

**CORRUPTION INVESTIGATIONS: SOME  
PRACTICAL GUIDANCE ON IMPROVING  
PROCEDURES FOR MUTUAL LEGAL  
ASSISTANCE**

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**Bribery and Corruption increasingly  
transnational; therefore:**

- Necessity to gather evidence across borders;
- Financial information required from foreign states;
- Confiscation/repatriation of assets needs to be addressed;
- Extradition may need to be addressed

**A fundamental question of the  
would be “Requester”:**

- Should I take jurisdiction or should the foreign state?

- A formal request (Mutual Legal Assistance)

or

- An informal request (Mutual Assistance)?

### **How to decide whether to take the formal or informal route?**

- Is the exercise of a coercive power on the part of the requested state being sought by the requester?
- Are public records being sought?
- Are potential witnesses willing to assist?
- Is the evidence of the witness contentious or non-contentious?
- Is the transfer of a consenting person into custody being sought?

### **Remember**

- The regime of Mutual Legal Assistance is for the obtaining of evidence?

### **Prerequisites when seeking evidence by informal means:**

- Material sought should be evidence that could be lawfully gathered under the requesting state's law (and no reason to believe it will be excluded in evidence within the requesting state);
- It should be evidence that may be lawfully gathered under the laws of the foreign state;
- The foreign state should have no objection.

### **The form of the Letter of Request**

- Requested by a competent authority and an assertion to that effect in the letter;
- A description of the facts and the relevance of the evidence being sought to those facts/to the investigation or proceedings;
- Dual criminality to be addressed;
- Specialty;
- Reciprocity;
- How should the evidence be presented? Examples from the requesting authority.

### **Obstacles to Mutual Legal Assistance:**

- Delay;
- Appeals;
- Improper influence;
- National interests;
- Confiscation/repatriation issues;
- Search/seizure
- Extradition

### **The Checklist:**

- Assertion of authority by the requesting authority;
- Citation of Treaties and Conventions;
- Assurances
- Identification of defendant/suspect;
- Present position re investigation etc;
- Charges/offences under investigation/proceedings;
- Summary of facts and how those facts relate to the request being made;
- Enquiries to be made;
- Assistance required;
- Signature of the person making the request.