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Attorney-General's Department

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Mutual assistance and international enforcement issues – an Australian perspective

Victoria Office of Public Prosecutions
Proceeds of Crime Conference

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What is mutual assistance?

- Mutual assistance (MA) is a formal process by which one country provides assistance to another country for the purposes of a criminal investigation or prosecution
- MA can also be used to obtain information or evidence in proceeds of crime matters or recover the proceeds of crime
- MA is a reciprocal process – countries provide assistance on the understanding that they will receive assistance in return when the need arises



What is mutual assistance?

- MA is governed by the *Mutual Assistance in Criminal Matters Act 1987* (MACMA) as well as bilateral and multilateral treaties
- Australia can receive MA requests from any country
- Australia can make MA requests to any country



Before mutual assistance...

- Police to police enquiries are invaluable in speeding up the process (e.g. property, business and vehicle searches).
- Egmont Group/ financial intelligence unit enquiries.
- CARIN Group (Europol)/ Interpol.
- The mutual assistance process can be time consuming if police to police enquiries have not verified information.



How can mutual assistance be used in proceeds of crime cases?

- Mutual legal assistance can be used to **identify** where proceeds of crime are located and to obtain relevant evidence.
- A request can be made to a foreign country to find out :
 - whether a person has assets in the foreign country
 - whether a person has bank accounts in the foreign country, and
 - whether a person has a company or business in the foreign country
- Can also be used to obtain evidence of the predicate offence



How can mutual legal assistance be used in proceeds of crime cases?

- Mutual legal assistance can be used to **restrain or confiscate** proceeds of crime located in other jurisdictions
- AGD can request that an Australian order be registered or given effect in the foreign country
- Alternatively, AGD can ask a country to take restraint or confiscation action under its own laws if possible



Key considerations and issues

- Foreign laws different to Australian laws
 - conviction vs. non-conviction based
 - automatic forfeiture vs. orders
 - tainted property
 - effective control



Successes:

Qld PPOs given effect in Malta

- Offenders pleaded guilty to trafficking cannabis and PPOs
- Funds held in HSBC bank account in Malta
- Mutual assistance request sent to Malta in December 2008
- Malta returned 85% of forfeited funds to Australia in December 2009.



Successes:

Germany register Australian orders

- Skiverton arrested in Frankfurt with A\$396,760
- Cash seized by German authorities
- German authorities not able to confiscate
- Restraining order – s19 POCA (Cth)
- Forfeiture order – s49 POCA (Cth)
- MA requests seeking registration of orders
- All proceeds repatriated to Australia



Repatriation of forfeited foreign property

- Forfeited foreign property does **not** become the property of Australia upon forfeiture
- Instead, it becomes the property of the foreign country
- Forfeited foreign property will **not necessarily** be returned to Australia
- Some bilateral treaties provide for the **return** of forfeited property (eg Greece, Indonesia), as do some multilateral treaties (eg UNCAC)



Repatriation of forfeited foreign property

- Most bilateral treaties give the requested country a **discretion** to retain foreign property or return it in part or in whole to the requesting state (eg USA, UK, Hong Kong, Thailand)
- Some bilateral treaties contemplate that the requested country shall **retain** forfeited property (eg France, Israel)
- Approaches to foreign countries to seek the return or sharing of forfeited property are conducted by the Australian Government – usually AGD or DFAT officials posted in those countries



Key points

- Make informal enquiries **early**
- Contact AGD **early**
- Remember to plan ahead
- Be prepared to provide further information / support to foreign jurisdiction during process
- Time frames



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