



**CROWN PROSECUTION SERVICE**

**TRANSNATIONAL CO-OPERATION IN THE SHARING OF  
EVIDENCE IN ASSET RECOVERY**

**TBLISI, JUNE 2017**



# Asset recovery enquiries overseas

- Securing evidence to prove the substantive offence
- Establishing the location of the proceeds of crime in another jurisdiction;
- Following the money – obtaining evidence to show the movement of assets between jurisdictions;
- Establishing whether an individual or legal person has assets in an overseas jurisdiction which can be used to satisfy a confiscation order upon conviction

# MLA and other forms of international co-operation



- Mutual Legal Assistance is not the only route to obtaining assistance from overseas authorities
- Starting point should be informal / intelligence based enquiries
  - Police to police co-operation, information sharing through FIU's
- Intelligence - forms the basis for the MLA request, either:
  - (a) to obtain evidentially information previously supplied as intelligence or,
  - (b) to obtain assistance that cannot be provided on an informal basis

# When is mutual legal assistance required?



- Mutual legal assistance is generally required when coercive investigation measures are necessary:
  - Search and seizure warrants regarding properties
  - Banking evidence (account information and banking documents);
  - Interrogation of witnesses
- Mutual legal assistance is necessary for the freezing of assets and for the enforcement of post conviction confiscation orders

# What is the legal basis for making a request?



- (1) Multi-lateral conventions, treaties, or agreements containing provisions on MLA in criminal matters or asset recovery;
- (2) Bi-lateral mutual legal assistance treaties or agreements;
- (3) Domestic legislation that allows for international co-operation in criminal cases;
  - See for example UK - Crime (International Co-operation) Act 2003
  - Switzerland - the Federal Act on International Mutual Assistance in Criminal Matters in
- (4) A letter sent through diplomatic channels (rogatory letters) with a need for assurance of reciprocity



## Multilateral Treaties – asset recovery

- United Nations Convention on Transnational Organised Crime (Palermo 2000)
  - See articles 13 (international co-operation confiscation), 18 (mutual legal assistance)
- United Nations Convention against Corruption (2003) (Chapter V)
- United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances (1988)
- *See also (general MLA)*
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union 2000 + Additional Protocol 2001
- European Convention on Mutual Assistance in Criminal Matters (Strasbourg 1959) and additional protocols

# Council of Europe Conventions: Strasbourg 1990 and Warsaw 2005



Two conventions which have money laundering and asset recovery as focus

- Council of Europe Convention on laundering, search, seizure and confiscation of proceeds of crime (Strasbourg 1990)
- Council of Europe convention on laundering, search, seizure and confiscation of proceeds from crime and on the financing of terrorism (Warsaw 2005)

# Strasbourg Convention



- **Article 7 – General principles and measures for international co-operation**
- 1. The Parties shall co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.
- 2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
  - a. for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
  - b. for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.
- **Article 8 – Obligation to assist**
- The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.





# Before drafting the MLA request

- Early engagement
  - Use liaison magistrates / asset recovery advisors
  - Contact points
  - Central authorities
  - Prosecutors
- Have regard to mutual legal assistance guidelines in the country from which you are requesting information
  - (See for example UK and Swiss Government websites)
- Ensure you have exhausted informal methods of enquiry first



## Drafting the MLA request - tips

- Keep the letter of request succinct and concise;
- Explain in clear language what assistance is being sought;
- Focussed requests will be better received than broad wide ranging requests;
- Ensure that the letter of request meets the specific requirements of the treaty upon which reliance is based; (see e.g. Article 27 of Strasbourg Convention)
- Ensure that letter addresses the specific requirements of requested State
  - Is dual criminality an issue?
  - Is reciprocity an issue?
- Ascertain whether suspect will be told of measures to be taken before evidence is transmitted; (will that compromise investigation?)
- Send draft to requested country before sending



# Article 27 Strasbourg Convention

- **Article 27 – Content of request**

1. Any request for co-operation under this chapter shall specify:

- a. the authority making the request and the authority carrying out the investigations or proceedings;
- b. the object of and the reason for the request;
- c. the matters, including the relevant facts (such as date, place and circumstances of the offence) to which the investigations or proceedings relate, except in the case of a request for notification;



# Article 27 Strasbourg Convention

- **Article 27 – Content of request**

(1) d. in so far as the co-operation involves coercive action:

- i. the text of the statutory provisions or, where this is not possible, a statement of the relevant law applicable; and
- ii. an indication that the measure sought or any other measures having similar effects could be taken in the territory of the requesting Party under its own law;

• e. where necessary and in so far as possible:

- i. details of the person or persons concerned, including name, date and place of birth, nationality and location, and, in the case of a legal person, its seat; and
- ii. the property in relation to which co-operation is sought, its location, its connection with the person or persons concerned, any connection with the offence, as well as any available information about other persons, interests in the property; and

• f. any particular procedure the requesting Party wishes to be followed.

# Joint Investigation Teams



A Joint Investigation Team is a team set up between two or more Member States, under judicial supervision, for the purpose of investigating specific serious cross-border crime and with a limited duration



# Joint Investigation Teams: Treaties

- European Union
  - Article 13 of the 2000 EU Mutual Legal Assistance Convention
  - 2002 Framework Decision on JITs
- Non EU
- Article 27 of the Police Cooperation Convention for South-East Europe (PCC-SEE), applicable between several Member States (Austria, Bulgaria, Hungary, Romania, Slovenia) and countries of the Balkans (Albania, Bosnia and Herzegovina, fYROM, Moldova, Montenegro, Serbia);
- Article 20 of the Second Additional Protocol to the European Convention on Mutual legal Assistance
  - See also: Article 19 UNTOC, Article 49 UNCAC



# Joint Investigation Teams: Purpose

- Typically:
- ***Demanding cross-border investigations:*** a JIT can be set up when ‘a Member State’s investigations into criminal offences require difficult and demanding investigations having links with other Member States’.
- ***Connected investigations requiring coordination:*** a JIT can be set up when ‘a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved’.



# Joint Investigation Teams: Advantages

- Ability to share information and evidence directly between JIT members without the need for formal requests
- Ability to request investigative measures between team members directly without the need for Letters of Request
- Ability for members to be present at house searches, interviews, etc.
- Ability to co-ordinate efforts on the spot, and for informal exchange of specialised knowledge



# Joint Investigation Teams: Exchanging Evidence



- Use of the information exchanged within a JIT (and that could not be obtained otherwise) is limited by a speciality rule: such information may in principle be used (only) for the purposes for which the team was set up.
  - However JIT agreement may allow for other uses (non conviction based recovery?)
- Assets can be traced in JIT member countries without the need for MLA requests
- Evidence can be obtained from 3<sup>rd</sup> states by way of MLA on behalf of the JIT (LOR should indicate evidence obtained will be shared with the JIT)

# Conclusions



- International instruments facilitate the tracing and freezing of assets and sharing of information;
- Progress through informal co-operation channels at early stages
- Early engagement with requested state before sending letters of request

# Contact



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