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བཀའ་སློམ་སྲོལ་འཛིན་ཡིག་ཚང་།

MINISTRY OF HOME AND CULTURAL AFFAIRS  
DEPARTMENT OF LAW AND ORDER  
TASHICHHODZONG



Ga/DLO (2B)/- 11/ 3 29

24<sup>th</sup> September, 2021

Cabinet Secretary,  
Cabinet Secretariat,  
Tashichhodzong.

Sub: Legislative Impact Assessment (LIA) on Mutual Legal Assistance (MLA) Bill.

Hon'ble Dasho,

The Department of Law and Order (DLO), MoHCA would like to inform that LIA on MLA Bill was submitted to the PPD, MoHCA vide our letter no. Ga/DLO (6)/-27831 dated 25<sup>th</sup> May, 2021 which forwarded the same to Cabinet Secretariat.

In this regard, the DLO would like to follow up and request the Cabinet Secretariat to kindly put up to Lhengye Zhungtshog for necessary endorsement.

Please find attached the cited LIA.

Thank you,

With respects,

(Karma Dorji)  
Offtg. Director

CC;

1. Chief, PPD, Tashichhodzong, MoHCA

**Legislative Impact Assessment** on drafting of Mutual Legal Assistance Act

**Type of Legal Measure:** Mutual Legal Assistance in Criminal Matters Act.

**Lead Ministry:** Department of Law and Order, Ministry of Home and Cultural Affairs. (DLO, MoHCA)

**Expected Date of Adoption:** 2022

## **SECTION I. PROBLEM IDENTIFICATION:**

**Describe the problem that the proposal is expected to tackle:**

### 1. International Convention, cooperation and obligations

The Royal Monetary Authority (RMA) has drafted the Anti Money Laundering and Countering the Financing of Terrorism (AML- CFT) Act, 2018 to show progress of Bhutan on improving the compliance level after adoption of Mutual Evaluation Report in September, 2016 by the Asian Pacific Group plenary.

In this regard, the requirement of MLA Bill was highlighted which would supplement and compliment the AML-CFT Act by establishing a clear legal framework of process to seek for and provide assistance to other states in servicing of judicial documents and gathering of evidence for criminal cases.

Further, under the 14 areas of cooperation in the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) membership, MLA is one of the priority concern related to areas of cooperation under Counter Terrorism and Transnational crimes leading to signing of the BIMSTEC Convention on MLA in criminal matters with member states.

Therefore, to have a clear domestic legal framework on MLA is necessary. It would bring out clarity in the existing procedures of communicating with member states while seeking assistance legally in criminal matters by different law enforcement agencies. Additionally, it would help Bhutan secure good status internationally by fulfilling the membership obligations pertaining to MLA.

Moreover, the United Nations Convention against Corruption (UNCAC) which has been ratified by Bhutan and thus such international instrument upon ratification constitutes as law of the land as denoted by Article 10(25) of the Constitution of Bhutan.

Therefore, in compliance with the requirements under Article 47 which is for purpose of MLA and Article 53, 54, 55 and 57 of the said Convention which provides for recovery, return, and disposal of assets in the field of international cooperation, the MLA Bill as domestic legislation shall consolidate the requirement of provisions for MLA in criminal matters as per the convention.

### 2. Competent authority

Pertinently, the Royal Government of Bhutan approved Department of Law and Order (DLO) as competent authority for MLA during the 150<sup>th</sup> Lhengye Zhungtshog held on 9<sup>th</sup> January, 2018 vide Cabinet letter no. c-3/150/847 dated 26<sup>th</sup> February, 2018. Therefore, it is imperative to have a MLA Act defining and empowering the DLO as a competent authority with clear responsibilities and accountabilities to achieve the intended objective. Likewise, the other law enforcement agencies and relevant stakeholders shall be able to identify DLO as competent authority to matters relating to provisions of seeking assistance in criminal matters from other states.

### 3. No uniform standard norms and comprehensive laws on MLA

There is no legal framework on MLA in Bhutan. The Anti-Corruption Act, 2011 and AML- CFT Act 2018 provides provisions on international cooperation including aspects of executing MLA. However, it does not provide wide scope to try all MLA related matters. Also, the law enforcement agencies at present have no prescribed norms to deal with MLA matters uniformly posing challenge for DLO to act as competent authority.

## **SECTION 2: OBJECTIVE OF THE PROPOSAL.**

### **What is the objective of the proposal and what is expected out of the proposal?**

1. To delineate clear roles and functions of competent authority and relevant law enforcement agencies to deal with matters of MLA.
2. To put in place a clear legal framework on MLA in compliance with international conventions that Bhutan is party to and has ratified it.
3. To consider the requisition under international cooperation to secure better ranking internationally in the field of MLA.

## **SECTION 3: POLICY OPTIONS**

1. **What are the options that are available to reach the objective and what range of alternatives will be considered?**
2. **How have the principles of subsidiarity and proportionality been taken into account?**

1. UNCAC and relevant provisions under ACC Act, 2011 and AML-CFT Act, 2018.

As cited above, the provisions of UNCAC becomes the law of the land after Bhutan ratified it as per constitution of Bhutan. Therefore, for the purpose of MLA, the UNCAC provisions can be implemented and further supplemented by the above cited two existing Acts. However, it is not

comprehensive since it does not have broader scope of application including the aspects of competent authority for MLA.

## 2. Collaboration with stakeholders

The collaboration with stakeholders may be desirable, however due to lack of comprehensive laws and clear legal framework; it would impede the uniform enforcement of MLA measures and related matters.

## 3. Border District Coordination Meeting (BDCM)

The BDCM held by DLO with its Indian counter parts across the border may resolve MLA issues concerning the two nations by way of agreement or consensus reached during such meeting. However, such forum cannot address all the MLA issues of all critical law enforcement agencies and international bodies since it is limited to cross border relationship.

## SECTIONS 4: IMPACTS – POSITIVE AND NEGATIVE

### **Positive Impacts:**

1. Delineate clear roles and powers of the relevant agencies pertaining to MLA in criminal matters.
2. Provide a comprehensive mechanism for:
  - a. the provision of legal assistance to foreign countries upon request
  - b. the making of requests for legal assistance to foreign countries by the Kingdom of Bhutan;
  - c. Ensuring the admissibility of evidence transmitted to the Kingdom of Bhutan pursuant to an outgoing request;
  - d. describing the nature of assistance that may be provided in response to an incoming request;
  - e. Complying with obligations relating to the provision of assistance imposed by international conventions to which the Kingdom of Bhutan is a party.
3. Strengthen MLA and related services delivery capacity of relevant agencies including DLO as competent authority for MLA.

**Negative Impacts:**

**1. Cost**

The MLA process may incur expenses since it would have to transmit evidence to foreign countries which might entail installation of adequate equipment to carry out the required functions.

**2. Resources**

Resources both in terms of human and finance may have to be strengthened including capacity building for law enforcement officials. For instance, some of the MLA matters would require intelligence input and data collection.