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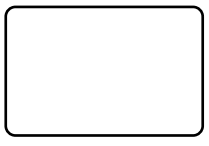

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# How Enforcement Authorities Interact

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## Overview

Cross-border investigations are growing in both number and complexity. The US Department of Justice (DOJ) has revealed that bribery cases now typically involve four or five countries.[1] Indeed, in 2016 and 2017, the five largest bribery settlements concerned a foreign company, an investigation that was conducted in cooperation with foreign authorities and – in all but one case – a settlement that credited amounts paid to foreign authorities.[2]

As cross-border investigations have grown, the mechanisms for international cooperation are maturing and in some cases undergoing transformation. The United States has long had a range of bilateral and multilateral agreements in place to facilitate international cooperation. Increasingly, however, US enforcement authorities are also using new types of agreements and even informal mechanisms to foster cooperation with enforcement partners abroad.

The first section of this article describes the key mechanisms for international cooperation. It begins with a general discussion of requests made pursuant to mutual legal assistance treaty (MLAT), and then moves to more specific discussions of non-MLAT-based requests for records and other types of assistance, requests for freezing and seizing assets, and requests for arrest and extradition. The second and final section addresses recent developments that relate to these mechanisms in various ways.

## The mechanisms for international cooperation

### MLAT requests

The most common method US authorities use to enlist cooperation from partners abroad in criminal matters is through requests made pursuant to bilateral MLAT. Such requests are made for a variety of purposes, including the following:

- obtaining evidence;
- taking testimony abroad;
- executing search warrants; and
- executing asset freezes and seizures.[3]

The United States has signed over 70 MLATs with countries across the globe. Each treaty defines the obligation to provide assistance, the scope of the obligation and the requirements for submitting a request.[4] The Office of International Affairs (OIA), an office within the DOJ staffed with over 50 attorneys that is designated as the US central authority for all incoming and outgoing MLAT requests, provides guidance and country-specific model forms to prosecutors seeking to use MLAT requests.[5] Although MLATs primarily facilitate cross-border criminal investigations and prosecutions, the DOJ's various domestic partners, including the US Securities and Exchange Commission (SEC), may use the MLAT process to obtain cross-border assistance in certain cases and in certain jurisdictions.[6]

In the typical criminal case, an assistant US attorney from one of the 94 federal judicial districts will send an MLAT request, with an accompanying translation, to OIA for approval. Once it is finalised, OIA will send the request and accompanying translation through diplomatic channels to the foreign central authority, which will review the request for sufficiency and, assuming it is deemed sufficient, thereafter oversee the execution of the MLAT request.[7] As discussed further below, OIA has parallel procedures in place to handle incoming MLAT requests.

The number of incoming and outgoing MLAT requests appears to have increased in recent years.[8] Annual DOJ budget submissions indicate that in financial year 2017, OIA granted 2,868 incoming mutual legal assistance requests, and 987 outgoing requests.[9] In financial year 2015, OIA opened 3,119 foreign requests for assistance and granted assistance in 1,373 cases, or 44 per cent of the requests.[10] Overall, however, there is relatively scarce information in the public domain about the number and, certainly, content of MLAT requests.[11]

The MLAT process has its limitations. First, courts and prosecutors in the United States and abroad,[12] including the current US attorney general,[13] have criticised the process as too slow and unsuitable for modern-day law enforcement.[14] Second, the requested country may refuse to cooperate on any number of grounds. For instance, the requested country may refuse to cooperate if the offence is not a crime in the requested country or if compliance with the request would, in the view of the requested country, contribute to the commission of a violation of human rights by the requesting country. At times, geopolitics can also play a role: the US State Department has recently described MLAT requests to Russia relating to anti-money laundering as 'often ineffective' partly due to measures Russia has taken 'intended to hinder sanctions enforcement'.[15] Third, strategic reasons from the perspective of the requesting state – such as a concern that the requested state may initiate its own investigation on the basis of provided information or that making a request may jeopardise an ongoing proactive investigation – may militate against using an MLAT request. Fourth, the MLAT process is limited by local laws.[16]

### Non-MLAT-based requests for assistance

While an MLAT request is the principal mechanism to obtain documents and other forms of cooperation, alternative mechanisms do exist. This section examines some of these alternative mechanisms.

First, the DOJ may submit requests for assistance via executive agreement and memorandum of understanding (MOU) on mutual assistance in criminal matters with particular countries.[17] Such interim executive agreements mostly concern illegal narcotics trafficking, and are limited to criminal conduct covered by the agreement. The SEC has both multilateral and bilateral MOUs in place.[18] Since it was created in 2002, the International Organization of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMOU) has been the SEC's primary tool for obtaining evidence from foreign securities regulators.[19] It currently has more than 100 signatories.[20] The SEC also may use bilateral information-sharing MOUs that existed prior to the establishment of the MMOU regime.[21] The US has signed bilateral MOUs with over 30 foreign

regulators.[22] Bilateral MOUs are now useful primarily where a foreign regulator may provide assistance beyond the MMOU requirements, such as compelling testimony or obtaining phone records.[23]

Second, a request can be made under a multilateral convention. Two of the most commonly used are the UN Convention Against Corruption[24] for corruption and related money laundering offences,[25] and the UN Convention Against Transnational Organized Crime[26] for 'organised crime' offences and related money laundering offences.[27] Requests can also be made under separate treaties for drug-related offences,[28] for terrorism-related offences[29] and offences generally in the Western Hemisphere,[30] as well as under subject-specific conventions.[31]

Third, enforcement authorities may present a letter rogatory under Section 1782 of Title 28 of the US Code. This is the 'customary method' of obtaining evidence located abroad, absent an MLAT or executive agreement.[32] Under this method, a prosecutor will request that a US judge submit a letter rogatory to the judiciary of a foreign country. The SEC may also use a letter rogatory during litigation to compel testimony or other evidence, or serve process on a foreign-located person.[33] But this process is of limited utility where the case is still in an investigative stage.[34] The process of using letters rogatory is generally viewed as time consuming and unpredictable as considerable discretion rests with the court.[35]

Fourth, enforcement authorities may share information, particularly financial intelligence, with foreign governments that are members of the Egmont Group. Currently, the Egmont Group has 155 members.[36] The US Financial Intelligence Unit (FIU), under the auspices of the Egmont Group, is the centralised US office that exchanges information with FIUs around the globe in order to combat money laundering, terrorism financing and other financial crimes.[37] The US may share information under the Egmont Group's 'Principles for Information Exchange' or the secure encrypted internet system – the Egmont Secure Web system – that allows countries, among each other, to request and share information via secure email.[38] While strict limits are placed on the use of information Egmont Group members receive – such intelligence may not be used as evidence in court – it can help identify evidence that can be subsequently obtained through other means or help locate assets for confiscation.[39]

Fifth, electronic data may be requested directly from a third-party service provider under the CLOUD Act if the United States has signed an executive agreement with the other state.[40] The section on recent developments below examines the mechanisms for cooperation created by the CLOUD Act, as well as the interaction of the CLOUD Act with the European Union's General Data Protection Regulation.

Finally, enforcement authorities may rely on their ever-growing network of contacts abroad to obtain information informally for lead generation. Such provision of information, often done between law enforcement agents, is referred to colloquially as 'law enforcement to law enforcement' or 'police to police'. Canadian authorities have said they use 'police-to-police cooperation' in lieu of an MLAT for 'straightforward' requests such as 'ask[ing] [the United States] to do an interview, or vice versa'.[41] This type of informal exchange also appears to characterise the acknowledged US reliance on foreign legal attaché offices in Brazil and Switzerland in the *Odebrecht/Braskem* investigation.[42] Agents and prosecutors stationed abroad at US embassies and consulates both help coordinate global investigations as well as build strong relationships with local enforcement agents and prosecutors.[43]

### Requests to freeze and seize assets

Requests to freeze and seize illegally obtained assets are usually made under an MLAT.[44] Alternatively, enforcement authorities may also make forfeiture requests under multilateral treaties,[45] letters rogatory and letters of request.[46] Principal US agencies involved in asset recovery are OIA and the DOJ's Money Laundering and Asset Recovery Section (MLARS).[47] Through OIA, the United States may restrain, seize and forfeit property held in bank accounts located outside the United States.[48] The Asset Forfeiture Policy Manual encourages 'international asset sharing'.[49] The past few years show such cooperation in practice. In 2016, in order to send 'a strong message about [US] commitment to vigorous and effective cooperation in international criminal enforcement', the United States returned to Taiwan US$1.5 million in forfeited proceeds from the sale of property purchased with alleged bribes linked to the former president of Taiwan.[50] The DOJ's cases over the past few years make clear that asset freezes and seizures continue to be an important tool in international cases.[51]

### Requests for arrest and extradition

Extradition requests are usually treaty-based. The United States has bilateral extradition treaties with around two-thirds of the world's nations[52] and is also party to two multilateral treaties and several multilateral international conventions.[53] OIA handles incoming and outgoing extradition requests.[54] Every formal request for extradition must be supported by documentation.[55] Extradition requests must contain a prosecutor's affidavit explaining, among other things, the charged offences and facts.[56] In matters of urgency, pending a formal request of extradition, the United States may request that a foreign authority provisionally arrest the fugitive.[57] If the fugitive's location is unknown, prosecutors may instead submit to Interpol, the international police organisation, a 'red notice' requesting that any member state apprehend the fugitive wherever he is found, but will still need to produce extradition documents in the event the fugitive is arrested.[58] The US may also issue or receive a 'diffusion' – a request sent directly (rather than through Interpol) to the law enforcement of a particular state or states where the fugitive is believed likely to be found. Diffusions, unlike red notices,[59] are not made publicly available and are thus favoured by enforcement authorities in more sensitive matters.

## Recent developments

### Informal mechanisms

As the MLAT procedure has come under pressure over the last few years (see discussion infra), prosecutors have begun to rely on informal methods to communicate with their foreign counterparts.[60] One such method that has received some attention is the use of texting between prosecutors for tasks ranging from comparing evidence before submitting MLAT requests to coordinating simultaneous raids.[61] A senior DOJ prosecutor has praised meetings in Paris under the auspices of the Organisation for Economic Co-operation and Development as having had a pivotal impact on the DOJ's interactions with foreign enforcement officials. In particular, the meetings reportedly provided an avenue for informal follow-ups on MLAT requests and obtaining information prior to sending an MLAT to avoid 'send[ing the request] blind'.[62] The DOJ and the SEC also hold at least yearly international training sessions for prosecutors worldwide.[63] The participation of enforcement authorities in international conferences is increasingly common. While such informal mechanisms for interaction and information exchange appear most likely to augment formal cooperation mechanisms, in particular cases they may replace them altogether.

## MLAT reform

Recent years have seen the shortcomings of the MLAT process prompt calls for reform. In December 2017, the US Attorney General urged the international community to 'expedite' responses to MLATs.[64] In line with this sentiment, the DOJ's budget proposal for financial year 2019 allocated increased resources to OIA as an 'imperative to avoid further backlogs'.[65] This is the second time that the DOJ dedicated funds to MLAT reform, having made a one-time investment in fiscal year 2015.

The DOJ also recently created two new units dedicated to reviewing and executing foreign requests – a recognition of the importance of reciprocity in the area of mutual legal assistance. Because the vast majority of MLAT requests incoming to the DOJ sought digital information, OIA established a centralised 'cyber unit' to process MLAT requests for electronic evidence.[66] This reform aimed to deal with the backlog resulting from a dramatic increase in the number of requests for computer records – by over 1,000 per cent since fiscal year 2000.[67] What remains unclear, however, is the extent to which the significance of the new cybercrime unit will be diminished by the changes brought about by the CLOUD Act.

## The CLOUD Act

The CLOUD Act, passed in March 2018 in response to the *Microsoft* warrant case that had been pending before the US Supreme Court,[68] makes many MLAT requests for digital evidence unnecessary. In the *Microsoft* case, the US government requested data from Microsoft, a US cloud service provider, that was stored on a server in Ireland.[69] Pursuant to a warrant under the Stored Communications Act (SCA), Microsoft produced non-content information stored on a US server, but it refused to produce the part of customer content that was stored on a server in Ireland.[70] The question on appeal was whether the SCA warrant could be used for data located abroad (in addition to US-based data).[71]

After oral argument was held but before the Supreme Court rendered its decision, the CLOUD Act was passed as an omnibus spending bill without any hearings or debate in either the House or Senate.[72] The Act significantly erodes the role of MLAT requests for digital data in two ways. First, it allows the DOJ to seize extraterritorially stored electronic data directly from the third-party service provider solely with an SCA warrant.[73] The DOJ no longer has to submit an MLAT request to obtain such e-data. Second, a foreign government may now make a direct request to a US service provider, so long as the United States has entered into an executive agreement with that foreign state.[74] Again, the foreign government does not need to send an MLAT request to obtain such e-data. After passage of the CLOUD Act, the Supreme Court dismissed the *Microsoft* case as moot and vacated the judgment.[75]

It is not yet clear how the CLOUD Act will interact with the new EU-wide General Data Protection Regulation (GDPR) that came into effect in May 2018. Article 48 of the GDPR requires that transfer of data out of the European Union, such as to the United States, can only be effected by an order based on an MLAT, but 'without prejudice to other grounds for transfer'. The latter would appear to open up the possibility that another kind of international agreement could provide a basis for such transfer. However, no international agreement, other than an MLAT, currently authorises transfer of data from the EU in response to a US warrant.[76] As such, the CLOUD Act and the GDPR are in tension with each other.[77] Efforts to resolve the tension appear to be under way.[78]

## Statute of limitations

One of the notable cases in the past year, *Bogucki*, concerned an alleged misuse of the MLAT process. In January 2018, the DOJ charged the former head of Barclays US forex trading with wire fraud offences. The indictment provided the end date of the scheme to defraud as 4 October 2011.[79] In August 2016 – on the verge of the expiration of the five-year limitation period – the DOJ made an MLAT request to the United Kingdom and at the same time obtained a court order pursuant to Section 3292 of Title 18 of the US Code to suspend (or toll) the statute of limitation while evidence was gathered from its overseas investigative partners.[80]

The defendant moved to dismiss, alleging that the DOJ's claim was time barred, that its filing of the MLAT had been 'frivolous' and that the request to toll the statute of limitations just two months before the expiration was merely 'to obtain additional time [to investigate] rather than [to obtain] evidence of criminal activity'.[81] The defendant argued that he and Barclays fully cooperated with the DOJ since the signing of the 2015 plea agreement, which rendered the MLAT request unnecessary. In response to the motion, the court ordered discovery and an evidentiary hearing,[82] and soon thereafter the DOJ dropped the charges in a joint filing on 30 March in which it agreed not to rely on the tolling order to establish the timeliness of the charges,[83] and issued a superseding indictment.[84] The DOJ thus never had to explain or defend its MLAT request or its decision to apply for a tolling order.[85] While prosecutors still retain considerable discretion over the timing of MLAT requests,[86] the *Barclays* case is a notable development in this area.

## Confidentiality

While the defendant in *Bogucki* was able to challenge the MLAT tolling order because he had learned about the existence of the order once he had been charged, as a general matter, courts have held that defendants are not entitled to obtain a copy of MLAT requests from the government as part of the pretrial disclosure process. In the *Hutchins* decision, also rendered earlier this year, the court held that the government, having disclosed records obtained pursuant to an MLAT request, was not required to disclose the MLAT request itself because the latter was not 'material to [the applicant's] defence'.[87]

## Arrest and extradition

Informal mechanisms have recently played a role in circumstances where there was no extradition treaty between the relevant states. In 2017, a Chinese national was extradited from the United States even in the absence of an extradition treaty between the United States and China. The Chinese Ministry of Public Security is reported to have hailed this as a 'model example' of cross-border law enforcement agreed between the Chinese and US presidents at a summit in April 2017.[88] Two years earlier, the United States repatriated a high-profile Chinese businessman accused of corruption by the Chinese government.[89]

## Conclusion

As enforcement authorities continue to pursue cases that cross borders, their methods of interaction are bound to undergo further transformation as they look for practical, efficient ways to gather evidence.[90] Moreover, as private practitioners gain greater understanding of the tools enforcement authorities use, and challenges to the use of such tools increase in number, the methods of interaction may need to evolve to respond to changes in the legal landscape. This will be an important area to watch in the years ahead.

## Notes

1 Michael Griffiths, 'Cooperate with everyone simultaneously to avoid piling on, says FCPA chief', *GIR* (14 June 2018), available at https://globalinvestigationsreview.com/article/jac/1170578/cooperate-with-everyone-simultaneously-to-avoid-piling-on-says-fcpa-chief (last accessed 18 June 2018). See also Michael Griffiths, 'DOJ prosecutor: "Every week, I'm on the phone with authorities from 8 to 10 countries"', *GIR* (12 June 2018), available at https://globalinvestigationsreview.com/article/jac/1170467/doj-prosecutor-"every-week-i'm-on-the-phone-with-authorities-from-8-to-10-countries" (last accessed 18 June 2018); US Department of Justice, Acting Assistant Attorney General Kenneth A Blanco Speaks at the American Bar Association National Institute on White Collar Crime (10 March 2017), available at https://www.justice.gov/opa/speech/acting-assistant-attorney-general-kenneth-blanco-speaks-american-bar-association-national ('[J]ust as we receive significant assistance from our foreign partners . . . so too do we provide significant assistance to them.').

2 US Department of Justice, Telia Company AB and Its Uzbek Subsidiary Enter Into a Global Foreign Bribery Resolution of More Than $965 Million for Corrupt Payments in Uzbekistan (21 September 2017), available at https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965; US Department of Justice, VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme (18 February 2016), available at https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million; US Department of Justice, Teva Pharmaceutical Industries Ltd Agrees to Pay More Than $283 Million to Resolve Foreign Corrupt Practices Act Charges (22 December 2016), available at https://www.justice.gov/opa/pr/teva-pharmaceutical-industries-ltd-agrees-pay-more-283-million-resolve-foreign-corrupt; US Department of Justice, Keppel Offshore & Marine Ltd and US Based Subsidiary Agree to Pay $422 Million in Global Penalties to Resolve Foreign Bribery Case (22 December 2017), available at https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties; US Department of Justice, Odebrecht and Braskem Plead Guilty and Agree to Pay at Least $3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History, available at https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve. (The *Odebrecht/Braskem* settlement was subsequently discounted.) See also BakerHostetler, 2017 FCPA Year-End Update 5 (8 March 2018), available at https://www.bakerlaw.com/webfiles/litigation/2018/Alerts/03-08-18-FCPA-2017-year-end-update.pdf; Calvin Chan and Jasmine Chan, The Post-Keppel Compliance Landscape in Singapore, *Anti-Corruption Report* (18 April 2018), available at https://www.anti-corruption.com/article/2750.

3 Charles Doyle, Extraterritorial Application of American Criminal Law, Congressional Research Service 29 (31 October 2016), available at https://fas.org/sgp/crs/misc/94-166.pdf; Hon. Virginia M Kendall and T Markus Funk, The Role of Mutual Legal Assistance Treaties in Obtaining Foreign Evidence, The American Bar Association (2014), available at https://www.americanbar.org/content/dam/aba/events/criminal_justice/CSR_MLAT_LetterRogatory.authcheckdam.pdf.

4 Office of the United States Attorneys, US Attorneys' Manual (USAM), Criminal Resource Manual, CRM Section 276.

5 US Department of Justice, General Legal Activities, Criminal Division (CRM) 2 (2 February 2018), available at https://www.justice.gov/file/1033246/download (last accessed June 18, 2018); USAM, Criminal Resource Manual, CRM Section 276. The United States Attorneys' Manual (USAM) also provides general drafting guidelines. USAM, Criminal Resource Manual, CRM Section 281.

6 SEC, *International Cooperation in Securities Law Enforcement* 60 (2004), available at https://www.sec.gov/about/offices/oia/oia_enforce/intercoop.pdf (last accessed June 18, 2018). Generally, the SEC will seek to obtain evidence and testimony through multilateral memoranda of understanding (MOU), as well as bilateral MOU, letters rogatory, ad hoc arrangements, and voluntary cooperation. The MLAT process may be a useful alternative where a multilateral or bilateral MOU with a particular country is not in place or does not permit obtaining the type of evidence required. Unlike MOU, MLATs are also legally binding on its signatories. DOJ's OIA will still handle any use of the MLAT process by the SEC. See SEC Division of Enforcement, Enforcement Manual Section 3.3.6.2 (28 November 2017), available at https://www.sec.gov/divisions/enforce/enforcementmanual.pdf (last accessed 19 July 2018); see also US SEC, *International Enforcement Assistance* (31 May 2018), available at https://www.sec.gov/about/offices/oia/oia_crossborder.shtml (accessed 19 July 2018); US SEC, *Cooperative Arrangements with Foreign Regulators* (14 March 2017), available at https://www.sec.gov/about/offices/oia/oia_cooparrangements.shtml (last accessed 19 July 2018).

7 USAM, Criminal Resource Manual, CRM Section 276.

8 See, eg, DOJ Criminal Division, Performance Budget: FY 2017 President's Budget 24-26, accessible at https://www.justice.gov/jmd/file/820926/download (last accessed 18 June 2018). See also DOJ Criminal Division, Performance Budget: FY 2016 President's Budget 22-25, accessible at https://www.justice.gov/sites/default/files/jmd/pages/attachments/2015/02/02/10._criminal_division_crm.pdf (last accessed 18 June 2018).

9 DOJ Criminal Division, Performance Budget FY 2019 Congressional Submission 22, accessible at https://www.justice. gov/jmd/page/file/1034256/download (last accessed 18 June 2018).

10 DOJ Criminal Division, Performance Budget: FY 2017 President's Budget 24-26, accessible at https://www.justice.gov/jmd/ file/820926/download (last accessed 18 June 2018). See also DOJ Criminal Division, Performance Budget: FY 2016 President's Budget 22-23, 25, accessible at https://www.justice.gov/ sites/default/files/jmd/pages/attachments/2015/02/02/10._ criminal_division_crm.pdf (last accessed 18 June 2018).

11 For comparison, see, eg, the Office of the Attorney General of Switzerland, Annual Report (January 2018), available at https://www.newsd.admin.ch/newsd/message/attachments/52111.pdf (last accessed 18 June 2018), which publishes statistics concerning received, processed and pending MLAT requests annually. See also, for France, En 4 ans d'existence, le PNF a infligé 1,2 milliard d'euros de sanctions, Challenges (22 January 2018), available at https://www.challenges.fr/france/en-4-

ans-d-existence-le-pnf-a-inflige-1-2-milliard-d-euros-de-sanctions_562158 (last accessed 18 June 2018).

12 For SFO, see Waithera Junghae, John Gibson: 'We may be obliged to challenge overly ambitious privilege claims', *GIR* (24 April 2018), available at https://globalinvestigationsreview.com/article/1168105/john-gibson-%E2%80%9Cwe-may-be-obliged-to-challenge-overly-ambitious-privilege-claims%E2%80%9D (last accessed 18 June 2018). For the Home Office, see Alan Travis, 'Secret report urges treaty forcing US web firms' cooperation in data sharing', The Guardian, available at https://www.theguardian.com/world/2015/jun/02/web-firms-data-sharing-secret-treaty (last accessed 18 June 2018). For Switzerland, see Waithera Junghae, 'Claudio Mascotto: Panama Papers, Beny Steinmetz and returning assets stolen by dictators', *GIR* (18 January 2017), available at https://globalinvestigationsreview.com/article/1080158/claudio-mascotto-panama-papers-beny-steinmetz-and-returning-assets-stolen-by-dictators (last accessed 18 June 2018). For Brazil, see Clara Hudson, 'GIR Live: Brazilian prosecutor says WhatsApp chat group drove investigation forward', *GIR* (27 October 2017), available at https://globalinvestigationsreview.com/article/1149463/gir-live-brazilian-prosecutor-says-whatsapp-chat-group-drove-investigation-forward (last accessed 18 June 2018).

13 US Department of Justice, Attorney General Sessions Delivers Remarks at the Global Forum on Asset Recovery Hosted by the United States and the United Kingdom (4 December 2017), available at https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-global-forum-asset-recovery-hosted-united.

14 Responses to MLAT requests for digital records last on average 10 months, but paper records can take considerably longer. See RA Clarke, MJ Morell, GR Stone, CR Sunstein and P Swire, Liberty and Security in a Changing World: Report and Recommendations of the President's Review Group on Intelligence and Communications Technologies 227 (12 December 2013).

15 US Department of State, International Narcotics Control Strategy Report, Volume II (March 2018), available at https://www.state.gov/documents/organization/278760.pdf.

16 Bank secrecy laws as well as strict state secrets laws in countries such as China, may hinder the ability of governments to respond to MLAT requests. Local blocking statutes (or those with similar effect, such as article 1bis of the French Blocking Statute and article 271 of the Swiss Penal Code) may also impede legal process abroad. The former requires the screening by the Parquet National Financier of all documents sent to the US pursuant to MLAT requests, which reportedly caused delays in the trial of an Alstom executive. For bank secrecy and state secrets laws, see Vincent Pitaro, ACR Program Examines FCPA Enforcement and Local Anti-Corruption Efforts in China and Singapore, *Anti-Corruption Report* (18 April 2018), available at https:// www.anti-corruption.com/article/2751 (last accessed 18 June 2018); Hector Gonzales et al, 'Production of Information to the Authorities', GIR (2 February 2018), available at https://globalinvestigationsreview.com/benchmarking/ the-practitioner%E2%80%99s-guide-to-global-investigations-second-edition/1153329/production-of-information-to-the-authorities (last accessed 18 June 2018). For a discussion of various blocking statutes, see *EFG Bank AG v AXA Equitable Life Ins Co*, 17-cv-4767, 2018 WL 1918627, at *2 (SDNY 20 April 2018) (an example of a US court recently interpreting relatively narrowly the Swiss statute in civil proceedings). See Letzte Änderung Ein Fehler ist aufgetreten, (30 April 2015), available at https:// www.admin.ch/opc/cn/classified-compilation/19370083/ index.html#a271 (last accessed 18 June 2018); Thomas A Frick and Adrian W Kammerer, Switzerland, *GIR: The European Middle Eastern and African Investigations Review 2016* (15 June 2016), available at https://globalinvestigationsreview.com/insight/the-european-middle-eastern-and-african-investigations-review-2016/1035883/switzerland (last accessed 18 June 2018); Dylan Tokar, 'MLAT request for French documents continues to plague Hoskins trial', *GIR* (25 February 2016), available at https://globalinvestigationsreview.com/article/jac/1025168/mlat-request-for-french-documents-continues-to-plague-hoskins-trial (last accessed 18 June 2018).

17 USAM, Criminal Resource Manual, CRM Section 277.

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