MUTUAL LEGAL ASSISTANCE
THE BRUNEIAN EXPERIENCE

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BRUNEI DARUSSALAM’S MLA REGIME

• Governed by the Mutual Assistance in Criminal Matters Order, 2005 (“MACMO”)
• Ratified the Treaty of Mutual Legal Assistance in Criminal Matters on 15 February 2006 making it the 4th ASEAN Member State to do so
• Member of the Commonwealth Harare Scheme (Scheme relating to Mutual Assistance in Criminal Matters within the Commonwealth)
• Under the MACMO, the Attorney General of Brunei Darussalam is the Central Authority
  ✓ Requests shall be made directly to the AG
  ✓ Requests shall also be made by the AG only & not through any other authority
  ✓ S55 of the MACMO- AG Can delegate her duties to the MLA Secretariat
OUR EXPERIENCE

• Since the setting up of the MLA Secretariat in 2005, Brunei has received 6 requests for assistance and made 3 requests of assistance

ISSUES:

• In the execution of requests for assistance, the urgency of the request is often not recognised
• Uncertainty of the procedure when diplomatic channels are utilised
• Misunderstanding that MLA can be used to assist in a “fishing expedition”
• Lack of feedback and communication from Central Authority of Foreign Country
• Lack of accessibility to MLA Laws of other countries
• Time Frame requirement usually not complied with
CASE #1

- Brunei made a request to the Central Authority of Foreign Country on a matter involving drugs
- Assistance was for obtaining video footage and recording statements
- Up till today, Brunei Darussalam has not received any acknowledgement of receipt of the request or any response with regards the request
- In the end, Law Enforcement had to use their own Law Enforcement contacts in foreign country to obtain the said evidence.
CASE #2

- Brunei made request to Central Authority of Foreign Country on a financial crime.
- Assistance requested was to obtain bank statements from a particular bank.
- About one year after the request, Brunei found out that the request still had not been executed due to the fact that it was not informed that the request had to pass through diplomatic channels in order to be acceded to.
- In the end, Local Law Enforcement was once again able to use their contacts to obtain the said information.
CASE #3

- Brunei received request from Central Authority of Foreign Country for a case involving financial crime.
- Assistance requested was for details of a particular company and for statements to be recorded.
- Request was made in 2009 and responded in the same year.
- In 2012, the very same request was received for the same information through diplomatic channels.
- Created the impression that Brunei had not responded to the request even though we did.
- Brunei resent materials requested as per normal channels.
- Up to now, still have not received acknowledgement that request had been received by Central Authority of Foreign Country.
FUTURE CHALLENGES

  - The United Nations Convention against Corruption now part of conventions to be implemented
  - Clarifications of the obligations for countries to have clear and efficient processes to facilitate the execution of MLA requests in a timely manner
  - Strengthened requirements for countries to have arrangements for sharing confiscated assets; and to assist with requests based on foreign non-conviction based confiscation orders in certain circumstances.
  - Countries are required to render MLA notwithstanding the absence of dual criminality when assistance does not involve coercive actions.
CRIMINAL ASSET RECOVERY ORDER, 2012

- Brunei Darussalam has recently enacted new Proceeds of Crime Legislation.
- Criminal Asset Recovery Order, 2012 came into effect on 16th June 2012.
- Contains a Part on “Foreign Orders” which contain provisions regarding:
  - Foreign Requests for Bruneian Restraining Orders.
  - Requests for the Enforcement of Foreign Restraining, Confiscation and Benefit Recovery Orders
  - Foreign Requests for Location of Proceeds of Crime
  - Powers of Investigations to be applied for a Foreign Serious Offence
  - Sharing of Confiscated Property and Asset Sharing Agreements
- Central Authority is still the Attorney General and all requests are to be made to the AG and by the AG.
“SERIOUS OFFENCE”

- An offence against a provision of:
  
a) Any written law in Brunei Darussalam for which the maximum penalty is death, imprisonment for a term of not less than 6 months, fine of not less than $1000 or more severe penalty;

b) A written law of a foreign country, in relation to acts or omissions which, had they occurred in Brunei Darussalam would have constituted an offence for which the maximum penalty is imprisonment for a term of not less than 6 months or more severe penalty including an offence of purely fiscal character.
DOCUMENTS REQUIRED FOR REGISTRATION

- Copy of Foreign Restraining Order, Confiscation Order or Benefit Recovery Order
- Facsimile copy can be accepted but ceases to have effect 21 days commencing on the date of registration unless a duly authenticated original of order is registered by that time.
- For foreign confiscation order and foreign benefit recovery order, the requirement is that the order is not subject to appeal.
- Any amendments to any of those orders will also have to be duly registered before they have any effect.
FUTURE CHALLENGES

• Engaging Law Enforcement & Encouraging them to use MLA more

• “Questionnaire Approach”

• Completed by Law Enforcement Agencies

• Central Authority of Brunei Darussalam uses this template to draft request to foreign Central Authority.

• What does the other country really need to know?
BRUNEI QUESTIONNAIRE

- Factors to address
  - To Which Country?
  - Has the request/s been made in this matter before?
  - The name of agency making the request
  - Background to Investigation/Prosecution
  - Offences suspected and alleged to have been committed (including names of alleged offenders)
  - Personal Particulars of each alleged offender
  - Short Summary about Status of Investigation/Prosecution, details about charges laid
  - Assistance sought
BRUNEI QUESTIONNAIRE

- Travelling Officers/ Investigators
- Procedural Requirements
- Name and Contact Details of Bruneian Investigator in case Foreign Law Enforcement want to discuss the case
- Previous Contacts
- Confidentiality
- Time Limits
- Supplementary Requests
ENGAGEMENT WITH LEAS


- Setting up of Liaisons

- “Open Door Policy”

- Encourage the use of Informal Assistance prior to MLA Request
ENGAGEMENT WITH FOREIGN CENTRAL AUTHORITIES

- Keeping it Simple
- Focus on what is needed and realistic
- Coordinate Timing and Execution
- Share copy of MLA request with us in draft form to ensure that its executable
- Please acknowledge receipt of materials or request
- Please respond to emails with regards updates on status of the case.
- Please inform us if there is a procedural requirement that we have not fulfilled. (i.e. transmission through diplomatic channels)
- Availability of MLA laws
CONCLUSION

• The best designed system is only as good as the people who operate it on a practical level. In many instances, success in mutual legal assistance is dependent almost entirely on the knowledge and most critically - the flexibility - of the authorities request and, even more importantly, providing the assistance.

• One of the most important goals of mutual legal assistance is the bridging of differences between legal systems. This goal can be realized only if the authorities entrusted with execution, approach mutual assistance requests with a view to overcoming the differences and not entrenching them.
END OF PRESENTATION

Questions?

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