover extraditions to P.R. China and the Philippines, state that the Extradition Act applies subject to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 2 With reference to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 3 Where the requesting state is not a member of the Pacific Islands Forum
- 4 With reference to Article 7 of the International Covenant on Civil and Political Rights

Table 22: Legislation and Treaties which Deny MLA in Relation to an Offence Punishable by Death

Legislation				
Australia ¹	Hong Kong, China ²	Indonesia	Macao, China ³	Vanuatu ¹
Treaties				
Australia-Indonesia ²		Australia-Hong Kong, China ²		Hong Kong, China-Korea ²

1 Unless there are special circumstances

2 Discretionary ground.

3 Unless the requesting state provides adequate assurance that the penalty will not be imposed

In the absence of legislation, certain members of the Initiative have policies to deal with international cooperation in death penalty cases. Mongolia states that it will not surrender a fugitive to face the death penalty in corruption cases. Through its Minister of Justice, Japan may deny extradition on this ground, having regard to the proportionality between the offense, the penalty and human rights concerns. P.R. China, Pakistan and Thailand state that the death penalty is not a bar to extradition or MLA in corruption cases.

Many countries will cooperate in death penalty cases if the requesting state provides sufficient assurances that the penalty will not be imposed or carried out. Indonesia requires an assurance in the form of a sworn statement by the highest judicial authority in the requesting state, *e.g.* a supreme court. Hong Kong, China only requires an assurance by the central authority or consular representative of the requesting state. Japan states that it will accept assurances from the judicial or diplomatic authorities of the requesting state. India's extradition legislation expressly states that it would not impose the death penalty against fugitives returned to India from a requested state that does not impose death for the same offence. The Philippines states that, if another country refuses to cooperate in a corruption case on this ground, then its President may provide assurances that the offender would be pardoned.

II. Procedures and Measures to Facilitate Extradition and MLA

A. Preparing, Transmitting and Executing Requests

1. Preparation of Outgoing Requests

The preparation of an outgoing request can involve many individuals. Prosecutors and law enforcement officials who have conducted an investigation are most familiar with the case and should of course be involved in drafting the request. In corruption cases, these are often officials of a special anti-corruption agency. At the same time, expertise in extradition and MLA is necessary to shed light on technical matters such as treaty requirements, unique legal concepts and points of contact in the requested state. Diplomatic officials could also play a role because of the political considerations of seeking assistance. It is therefore important to ensure all the necessary individuals are involved, but it is equally important that the process is as streamlined as possible to minimize delay.

Some members of the Initiative have adopted a practice of requiring the investigator/prosecutor in a corruption case to draft outgoing requests jointly or in consultation with an expert from the central authority. Such is the situation in Australia (MLA); Hong Kong, China; Macao, China; Malaysia (MLA); Thailand. This could greatly ensure that requests contain sufficient evidence and information to comply with the demands of the requested state. Australia requires a local law enforcement or prosecutorial agency to draft outgoing extradition requests and submit it to the Attorney-General for approval. Pakistan has no central authority *per se*. However, investigators from the National Accountability Bureau (the anti-corruption agency) draft outgoing requests with the assistance of experts on international cooperation from the Bureau's Overseas Wing.

After a request is drafted, most countries require the request to be approved before it is sent. In some cases, approval is given by the central authority which is already involved in the drafting of the request: Hong Kong, China; Malaysia (MLA); Thailand (MLA). Others jurisdictions require additional

bodies to approve the request before transmission: Australia (Minister for Justice and Customs); Macao, China (the Chief Executive); Malaysia (extradition – Ministry of Internal Security); Pakistan (extradition – Ministry of Interior); Thailand (extradition – Ministry of Foreign Affairs).

Several members of the Initiative also have procedures to follow-up outgoing requests: Thailand will follow up after approximately six months, either through the diplomatic channel or the central authorities. In Malaysia, the Attorney General’s Chambers will monitor outgoing extradition and MLA requests in consultation with other bodies involved. In Hong Kong, China, the central authority monitors outgoing extradition requests, while counsel in charge of a case does so for MLA requests. Pakistan’s National Accountability Bureau generates monthly reports on all outstanding incoming and outgoing requests in corruption cases.

2. Language of the Request and Translation

A technical but potentially thorny problem is the language of the request. A request must obviously be in a language that is understood by the officials of the requested state who are involved in executing the request. Often, a requesting state must therefore translate the request into an official language of the requested state, which could be costly and time-consuming. It can also be difficult to find a qualified translator. Further delay could result if the quality of the translation is poor, or if the requested state seeks additional information which must also be translated.

The severity of this problem is lessened if a requested state accepts incoming requests in English. Most requesting states can translate documents from their official language into English with relative ease. Several members of the Initiative that do not use English as an official language have adopted this approach.

Table 23: Members of the Initiative that Accept Incoming MLA Requests in English (Subject to Treaty)

Australia	Kyrgyzstan*	Palau
Bangladesh	Korea	Papua New Guinea
Cook Islands	Malaysia	Singapore
Fiji	Nepal	Thailand
Hong Kong, China	Pakistan	
Kazakhstan*		

* Must be accompanied by the original request in the language of the requesting state

Finally, P.R. China states that it will accept incoming requests in the language of the requesting state. P.R. China will then translate the request into Chinese for execution.

To translate requests, Indonesia and Thailand indicate that they may hire translators in the private sector to perform the work. Outsourcing of this nature is often necessary because of cost, but it is vital that governments ensure that the confidentiality of the draft request is maintained.

3. Formal Transmission of Requests for Cooperation and Evidence

The transmission of requests for cooperation and evidence can impact the efficiency of cooperation in practice. The most commonly used channels of communication are the diplomatic channels, through central authorities and through direct law enforcement bodies.

a. Transmission through the Diplomatic Channel

The diplomatic channel is the traditional conduit for extradition and MLA requests among Asia-Pacific countries. This approach requires the law enforcement authorities of the requesting state to prepare a request and send it to the diplomatic authorities of their country. The request is then forwarded to the diplomatic authorities of the requested state, which then forwards it to the appropriate law enforcement or prosecutorial authorities for execution. Evidence that is gathered under the request is transmitted to the requesting state by retracing this route. Letters rogatory requests are also generally transmitted through the diplomatic channel.

The main disadvantage of the diplomatic channel is delay. The path of communication is somewhat circuitous. Experience shows that this may be time-consuming. More delay could occur when diplomatic authorities have heavy workloads or are inadequately staffed.

Table 24: Extradition and MLA Legislation and Treaties which Require Communication through Diplomatic Channels (Except Possibly in Urgent Cases)

Extradition Legislation					
Bangladesh	India	Japan	Malaysia	Pakistan	Thailand
P.R. China	Indonesia	Macao, China	Nepal	Philippines	
Extradition Treaties					
Australia-Indonesia		P.R. China-Korea	Indonesia-Malaysia		Korea-Mongolia
Australia-Korea		P.R. China-Philippines	Indonesia-Philippines		Korea-Philippines
Australia-Philippines		P.R. China-Thailand	Indonesia-Thailand		Korea-Thailand
Australia-Thailand		Fiji-Thailand	Japan-Korea		Malaysia-Thailand
Bangladesh-Thailand		India-Mongolia	Korea-India		Philippines-Thailand
Cambodia-Thailand		India-Philippines			
MLA Legislation					
Japan	Korea	Malaysia	Macao, China	Palau	Thailand

b. Transmission through Central Authorities

A growing number of arrangements in the Asia-Pacific now take a different approach by replacing the diplomatic authorities with a “central authority”. As its name suggests, the central authority is responsible for the transmission, receipt and handling of all requests for assistance on behalf of a state. It is typically located in a ministry of justice or the office of an attorney general.

The use of central authorities in Asia-Pacific is more common in MLA than in extradition. Among the extradition arrangements in Asia-Pacific, only the Australia-Hong Kong, China and P.R. China-Mongolia treaties require signatories to designate central authorities to transmit and receive requests. A list of the central authorities of the Initiative’s members for MLA is found in Annex C.

Table 25: MLA Legislation and Treaties which Require Central Authorities to Handle Requests for Assistance

Legislation				
Cook Islands	Fiji	Indonesia	Macao, China	Vanuatu
Treaties				
Southeast Asian MLAT		P.R. China-Thailand		Korea-Mongolia
Australia-Hong Kong, China		Hong Kong, China-Korea		Korea-Philippines
Australia-Indonesia		Hong Kong, China-Philippines		Korea-Thailand
Australia-Korea		Hong Kong, China-Singapore		Korea-Vietnam
P.R. China-Indonesia		India-Korea		UNCAC
P.R. China-Korea		India-Mongolia		UNTOC
P.R. China-Philippines		India-Thailand		

Central authorities can increase the effectiveness of international cooperation. It avoids delays caused by the diplomatic channels. As a body involved in enforcing criminal laws, the central authority may execute the request itself immediately, or it may be better positioned (than the diplomatic authorities) to identify the body most suited for doing so. This is particularly important if a requested state has numerous law enforcement agencies. Central authorities can also monitor a request and ensure its execution.

Another advantage of central authorities is that they could provide a visible point of contact for other countries that are seeking assistance. Such a role is enhanced if a central authority has a Web site in a language that is widely-spoken internationally and which contains the relevant the legislation and treaties, sample requests for assistance, description of the requirements for cooperation and contact information.

Table 26: Web Sites of Central Authorities (See Annex C for Address)

	Available in English	Relevant Legislation	Relevant Treaties	Contact Information	Requirements for Cooperation	Sample Documents
Australia	x	x	x	x		
P.R. China	x	x				
Hong Kong, China	x	x	x	x		
Indonesia						
Macao, China*				x		
Malaysia	x	x		x	x	
Mongolia						
Pakistan	x					
Thailand	x	x	x	x		

* Information refers to the Office of the Prosecutor General of the Macao, China, which is the central authority under the legislation of Macao, China. The Office of the Secretary for Administration and Justice is the central authority under the UNCAC.

Central authorities can also serve an advisory function in light of their expertise in international cooperation. Their staff can assist law enforcement authorities in preparing outgoing requests for assistance and advising foreign authorities on incoming requests. The following members of the Initiative state that their central authorities are staffed with law graduates who have experience in international criminal cases and can speak, read and write English: Hong Kong, China; Mongolia; and Thailand. Japan's International Affairs Division of the Ministry of Justice is staffed with qualified attorneys and experts in financial policy and investigation. The Division, like the central authority of Hong Kong, China, will also assist foreign states in preparing and drafting requests. Australia's central authority will also discuss drafts of incoming requests with the requesting state.

On the other hand, there could also be drawbacks to using central authorities. Central authorities with inadequate resources could delay the execution of requests. Some countries also designate different bodies as central authorities for different treaties and conventions. This may cause confusion to requesting states, raise concerns about coordination, reduce economies of scale and dilute the concentration of expertise.

c. *Transmission between Law Enforcement Agencies*

To further enhance efficiency, some arrangements outside Asia-Pacific allow prosecutors and/or investigators of the requesting state who are involved in a case to directly request MLA from their counterparts in the requested state. (Though in some jurisdictions, the law enforcement agencies involved are

required to send a copy of the request to their respective central authorities.) Pakistan is the only member of the Initiative whose legislation allows its anti-corruption agency (the National Accountability Bureau) to directly request MLA from a foreign state in corruption cases.

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 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.

4. Urgent Procedures for Extradition and MLA

a. Provisional Arrest as an Emergency Measure for Extradition

Provisional arrest is an emergency measure to arrest of a person sought for extradition before a full extradition request is made. A request for provisional arrest generally requires less supporting documentation than extradition and hence takes less time to make. After the person sought has been provisionally arrested, the requesting state is usually required to make a full extradition request within a certain time period. Otherwise, the person is released.

To facilitate expeditious transmission of a request for provisional arrest, some extradition arrangements allow the parties to communicate outside the diplomatic channel, such as via Interpol or central authorities. Other extradition treaties and legislation in Asia-Pacific specifically allow a request for provisional arrest to be sent via certain media, e.g. post, telegraph or other means affording a record in writing. Thailand states that, as a matter of practice, it will accept urgent requests via alternate media for the purposes of preparation. However, the formal request must still be sent through regular channels before the arrest will be effected.

Table 27: Extradition Legislation and Treaties which Provide for Provisional Arrests

	Alternate Media	Outside Diplomatic Channel		Alternate Media	Outside Diplomatic Channel
Legislation					
Australia			Macao, China	x	x
P.R. China		x	Malaysia		x
Cook Islands		x	Palau	x	x
Fiji		x	Papua New Guinea		x
Hong Kong, China			Philippines	x	x
India			Singapore		
Japan			Sri Lanka		
Kazakhstan	x		Thailand		
Korea			Vanuatu		x
Treaties					
Australia-Hong Kong, China		x	Hong Kong, China-Indonesia		x
Australia-Korea	x		Hong Kong, China-Malaysia		x
Australia-Indonesia		x	Hong Kong, China-Philippines		x
Australia-Philippines	x	x	Hong Kong, China-Singapore		x
Australia-Thailand			Hong Kong, China-Sri Lanka		x
Bangladesh-Thailand		x	India-Mongolia		x
Cambodia-Thailand		x	India-Philippines	x	x
P.R. China-Korea		x	Indonesia-Malaysia	x	x
P.R. China-Mongolia		x	Indonesia-Philippines	x	x
P.R. China-Philippines		x	Indonesia-Thailand	x	x
P.R. China-Thailand		x	Japan-Korea		
Fiji-Thailand			Korea-India		x
Hong Kong, China-India		x	Korea-Mongolia		x
Korea-Philippines	x		Malaysia-Thailand		
Korea-Thailand	x		Philippines-Thailand	x	x
Korea-Vietnam		x			

b. Urgent MLA Requests

Some MLA schemes in Asia-Pacific also provide for urgent procedures. Some treaties permit oral requests or requests via facsimile with subsequent written confirmation in urgent cases. Other arrangements allow law enforcement authorities in the requesting and requested states to bypass the diplomatic channel and communicate directly. Some treaties also allow urgent requests to be communicated through Interpol or ASEANPOL.

Table 28: MLA Legislation and Treaties with Urgent Procedures

	Oral or Fax Request	Bypass Diplomatic Channel		Oral or Fax Request	Bypass Diplomatic Channel
Legislation					
Japan		x	Korea		x
Treaties					
Australia-Hong Kong, China	x		India-Thailand	x ¹	
Australia-Philippines		x	Korea-Philippines	x	
P.R. China-Philippines	x		Korea-Thailand	x	
P.R. China-Thailand	x ¹		Macao, China	x	x
Hong Kong, China-Korea	x		Southeast Asian MLAT		x ³
Hong Kong, China-Philippines	x		UNCAC	x	x ²
India-Mongolia	x ¹		UNTOC	x	x ²

- 1 Via facsimile
2 Via Interpol
3 Via Interpol or ASEANPOL

5. Approval and Execution of Incoming Requests

The approval of incoming requests for extradition and MLA could also involve a range of factors and actors. Again, it is important to engage all the relevant bodies but also to streamline the process so as to ensure efficiency.

In many jurisdictions, a single body (usually the central authority) reviews incoming requests (e.g. for compliance with requirements in a relevant treaty or legislation) before execution: Australia (extradition); Cook Islands (extradition); Hong Kong, China (MLA); Indonesia (MLA); and Malaysia (MLA). Other jurisdictions involve additional bodies in the approval process: Australia (MLA - Minister for Justice and Customs); Hong Kong, China (extradition - Chief Executive); Japan (Ministry of Foreign Affairs, subject to treaty); Macao, China (Chief Executive); and Malaysia (extradition - Ministry of Internal Security).

Depending on the nature of the assistance sought, different law enforcement and judicial bodies may be involved in the execution of a request. For corruption cases, Hong Kong, China, assigns incoming MLA requests to the Independent Commission Against Corruption (ICAC), the territory's anti-corruption law enforcement agency, thus taking advantage of the ICAC's expertise in corruption cases. The ICAC may also provide a dedicated unit to deal with a particular request in certain cases. Pakistan and Singapore also require their anti-corruption agencies to execute incoming MLA requests in corruption cases. Pakistan's anti-corruption agency (the National Accountability

Bureau) also deals with the investigative aspects of incoming extradition requests (although the Ministry of Interior is formally responsible for executing the request). Under its governing legislation, Indonesia's anti-corruption agency, the Corruption Eradication Commission (KPK), is allowed to execute incoming requests.

It is advisable for countries to monitor incoming requests after they are received so as to ensure timely execution. Hence, the central authority of Hong Kong, China does so for incoming requests and holds regular team meetings to discuss the progress of cases. It may also be useful to keep the requesting state informed of the status of the request. Thus, Thailand's Office of the Attorney General communicates with the embassy of the requesting state on the status of an incoming extradition request, and does the same with the competent authority of the requesting state for MLA requests. As noted earlier, Pakistan's National Accountability Bureau issues monthly reports on all incoming and outgoing requests that are outstanding.

Since requests for cooperation often contain sensitive information, several jurisdictions have policies to keep incoming requests confidential. Such is the case in Hong Kong, China; Macao, China; and Thailand. Macao, China states that, if confidential information must be revealed to execute the request, it will consult the requesting state before proceeding. The P.R. China-Indonesia MLA treaty contains a similar requirement. So does Australia's MLA legislation. Pakistan states that its National Accountability Bureau has a strict system of internal controls to protect the confidentiality of requests.

6. Participation of Foreign Authorities in Executing Requests

Another measure that may facilitate effective cooperation is to allow foreign authorities to be present when a request is executed. For example, when seeking testimony from a witness, the requesting state could (and must, under some treaties) submit a list of questions to the official who will question the witness. However, even with such a list, the questioner may not know the investigation well enough to be able to ask additional or follow-up questions which are triggered by the witness' responses. The requesting state could of course submit a list of supplemental questions after the examination of the witness, but this could further delay the investigation. The supplemental questions could also generate further follow-up questions.

Many MLA arrangements in Asia-Pacific recognize this difficulty and thus allow officials of the requesting state to participate in the taking of evidence. In

many instances, the officials of the requesting state may pose questions to a witness, either directly or through an official of the requested state. The legislation of some countries even allows the requesting state to question the witness via video link.

Table 29: MLA Legislation and Treaties which Allow Requesting State to Participate in Proceedings to Take Evidence

Legislation				
Australia*	Fiji*	Kazakhstan	Macao, China	Papua New Guinea*
Cook Islands*	Hong Kong, China*	Kyrgyzstan	Malaysia	Vanuatu*
Treaties				
Australia-Hong Kong, China		P.R. China-Thailand		India-Thailand
Australia-Indonesia		Hong Kong, China-Korea		Korea-Mongolia
Australia-Korea		Hong Kong, China-Philippines		Korea-Philippines
Australia-Philippines		Hong Kong, China-Singapore		Korea-Thailand
P.R. China-Indonesia		India-Korea		Korea-Vietnam
P.R. China-Korea		India-Mongolia		Southeast Asian MLAT

* Requesting state may question a witness via video link

A similar problem could arise in a request for search and seizure. For instance, a search of an office for relevant evidence could require officers who execute the search to sift through thousands of documents. If the officers do not have a thorough understanding of the facts of the investigation, it could be difficult for them to judge the relevance of each document. To address this problem, the legislation of Kyrgyzstan permits a representative of the requesting state to be present at a search. The MLA legislation of other Asia-Pacific jurisdictions allows an officer who executes a search warrant to “obtain such assistance ... as is necessary and reasonable in the circumstances.” Arguably, this provision could allow an executing officer to seek the assistance of representatives of the requesting state during the execution of the warrant. The following jurisdictions have legislation that includes such a provision: Australia; Hong Kong, China; Papua New Guinea; and Vanuatu.

7. Use of Liaison Personnel

The law enforcement agencies of some Asia-Pacific countries have designated liaison personnel to deal with international cooperation. The duties of these personnel usually do not include sending and receiving formal requests for assistance (*i.e.* they do not replace the diplomatic or central authorities). Their responsibility (among other tasks) is to serve as a contact point and to advise to domestic and foreign law enforcement officials who are seeking international cooperation. In some cases, liaison personnel may be posted in a foreign country.

Law enforcement officials are well-advised to contact liaison personnel when preparing a request for assistance, even if the request must still be formally sent through diplomatic channels or central authorities. Liaison officers are often familiar with the requirements for cooperation between their home country and the foreign country to which he/she has been assigned. Hence, he/she could advise law enforcement authorities in either country on how to meet those requirements. A liaison officer will also likely have contacts in foreign law enforcement agencies, which could be useful for following up requests that have been submitted.

Some members of the Initiative have designated liaison personnel. For example, the Liaison Bureau of the Hong Kong Police Force coordinates and deals with all police-related inquiries from overseas police organizations and local consulate officials. Australia has gone further by posting liaison personnel overseas: the International Network of the Australia Federal Police provides liaison support for extradition and MLA requests to and from Australia. As of September 2005, the Network had 63 officers at 30 posts in 25 countries, including 16 posts in 13 members of the Initiative.

The central authorities of Hong Kong, China and Malaysia also have a practice of liaising with other jurisdictions when seeking or providing extradition and MLA in corruption cases. The communication may pertain to both general and case-specific matters.

Inter-governmental bodies can also serve as forums for liaison. Law enforcement representatives from members of the Initiative meet regularly in the framework of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. Law enforcement officials from signatories to the OECD Convention do likewise in the OECD Working Group on Bribery. Law enforcement agencies in ASEAN member countries also exchange information through the ASEAN Senior Officials on Transnational Crime and the ASEAN Chiefs of National Police (ASEANPOL). Finally, Hong Kong, China has posted liaison personnel with the International Criminal Police Organization (Interpol).

B. Procedural Measures for Enhancing Extradition and MLA

1. Simplified Extradition through Endorsement of Warrants and Consent Extradition

Extradition between many Asia-Pacific countries follows a two-stage procedure. The person sought is first brought before a judge who will conduct a hearing to determine whether some of the conditions for extradition are met (e.g. sufficiency of evidence). If the judge finds that these conditions are met, the judge will commit the person sought into custody to await surrender. At the second stage, the matter reverts to the executive branch of government to decide whether the person sought should be surrendered in light of all of the circumstances. The decisions of the extradition judge and the executive may be subject to appeals.

Extradition is streamlined between some Asia-Pacific countries through the endorsement of warrants. Under such schemes, a requesting state sends the warrant for the arrest of the person sought (or a copy in some cases). The judicial authorities of the requested state then endorse the warrant, after which the warrant can be executed like an arrest warrant issued by the requested state. When the warrant is executed, the arrested person is brought to court. The court may then conduct a brief hearing to determine whether certain conditions are met, such as whether the person arrested is the person sought. If the conditions are fulfilled, the court orders the surrender of the person to the requesting state.

Extradition based on the endorsement of warrants tends to be more expeditious than regular extradition requests. The requesting state usually has fewer documents to compile, transmit and authenticate. More importantly, the process in the requested state tends to be more abbreviated. There is generally no lengthy hearing in the requested state to determine a panoply of preconditions to extradition, such as dual criminality, the sufficiency of evidence etc. As well, the court often orders surrender directly. There is no second phase of proceedings after the judicial hearing in which the executive branch of government decides whether to surrender the person sought. It should be noted, however, that these schemes are often based on domestic law, not treaties. A requested state therefore has no international obligations to accede to an extradition request.

In Asia-Pacific, arrest of fugitives on endorsement of a foreign warrant is used for extradition between Malaysia and Singapore, as the penal laws of the two countries are very similar, due to a shared legal history in the pre-

independence era. For extraditions to Singapore, a Malaysian court only has to confirm the identity of the person who has been arrested before ordering surrender. For extraditions to Malaysia, a Singapore court has to confirm that the person arrested is the person specified in the Malaysian warrant, before ordering his surrender to the appropriate court in Malaysia.

Extradition among most Pacific Islands Forum countries also uses a system of endorsement of warrants because of similarities in these countries' legal systems. The process begins when a magistrate of the requested state endorses the original arrest warrant issued in the requesting state. Upon the arrest of the person sought, a magistrate will determine whether extradition should be denied because of some limited grounds, such as whether surrender would be unjust or oppressive. The magistrate does not consider some of the grounds for denying extradition that apply when a non-Forum country requests extradition, such as insufficient evidence of the crime, political offence, double jeopardy, cruel punishment and nationality. If there are no grounds to deny extradition, the magistrate orders surrender, subject to appeal. Extradition among the following members of the Initiative uses such a scheme: Cook Islands; Fiji; Papua New Guinea; and Vanuatu.

Another measure used by some Asia-Pacific countries to expedite extradition is to allow extradition by consent. A person sought for extradition is allowed to consent to extradition, often shortly after his/her arrest. Extradition by consent obviates the need for a lengthy examination of the preconditions for extradition. It may also relieve the requesting state of its duty to provide all of the necessary documentation.

Table 30: Legislation and Treaties that Provide for Consent Extraditions

Legislation		
Australia	Hong Kong, China	Palau
Cook Islands	Macao, China	Papua New Guinea
Fiji	Malaysia	Vanuatu
Treaties		
Australia-Indonesia	Cambodia-Thailand	Korea-Mongolia
Australia-Philippines	Hong Kong, China-Malaysia	Korea-Philippines
Australia-Korea	Hong Kong, China-Singapore	Korea-Thailand
Bangladesh-Thailand	India-Korea	Korea-Vietnam

2. Appeals

Appeals may be necessary in the interests of justice, but they can also prolong proceedings and

Table 31: Extradition Legislation which Gives Requesting States a Right of Appeal

Australia	Hong Kong, China*	Papua New Guinea
Cook Islands	Malaysia*	Thailand
Fiji	Palau	Vanuatu

* Only on questions of law.

lead to further delay. Most Asia-Pacific jurisdictions allow a person sought to appeal the decision of an extradition judge. Some jurisdictions also allow the requesting state to appeal a judge's denial of extradition. In some cases, the available grounds of appeal are more restricted for the requesting state than for the person sought.

Proceedings can be further prolonged if the person sought can tender additional evidence on appeal. The extradition legislation of Hong Kong, China and Singapore allows the person sought to do so. The legislation in other jurisdictions expressly precludes appellants from tendering additional evidence: Australia; Cook Islands; Fiji; Papua New Guinea; and Vanuatu.

In addition to appeals of the decision of an extradition judge, Australia and Hong Kong, China also permit appeals of the government's decision to surrender. In some instances, these appeals are heard in proceedings that are separate from and after the appeal of the decision of the extradition judge. The result could be multiple and somewhat convoluted appeal proceedings that may cause delay.

Appeals of MLA requests in the requested state are less common. The MLA legislation of most members of the Initiative does not allow appeals for most types of assistance. One exception is Japan, which permits a court to review a seizure of evidence by the police.

3. Time Requirements

To ensure proceedings are expeditious, extradition legislation in Asia-Pacific may contain very short time requirements for certain steps to be taken. For instance, an extradition hearing in Korea must commence within 2 months after the arrest of the person sought. The deadline is 60 days and 48 hours in Palau and Macao, China respectively. Instead of fixing a deadline, some Asia-Pacific countries merely require the hearing to commence "as soon as practicable" after the parties have had "reasonable time" to prepare: Cook Islands; Fiji; Papua New Guinea; and Vanuatu. In addition, many countries only give the person sought 15 days to appeal the decision of the extradition judge: Australia; Bangladesh; P.R. China (10 days); Cook Islands; Fiji; Hong Kong, China; Macao, China (10 days); Papua New Guinea; Pakistan; Philippines (10 days); Thailand; and Vanuatu. Despite these short limitation periods, delays still frequently occur in extradition proceedings. One problem may be that these provisions only require certain steps to commence. They do not, for instance, prevent the proceedings from being commenced and then adjourned or drawn out for lengthy periods of time.

Hence, provisions which require certain steps to be completed by a certain time may be more effective. In P.R. China, after receiving notice of an extradition hearing, a person sought has 30 days to make submissions to the court. In Macao, China, a person sought has only 10 days to do so. In Japan and Korea, if a person sought has not been granted bail, an extradition judge must decide whether to order committal within two months of the person's arrest. A judge in Palau must render a decision within 7 days of the hearing, while a court in Macao, China has 20 days to do so. Many Asia-Pacific jurisdictions also impose deadlines for the government to order surrender within a certain time after the court proceedings (including appeals) have ended. In addition, the person sought may be released if he/she is not surrendered within a certain time after the order has been made. Imposing relatively short deadlines could certainly expedite proceedings, but there may be one drawback: in exceptionally complex cases, the court and the litigants may not have sufficient time to properly prepare and consider the case.

Table 32: Time Limits for the Government to Order Surrender

	Time to Order Surrender (days)	Time to Effect Surrender (Months)		Time to Order Surrender (days)	Time to Effect Surrender (Months)
Australia		2	Macao, China		20 days
Bangladesh		2	Nepal		2
Cook Islands		2	Pakistan		2
Fiji		2	Palau		2
Hong Kong, China	75	1	Papua New Guinea		2
India		2	Singapore	60	
Japan	10	1	Sri Lanka		2
Korea		1	Thailand		3
Kyrgyzstan		1	Vanuatu		2

C. Alternatives to Formal MLA and Extradition

In practice, it is imperative that practitioners also consider whether assistance outside regular MLA treaties and legislation can meet their needs. This is often available when gathering information through non-coercive means. Since such channels are likely much faster and simpler, practitioners should explore and exhaust them before resorting to formal MLA. They may also be the only option if formal measures are unavailable, *e.g.* because there is no MLA treaty or the treaty does not provide the type of assistance in question.

The most common form of informal assistance is direct contact at the law enforcement level. An investigator can often call another investigator in a

foreign state and quickly obtain publicly available information such as land title records and company registration and filings. This method may also be used to obtain a statement from a cooperative witness. The liaison officers discussed earlier can often facilitate such assistance (see Section II.B.1). For example, Thailand states that its law enforcement authorities can directly assist their foreign counterparts at the police-to-police level or on the basis of MOUs.

There are also non-police channels of assistance. Instead of extradition, immigration authorities in the requested state may be able to deport the person sought. As for MLA, financial intelligence units (FIUs) which are part of the Egmont Group (which includes FIUs from 8 members of the Initiative) have undertaken to cooperate and share information. Individual FIUs may have memoranda of understanding or letters to accomplish the same. Korea's legislation specifically allows its FIU to exchange information with foreign counterparts under certain circumstances. Another source of information is company and securities regulators. For instance, regulators in the Philippines and Hong Kong, China have signed a memorandum of understanding (MOU) to share information. Both the securities regulators in Malaysia and P.R. China have seven MOUs with their counterparts in other members of the Initiative. Likewise, some tax treaties and agreements allow tax authorities to share information about crimes, including corruption. For instance, the OECD Model Tax Convention was recently amended to expressly permit the sharing of information in corruption cases. However, one limitation to these channels of informal assistance is that some jurisdictions may refuse to provide information through regulatory channels for use in a criminal investigation, and some criminal courts may not accept the information as sufficient proof if it is not backed by evidence provided in a more formal way.

III. Recovery of Proceeds of Corruption in Criminal Proceedings

It has become increasingly easy to conduct transnational financial transactions. Corrupt officials have taken advantage of this situation by siphoning and hiding the proceeds of their crimes abroad. Asia-Pacific countries have seen examples in which corrupt officials transferred millions of dollars of proceeds overseas. The confiscation of proceeds of corruption through MLA has therefore become a focal issue in recent years. An even more complicated question is whether confiscated proceeds should be retained by the requesting state, the requested state or a third party.

A few Asia-Pacific countries have sought to recover proceeds of corruption that have been exported, with varying degrees of success. For example, in 2003, the Philippines recovered USD 658 million from Switzerland which had been exported by a former president. The entire recovery process took 17 years from the Philippines' initial request for MLA. In 1997, Pakistan requested MLA from Switzerland to seek the return of assets exported by a former prime minister. Switzerland subsequently charged and convicted the former prime minister with money laundering. In July 2003, a magistrate ordered the assets forfeited to Pakistan, but the order as well as the conviction remains under appeal.

This section of the report will focus on the legal basis, preconditions and procedure for the repatriation of the proceeds of corruption through formal MLA in criminal proceedings. However, as with other types of cases, MLA in criminal matters is but one means of securing international assistance. The alternatives to formal MLA that are described earlier (see Section II.C) may also be useful for seizing proceeds of corruption, particularly since speed is often of the essence when recovering assets. Another possibility is to request a foreign state to commence domestic criminal proceedings, such as for money laundering. Yet another option is to commence civil proceedings in the requested state and seek remedies such as an injunction to freeze assets or a confiscation order. Civil proceedings could be advantageous because they generally require a lower evidentiary burden of proof. Remedies may be available in the absence of a criminal conviction. However, the cost of civil proceedings could be quite high.

A. Legal Basis for Assistance

The legal basis for MLA in relation to proceeds of crime, including corruption, within Asia-Pacific is similar to that for other forms of MLA. Several bilateral treaties expressly provide for MLA relating to proceeds of crime. Some Asia-Pacific jurisdictions provide MLA in this area based on domestic legislation. The complexity of the legislation varies across jurisdictions. Some have extensive provisions that detail the procedure for rendering MLA to trace, freeze and confiscate proceeds of crime. Other jurisdictions have legislation that contemplates the granting of MLA relating to proceeds of crime without prescribing the detailed procedure for doing so. These relevant provisions are sometimes found in laws on money laundering, not MLA.

MLA concerning proceeds of corruption may involve some additional preconditions that may not apply to MLA for other types of crime. Some Asia-Pacific jurisdictions provide MLA only for proceeds that derive from serious crimes, such as offenses that attract punishment of at least one year imprisonment in the requesting and requested states. In some cases, the requesting state may have to provide an assurance of reciprocity.

Some multilateral treaties could also be relevant. The UNCAC requires States Parties to provide MLA for asset confiscation and repatriation. If a State Party requires a treaty as a precondition to providing MLA of this nature, it must consider the UNCAC as the requisite treaty basis. The UNTOC also requires States Parties to assist one another in the confiscation of assets to the extent possible under their domestic law. The Southeast Asian MLAT requires its signatories to “endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate” assets subject to their domestic laws.

Table 33: Legislation and Treaties which Expressly Provide MLA in Relation to Proceeds of Crime

Legislation				
Australia ¹	Hong Kong, China ^{4 6}	Indonesia	Palau ¹	Singapore ⁵
Cook Islands ²	Korea ⁶	Macao, China	Papua New Guinea	Thailand ⁶
Fiji ³	Japan	Malaysia ^{1 7}	Philippines ⁶	Vanuatu ¹
Treaties				
Southeast Asian MLAT		P.R. China-Thailand		Korea-Mongolia
Australia-Hong Kong, China		Hong Kong, China-Korea		Korea-Philippines
Australia-Indonesia		Hong Kong, China-Philippines		Korea-Thailand
Australia-Korea		Hong Kong, China-Singapore		Korea-Vietnam
Australia-Philippines		India-Korea		UNCAC
P.R. China-Korea		India-Mongolia		UNTOC
P.R. China-Philippines		India-Thailand		

1 Only for proceeds of offences punishable by at least 1 year's imprisonment

2 Only for proceeds of offences punishable by at least 1 year's imprisonment or NZD 5,000 (approximately USD 3,500)

3 Only for proceeds of offences punishable by at least 6 months' imprisonment or FJD 500 (approximately USD 300)

- 4 Only for proceeds of offences punishable by at least 2 years' imprisonment
- 5 Only for proceeds of listed offences (which includes corruption)
- 6 Requesting state must provide an assurance of reciprocity
- 7 Requesting state may be asked to provide an assurance of reciprocity

As noted earlier (see Section I.A.3), the extradition treaties and legislation of many Asia-Pacific countries include MLA features. The authorities of the requested state could use these provisions to search, seize and transmit property acquired by the person sought as a result of corruption.

Another issue that may arise is whether the definition of proceeds of corruption includes "indirect" proceeds. Indirect proceeds are essentially proceeds derived or converted from the proceeds of corruption. For example, if a public official accepts a bribe and uses the bribe to purchase property, the bribe is "direct" proceeds and the property is "indirect" proceeds. Members of the Initiative that may provide MLA in relation to indirect proceeds of corruption include Australia; P.R. China; Cook Islands; Fiji Islands; Hong Kong, China; Japan; Malaysia; Nepal; Pakistan; Palau; the Philippines; Singapore; and Thailand.

B. Procedures

The recovery and return of proceeds of corruption generally involves several steps. Proceeds must first be traced and identified in the requested state. Once located, the assets may have to be quickly frozen or seized to prevent their removal. A more lengthy legal process may follow to confiscate the assets to the requested state and finally to repatriate the assets to the requesting state.

1. Tracing and Identification of Assets

The first step in asset recovery is to locate the assets in question. Several MLA treaties and legislation in Asia-Pacific expressly require a state to trace and identify proceeds of crime in their jurisdiction upon request.

Table 34: Legislation and Treaties under which Signatories Endeavor to Trace and Identify Proceeds of Crime upon Request

Australia-Hong Kong, China	Hong Kong, China-Korea	Korea-Philippines
Australia-Indonesia	Hong Kong, China-Philippines	Korea-Thailand
Australia-Korea	India-Korea	Korea-Vietnam
Australia-Philippines	India-Mongolia	Macao, China (legislation)
P.R. China-Korea	India-Thailand	UNCAC
P.R. China-Philippines	Korea-Mongolia	UNTOC
P.R. China-Thailand		

Tracing and identification of assets often do not involve any special MLA procedures but only the gathering of documents, which is covered by almost all MLA arrangements. Some Asia-Pacific countries, however, have additional measures designed specifically for the tracing of proceeds of crime. For instance, Australia's MLA legislation allows courts to issue production orders for "property-tracking documents". These orders compel persons (e.g. financial institutions) to produce documents relevant to the identifying, locating or quantifying of proceeds of a serious foreign offense. The legislation also allows the issuance of search warrants for such documents. The legislation in the Cook Islands; Fiji; Papua New Guinea; and Vanuatu contains similar provisions.

Another tool to trace proceeds of corruption is the monitoring of an account at a financial institution. At the request of a foreign country, Australia may seek a monitoring order from a court. Such an order compels a financial institution to provide information about transactions conducted through a specific account during a particular period. However, these orders are only available if the investigation pertains to a crime punishable by at least three years imprisonment.

2. Freezing and Seizure

Once an asset is identified, it may be imperative for the authorities to quickly "freeze and seize" the asset to prevent its removal before confiscation. Treaties and legislation that contain proceeds of crime provisions often require the requested state to freeze proceeds upon discovery.

Table 35: Legislation and Treaties under which Signatories Must Freeze Proceeds upon Discovery

Australia-Hong Kong, China	Hong Kong, China-Korea	Korea-Philippines
Australia-Indonesia	Hong Kong, China-Philippines	Korea-Thailand
Australia-Korea	Hong Kong, China-Singapore	Korea-Vietnam
Australia-Philippines	India-Korea	Macao, China (legislation)
P.R. China-Korea	India-Thailand	UNCAC
P.R. China-Philippines	Korea-Mongolia	UNTOC
P.R. China-Thailand		

To discharge this obligation, the MLA legislation of many Asia-Pacific jurisdictions allows the requested state to apply for a court order to freeze the subject asset. One obvious drawback to this approach is delay. Assets such as funds in bank accounts can be transferred very quickly. Time is therefore of the essence. Yet this can prove challenging because of delays in marshalling and transmitting evidence in support of an application for a freezing order in the requested state. The hearing of the application itself can cause further delay.

Several Asia-Pacific countries have attempted to overcome this problem by allowing direct enforcement of a foreign freezing order. Under this approach, the requesting state obtains a freezing order from its courts and transmits the order to the requested state. The requested state then registers the foreign freezing order in its courts, after which the foreign order becomes enforceable in the requested state like a domestic court order. Time is saved because there is no application before the courts of the requested state for a second freezing order. Studies have shown that this approach is timely, requires fewer resources, avoids duplication and is significantly more effective.

To further expedite the process, some members of the Initiative permit registration of faxed copies of foreign orders. However, in most cases, a properly sealed or authenticated copy of the order must subsequently be filed.

One potential obstacle to freezing is the requirement that criminal proceedings be instituted in the requesting state. Some jurisdictions will freeze proceeds if criminal proceedings have been commenced or are about to be commenced. Others require reasonable grounds to believe that proceedings will be instituted and that confiscation may be ordered in those proceedings. The most demanding legislation may require a final conviction of a person and a final confiscation order in the requesting state.

Table 36: Prerequisites for Enforcing a Foreign Freezing Order

	Court Application	Direct Registration	Faxed Orders*	Proceedings Instituted or about to Be Instituted	Reasonable Grounds to Believe Proceedings Will Be Instituted	Final Conviction and Confiscation Order
Australia	x	x	x	x		
Cook Islands	x	x	x		x	
Fiji	x	x	x		x	
Hong Kong, China	x				x	
Japan	x				x	
Korea	x					
Macao, China						
Malaysia	x				x	
Palau	x	x	x		x	
Papua New Guinea	x	x	x		x	
Philippines						x
Singapore	x				x	
Thailand	x					x
Vanuatu	x	x	x		x	
UNCAC		x				

* Properly sealed or authenticated copy of the order must subsequently be filed within 21 days

It may be useful in some instances to ensure that an account holder is not aware that his/her account has been frozen and hence is not alerted to an ongoing investigation. In almost all of the Initiative's members, an application to enforce a foreign freezing order may be made *ex parte*, but the account holder is usually given notice of the freezing order after its issuance. The exceptions are P.R. China; Cook Islands; and Kyrgyzstan, in which the financial institution where an account has been frozen may be forbidden from disclosing the freezing order to the account holder.

3. Confiscation to the Requested State

The third step in the repatriation process is the confiscation of the property to the requested state. Similar to freezing orders, a foreign forfeiture order is enforced either through an application in the courts of the requested state or through direct registration of the foreign order. Apart from forfeiture of actual proceeds of crime, some jurisdictions will render MLA to enforce fines that have been imposed by a foreign state in lieu of forfeiture.

One commonly-cited obstacle to confiscating the proceeds of corruption in Asia-Pacific and elsewhere is the proof of a connection between an underlying crime and the subject asset. The standard of proof varies among jurisdictions. Some legislation and treaties require the subject property to be "payments or other rewards received in connection with" an offense, or "property derived or realized, directly or indirectly" from such assets. Other jurisdictions may also cover property that is used or intended to be used in connection with an offense. Still others require the subject property to be "in respect of an offence".

Another potential obstacle to asset forfeiture is the requirement of a criminal conviction. Some members of the Initiative require requesting states to show that a person has been convicted of a crime and that the conviction is final. This could be problematic if the perpetrator has absconded or died. Other countries only require the foreign confiscation order to be final.

Other complicating factors include public and essential interests and the interests of third parties. Some Asia-Pacific countries may refuse to enforce a foreign confiscation order if the request is likely to prejudice its national interest or is "contrary to the interests of justice". The legislation in several Asia-Pacific jurisdictions also requires notice to be given to third parties who may have an interest in the subject property. These third parties could include individuals who acquired in good faith an interest in assets of criminal origin, or even a company or an individual who has suffered a loss because of the crime.

Table 37: Prerequisites for Enforcing a Foreign Confiscation Order

	Court Application	Direct Registration	Foreign Fine Orders	In Connection with an Offense or Derived therefrom	Used or Intended to be Used in Connection with Offense	In Respect of the Offence	Final Conviction	Final Confiscation Order	Notice to Third Parties	Public or Essential Interests
Legislation										
Australia		x	x			x	x*		x	
Cook Islands		x	x				x			
Fiji		x	x			x	x			
Hong Kong, China	x	x	x	x	x				x	x
Japan	x					x		x		
Korea	x									
Macao, China	x		x							x
Malaysia		x	x	x				x	x	x
Palau		x		x				x		
Papua New Guinea		x	x			x	x			
Philippines							x			x
Singapore		x		x	x			x	x	x
Thailand	x							x		
Vanuatu		x	x				x			
Treaties										
Australia-Philippines		x								
Hong Kong, China-Korea		x								
Hong Kong, China-Philippines			x							
Hong Kong, China-Singapore		x								
Korea-Philippines				x	x					
Korea-Vietnam			x	x						
UNCAC	x	x								

* Except for certain designated countries

4. Repatriation to the Requesting State

The final and sometimes the most vexing step in the asset recovery process is the repatriation of the asset to the requesting state. The issues that arise can be complicated. For instance, should the asset be repatriated in whole, in part or not at all to the requesting state? Can the requested state deduct costs of recovery? Should assets be returned to the government of the requesting state, or to a victim (e.g. a briber or a victim of embezzlement)? If the asset is to be turned over to the government of the requesting state, should one consider whether the officials of this government may misuse the assets again?

The MLA legislation of most countries in the Initiative is either silent or vague on this issue. Australia's legislation states that property that is subject to a registered foreign forfeiture order may be disposed of or otherwise dealt with in accordance

with any direction of the Attorney-General. This may include giving all or part of the assets to the requesting state. Under the legislation of Hong Kong, China, the Secretary of Justice has discretion to give all or part of the confiscated assets to the requesting state that is a treaty partner. Macao, China may return all or part of a confiscated asset to the requesting state upon request. Regulations in Malaysia merely states that the government has absolute discretion to manage and dispose of the seized property. The legislation of the Cook Islands; Palau; and Vanuatu permits (but does not require) their Attorneys General to enter into arrangements with the requesting state for reciprocal sharing. Indonesia's legislation has a similar provision that applies to the proceeds of confiscated assets that have been auctioned. Legislation scheduled to come into force at the end of 2006 will allow Japan to repatriate assets to a foreign state on a case-by-case basis and upon an assurance of reciprocity by the requesting state. Unlike other jurisdictions, Thailand's legislation is clear: forfeited items become Thailand's property.

Several MLA treaties involving Asia-Pacific countries provide some additional guidance. Some mandate repatriation of confiscated proceeds (or their value): Australia-Indonesia; Australia-Philippines; and P.R. China-Indonesia. The Hong Kong, China-Philippines is more explicit. It requires the requested state to give effect to a final decision by a court of the requesting state imposing a pecuniary penalty or confiscation. The requested state must return the property to the requesting state. Where the subject property is real property, the requested state must sell the property and deliver the proceeds to the requesting state.

The remaining MLA treaties in Asia-Pacific that deal with this issue largely give the requested state wide discretion in dealing with confiscated assets. Some stipulate that the requested state will retain confiscated proceeds of crime, unless otherwise decided by the parties in a particular case: Australia-Hong Kong, China; Hong Kong, China-Singapore; India-Mongolia; India-Thailand; Korea-Philippines; and Korea-Vietnam. Other treaties state that forfeited proceeds may be transferred to the requesting state, subject to the applicable domestic law and the agreement of the parties: P.R. China-Korea; P.R. China-Philippines; P.R. China-Thailand; Hong Kong, China-Korea; India-Korea; Korea-Mongolia; and Korea-Thailand. The Australia-Korea treaty merely requires that the confiscated assets be dealt with in accordance with the law of the requested state.

Some multilateral conventions may also be of assistance. The UNCAC requires States Parties to adopt legislative and other measures, "in accordance with the fundamental principles of its domestic law", to deal with the return of assets. It also prescribes certain instances in which the proceeds of corruption are returned to a foreign state depending on the nature of the predicate offense. The Southeast Asian MLAT states that, "[s]ubject to the domestic laws of the Requested

Party, property forfeited or confiscated ... may accrue to the Requesting Party unless otherwise agreed in each particular case.”

When there are no applicable treaties or conventions, governments may have specific policies to deal with the repatriation of assets. For example, Pakistan states that it may return confiscated proceeds of corruption to a requesting state, having regard to factors such as the expenses incurred by Pakistani authorities in confiscating the assets. If repatriated, the assets would be returned to the government of the requesting state or to victims of the crime.

Even if a requested state is willing to repatriate assets, it may impose certain conditions on how and when to use or distribute the assets. In the case noted above involving the Philippines, Switzerland forwarded the funds to an escrow account. The funds could be released only after an independent Philippine court found that the assets were illicit property and ordered confiscation to the Philippine government. These proceedings in the Philippine court must further comply with international standards on human rights and due process. A separate case involving proceeds of corruption from Nigeria illustrates another method: Switzerland transferred the assets to the Bank for International Settlements, most of which were later spent on housing projects, education and allocations to state governments in Nigeria.

Annexes

A. Matrix on Extradition Arrangements within Asia-Pacific

Requested State \ Requesting State	Australia	Bangladesh	Cambodia	P.R. China	Cook Islands	Fiji Islands	Hong Kong, China	India	Indonesia	Japan	Kazakhstan	Korea	Kyrgyzstan	Malaysia*
Australia	-	L	T	CDT	TW	W	BCT	CDI	BCT	CDOT	T	BCDOT	CT	BCDT
Bangladesh	DL	-		D	L	L		D		D		D		D
Cambodia	DT		-	BDT	DT	D	T	DT	T	DT	T	DT	T	DT
P.R. China	CDT		BT	-	DT	D		CDI	CT	CDI	BT	BCDT	BCT	CDT
Cook Islands	DLT		T	DT	-	W	T	BDI	T	DT	T	DT	T	DT
Fiji Islands	DL	L		D	W	-		D		D		D		D
Hong Kong, China	BCDT		T		DT	D	-	BCDI	BCT	CDI	T	CDT	CT	BCDT
India	CDLT	L	T	CDT	BT	L	BCT	-	CT	CDI	T	BCDT	CT	CDT
Indonesia	BCDI		T	CDI	DT	D	BCT	CDI	-	CDI	T	BCDT	CT	BCDT
Japan	CDOT		T	CDI	DT	D	CT	CDI	CT	-	T	BCDOT	CT	CDI
Kazakhstan	DT		T	BDT	DT	D	T	DT	T	DT	-	DT	BI ¹² T	DT
Korea	BCDOT		T	BCDT	DT	D	CT	BCDI	BCT	BCDOT	T	-	CT	CDT
Kyrgyzstan	CDT		T	BCDT	DT	D	CT	CDI	CT	CDI	BI ¹² T	CDT	-	CDT
Macao, China	CT		T		T			CT	CT	CT	T	CT	CT	CT
Malaysia*	BCDLT	L	T	CDT	LT	L	BCT	CDI	BCT	CDI	T	CDI	CT	-
Mongolia	CD			BCD	D	D	C	BCD	C	CD	B	BCD	C	CD
Nepal	CDI		T	CDI	DT	D	CT	BCDI	CT	CDI	T	CDI	CT	CDI
Pakistan	BCDLT		T	BCDT	LT	L	CT	CDI	CT	CDI	T	CDI	CT	CDT
Palau	D			D	W	W		D		D		D		D
Papua New Guinea	CDL	L		CD	BW	W	C	CD	C	CD		CD	C	CD
Philippines	BCDT		T	BCDT	DT	D	BCT	BCDI	BCT	CDI	T	BCDT	CT	CDT
Samoa	DL	L		D	BW	W		D		D		D		D
Singapore	CDLT	L	T	CDI	LT	L	BCT	CDI	CT	CDI	T	CDI	CT	CIW
Sri Lanka	CLT	L	T	CT	LT	L	BCT	CT	CT	CT	T	CT	CT	CT
Thailand	BCDT	B	BT	BCDT	BT	B	CT	CDI	BCT	CDI	T	BCDT	CT	BCDT
Vanuatu	DLT	L	T	DT	TW	W	T	DT	T	DT	T	DT	T	DT
Vietnam	CDI		T	CDI	DT	D	CT	CDI	CT	CDI	T	BCDT	CT	CDT

Key

Gray denotes treaty not yet ratified or in force
 B Bilateral Treaty
 C United Nations Convention against Corruption
 D Domestic legislation
 I1, I2 Commonwealth of Independent States Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters (22 Jan. 1993 and 7 Oct. 2002)
 L Scheme for Extradition within the Commonwealth (the London Scheme)

O OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
 T United Nations Convention against Transnational Organized Crime
 W Endorsement of Warrant
 * Malaysia has also ratified the UNTOC, but it has declared that it does not take the Convention as the legal basis for extradition with other States Parties. It will instead continue to rely on its domestic legislation.

Matrix on Extradition Arrangements within Asia-Pacific (continued)

Requested State \ Requesting State	Macao, China	Mongolia	Nepal	Pakistan	Palau	Papua New Guinea	Philippines	Samoa	Singapore	Sri Lanka	Thailand	Vanuatu	Vietnam
Australia	CT	C	CT	BCDLI	D	CW	BCT	L	CLT	CT	BCDT	TW	CT
Bangladesh				D	D			L	L	L	BD	L	
Cambodia	T		T	T	D		T		T	T	BDT	DT	T
P.R. China		BC	CT	BCDT	D	C	BCT		CT	CT	BCDT	DT	CT
Cook Islands	T		T	DT	D	BW	T	B	T	T	BDT	WT	T
Fiji Islands				D	D	W		L	L	L	B	W	
Hong Kong, China		C	CT	CDT	D	C	BCT		BCI	BCI	CDT	DT	CT
India	CT	BC	BCT	CDT	D	C	BCT	L	CLT	CLT	CDT	LT	CT
Indonesia	CT	C	CT	CDT	D	C	BCT		CT	CT	BCDT	DT	CT
Japan	CT	C	CT	CDT	D	C	CT		CT	CT	CDT	DT	CT
Kazakhstan	T	B	T	DT	D		T		T	T	DT	DT	T
Korea	CT	BC	CT	CDT	D	C	BCT		CT	CT	BCDT	DT	BCT
Kyrgyzstan	CT	C	CT	CDT	D	C	CT		CT	CT	CDT	DT	CT
Macao, China	-	C	CT	CT		C	CT		CT	CT	CT	T	CT
Malaysia*	CT	C	CT	CDT	D	C	CT	L	CLTW	CLT	BCDT	LT	CT
Mongolia	C	-	C	CD	D	C	C		C	C	CD	D	C
Nepal	CT	C	-	CDT	D	C	CT		CT	CT	CDT	DT	CT
Pakistan	CT	C	CT	-	D	C	CT		CT	CT	CDT	LT	CT
Palau				D	-	W					D	W	
Papua New Guinea	C	C	C	CD	D	-	C	L	CL	CL	CD	W	C
Philippines	CT	C	CT	CDT	D	C	-		CT	CT	BCDT	DT	CT
Samoa				D	D	W		-	L	L	D	W	
Singapore	CT	C	CT	CDT	D	C	CT	L	-	CLT	CDT	LT	CT
Sri Lanka	CT	C	CT	CT		C	CT	L	CLT	-	CT	LT	CT
Thailand	CT	C	CT	CDT	D	C	BCT		CT	CT	-	DT	CT
Vanuatu	T		T	DT	D	W	T	L	LT	LT	DT	-	T
Vietnam	CT	C	CT	CDT	D	C	CT		CT	CT	CDT	DT	-

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 D Domestic legislation
 I1, I2 Commonwealth of Independent States Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters (22 Jan. 1993 and 7 Oct. 2002)
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 * Malaysia has also ratified the UNTOC, but it has declared that it does not take the Convention as the legal basis for extradition with other States Parties. It will instead continue to rely on its domestic legislation.

B. Matrix on MLA Arrangements within Asia-Pacific

Requested State \ Requesting State	Australia	Bangladesh	Cambodia	P.R. China	Cook Islands	Fiji Islands	Hong Kong, China	India	Indonesia	Japan	Kazakhstan	Korea	Kyrgyzstan
Australia	-		T	CT	DT	D	CBDT	CDT	BCT	CDT	T	BCDT	CT
Bangladesh	D	-			D	D	D	D				D	
Cambodia	DT		-	BT	DT	D	DT	DT	AT	DT	T	DT	T
P.R. China	CDT		BT	-	DT	D		CDT	BCT	CDT	BT	BCDT	BCT
Cook Islands	DT		T	T	-	D	DT	DT	T	DT	T	DT	T
Fiji Islands	D				D	-	D	D		D		D	
Hong Kong, China	BCDT		T		DT	D	-	CDT	CT	CDT	T	BCDT	CT
India	CDT		T	CT	DT	D	CDT	-	CT	CDT	BT	BCDT	BCT
Indonesia	BCDT		AT	BCT	DT	D	CDT	CDT	-	CDT	T	BCDT	CT
Japan	CDT		T	CT	DT	D	CDT	CDT	CT	-	T	CDT	CT
Kazakhstan	DT		T	BT	DT	D	DT	BDT	T	DT	-	DT	BT ^{11/2T}
Korea	BCDT		T	BCT	DT	D	BCDT	BCDT	BCT	CDT	T	-	CT
Kyrgyzstan	CDT		T	BCT	DT	D	CDT	BCDT	CT	CDT	BT ^{11/2T}	CDT	-
Macao, China	CT		T		T			CT	CT	CT	T	CT	CT
Malaysia	BCDT		AT	CT	DT	D	CDT	CDT	ACT	CDT	T	CDT	CT
Mongolia	CD			BC	D	D	CD	BCD	C	CD	B	BCD	BC
Nepal	CDT		T	CT	DT	D	CDT	CDT	CT	CDT	T	CDT	CT
Pakistan	CDT		T	CT	DT	D	CDT	CDT	CT	CDT	BT	CDT	CT
Palau	D				D	D	D	D		D		D	
Papua New Guinea	CD			C	D	D	CD	CD	C	CD		CD	C
Philippines	BCDT		AT	BCT	DT	D	BCDT	CDT	ACT	CDT	T	BCDT	CT
Samoa	D				D	D	D	D		D		D	
Singapore	CDT		AT	CT	DT	D	BCDT	BCDT	ACT	CDT	T	CDT	CT
Sri Lanka	CDT		T	CT	DT	D	CDT	CDT	CT	CDT	T	CDT	CT
Thailand	CDT		AT	BCT	DT	D	CDT	BCDT	ACT	CDT	T	BCDT	CT
Vanuatu	DT		T	T	DT	D	DT	DT	T	DT	T	DT	T
Vietnam	CDT		AT	CT	DT	D	CDT	CDT	ACT	CDT	T	BCDT	CT

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C United Nations Convention against Corruption

D MLA available through domestic legislation

I1, I2 Commonwealth of Independent States (CIS) Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters dated 22 January 1993 and 7 October 2002

T United Nations Convention against Transnational Organized Crime

Matrix on MLA Arrangements within Asia-Pacific (continued)

Requested State \ Requesting State	Macao, China	Malaysia	Mongolia	Nepal	Pakistan	Palau	Papua New Guinea	Philippines	Samoa	Singapore	Sri Lanka	Thailand	Vanuatu	Vietnam
Australia	CT	BCDT	C	CT	CT	D	CD	BCT		CT	CT	CDT	DT	CT
Bangladesh						D	D					D	D	
Cambodia	T	ADT		T	T	D	D	AT		AT	T	ADT	DT	AT
P.R. China		CDT	BC	CT	CT	D	CD	BCT		CT	CT	BCDT	DT	CT
Cook Islands	T	DT		T	T	D	D	T		T	T	DT	DT	T
Fiji Islands		D				D	D					D	D	
Hong Kong, China		CDT	C	CT	CT	D	CD	BCT		BCT	CT	CDT	DT	CT
India	CT	CDT	BC	CT	CT	D	CD	CT		BCT	CT	BCDT	DT	CT
Indonesia	CT	ACDT	C	CT	CT	D	CD	ACT		ACT	CT	ACDT	DT	ACT
Japan	CT	CDT	C	CT	CT	D	CD	CT		CT	CT	CDT	DT	CT
Kazakhstan	T	DT	B	T	BT	D	D	T		T	T	DT	DT	T
Korea	CT	CDT	BC	CT	CT	D	CD	BCT		CT	CT	BCDT	DT	BCT
Kyrgyzstan	CT	CDT	BC	CT	CT	D	CD	CT		CT	CT	CDT	DT	CT
Macao, China	-	CT	C	CT	CT		C	CT		CT	CT	CT	T	CT
Malaysia	CT	-	C	CT	CT	D	CD	ACT		ABCT	CT	ACDT	DT	ACT
Mongolia	C	CD	-	C	C	D	CD	C		C	C	CD	D	BC
Nepal	CT	CDT	C	-	CT	D	CD	CT		CT	CT	CDT	DT	CT
Pakistan	CT	CDT	C	CT	-	D	CD	CT		CT	CT	CDT	DT	CT
Palau		D				-	D					D	D	
Papua New Guinea	C	CD	C	C	C	D	-	C		C	C	CD	D	C
Philippines	CT	ACDT	C	CT	CT	D	CD	-		ACT	CT	ACDT	DT	ACT
Samoa		D				D	D		-			D	D	
Singapore	CT	ABCDT	C	CT	CT	D	CD	ACT		-	CT	ACDT	DT	ABCT
Sri Lanka	CT	CDT	C	CT	CT	D	CD	CT		CT	-	BCDT	DT	CT
Thailand	CT	ACDT	C	CT	CT	D	CD	ACT		ACT	BCT	-	DT	ACT
Vanuatu	T	DT		T	T	D	D	T		T	T	DT	-	T
Vietnam	CT	ACDT	BC	CT	CT	D	CD	ACT		ABCT	CT	ACDT	DT	-

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C United Nations Convention against Corruption

D MLA available through domestic legislation

I1, I2 Commonwealth of Independent States (CIS) Conventions on Legal Assistance and Legal Relationship in Civil, Family and Criminal Matters dated 22 January 1993 and 7 October 2002

T United Nations Convention against Transnational Organized Crime

C. Central Authorities for MLA

Australia	Assistant Secretary International Crime Cooperation Branch Criminal Justice Division Attorney-General's Department Robert Garran Offices National Circuit Barton Act 2600 Australia Tel: + 61 2 6250 6227 Fax: + 61 2 6250 5457 Email: catherine.hawkins@ag.gov.au Web site: www.ag.gov.au/www/agd/agd.nsf/page/Extradition_and_mutual_assistance
Bangladesh	Information not available
Cambodia	Information not available
P.R. China	Under the Treaties with Indonesia, Korea, Philippines and Thailand: Ministry of Justice of the People's Republic of China No.10 Nandajie, Chaoyangmen Chaoyang District, Beijing, China, 100020 Web site: www.legalinfo.gov.cn/english/JudicialAssis/JudicialAssis1.htm Under the UNCAC: The Supreme People's Procuratorate of the People's Republic of China 147 Beiheyuan Dajie Dongcheng District, Beijing, China, 100726
Cook Islands	Attorney General Attorney General's Office Rarotonga, Cook Islands Tel: +682 29 337 Fax: +682 20 839 / 23 725 SG

Fiji Islands	Attorney General Attorney General's Chambers PO Box 2213, Government Buildings Suva, Fiji Tel: +679 321 1580 Fax: +679 330 2404
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India	Under the Treaties with Korea, Mongolia and Thailand: Ministry of Home Affairs North Block, Central Secretariat New Delhi, 110 001, India Tel: +91 11 23092011 or +91 11 23092161 Fax: +91 11 23093750 or +91 11 23092763
Indonesia	Under Law on Mutual Legal Assistance in Criminal Matters: Mrs. Risma INDRIYANI Head of Sub Directory General International Law 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 Email: rismaindriyani@yahoo.com Under P.R. China-Indonesia Treaty: Ministry of Justice

Japan	<p>Under the treaty with Korea: 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@moj.go.jp Web site: www.moj.go.jp/ENGLISH/information/ic-01.html</p>
Kazakhstan	<p>Information not available</p>
Korea	<p>Ministry of Justice International Criminal Affairs Division Building # 1, Gwacheon Government Complex, Jungang-dong 1 Gwacheon-si, Gyeonggi-do Republic of Korea Tel: +82 2 503 7058 Fax: +82 2 3480 3113 Web site: www.moj.go.kr</p>
Kyrgyz Republic	<p>Information not available</p>
Macao, China	<p>Under the UNCAC: Office of the Secretary for Administration and Justice Sede do Governo da RAEM Avenida da praia Grande Macao SAR, People's Republic of China</p> <p>Under domestic legislation: Office of the Prosecutor General of the MSAR Alameda Dr. Carlos D' Assumpção Edf. "Dynasty Plaza", 7o andar, NAPE Macao Special Administrative Region People's Republic of China Tel: +853 797 8208 Fax: +853 752 238 Email: iapMacao@mp.gov.mo Web site: www.mp.gov.mo</p> <p>Note: The legislation of Macao, China requires all MLA requests to be transmitted through the diplomatic channel (unless otherwise stated in an applicable treaty or convention)</p>

Malaysia	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 or +60 3 8888 6368 Web site: www.agc.gov.my
Mongolia	Under the Treaty with Korea: Ministry of Justice and Home Affairs Ulaanbaatar-46, Khudaldaani gudamj 61A Mongolia Tel: +976 1 325225 Fax: +976 1 325225 Web site: www.mojha.gov.mn Under the Treaty with India: General Prosecutor's Office
Nepal	Information not available
Pakistan	Central authority for corruption cases only: 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 ; infonab@nab.gov.pk Web site: www.nab.gov.pk
Palau	All requests for MLA must be sent via the diplomatic channel to the Minister of State
Papua New Guinea	Ministry for Justice Kumul Avenue PO Wards Strip Waigani, Papua New Guinea Tel: +675 27 1502 Fax: +675 25 2512

Philippines	Department of Justice International Affairs Division
Singapore	Attorney General of Singapore Criminal Justice Division The Adelphi, 1 Coleman St, # 10-00 Singapore 179803 Republic of Singapore Tel: +65 6336 1411 Fax: +65 6332 5984
Sri Lanka	Sri-Lanka-Thailand treaty: Secretary to the Minister of Justice Superior Courts Complex Colombo 12, Sri Lanka Tel: +94 1 2323022 Fax: +94 1 2320785
Thailand	Treaty-based MLA requests: Attorney General of the Kingdom of Thailand Office of the Attorney General Na Hupphoei Road Bangkok 10200, Thailand Tel: +66 2 515 4656 Fax: +66 2 515 4657 Email: inter@ago.go.th Web site: www.inter.ago.go.th For additional information, see also the Web site of the Foreign Affairs Division of the Royal Thai Police: www.foreign.police.go.th/thailaws.html
Vanuatu	Attorney General State Law Office PMB 048, Port Vila, Vanuatu Tel: +678 22 362 Fax: +678 25 473

Vietnam

Under the MLA Treaty with Korea:
Prosecutor-General of the People's Supreme Procuracy

Under the Southeast Asian MLAT:
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