



# Department of Justice

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**STATEMENT OF**  
**BRUCE SWARTZ**  
**DEPUTY ASSISTANT ATTORNEY GENERAL**  
**DEPARTMENT OF JUSTICE**

**BEFORE THE**  
**COMMITTEE ON FOREIGN RELATIONS**  
**UNITED STATES SENATE**

**CONCERNING**  
**THE MUTUAL LEGAL ASSISTANCE TREATY WITH BERMUDA**

**PRESENTED**

**JUNE 7, 2011**

**Statement of  
Bruce Swartz  
Deputy Assistant Attorney General  
Department of Justice**

**Before the  
Committee on Foreign Relations  
United States Senate**

**Concerning  
The Mutual Legal Assistance Treaty with Bermuda**

**June 7, 2011**

Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the views of the Department of Justice on the Mutual Legal Assistance Treaty (Treaty or MLAT) signed by the United States and Bermuda. The Treaty, jointly negotiated by the Departments of State and Justice, reflects the international law enforcement priorities of the Department of Justice. Accordingly, we join the Department of State in urging the Committee to report favorably to the Senate and recommend its advice and consent to ratification of the Treaty.

I realize that the Committee has become acquainted with the significant benefits MLATs provide to the international law enforcement community since the first such treaty came into force in 1977. Nearly thirty-five years later, we now have MLATs in force with over 60 countries. Moreover, the transmittal package for the MLAT with Bermuda provides a detailed article-by-article analysis of the Treaty, which I will not attempt to repeat here. Rather, I would like to highlight how the MLAT with Bermuda reflects our international law enforcement priorities.

The MLAT, signed on January 12, 2009, is the first such treaty between the United States and Bermuda and is the culmination of a lengthy negotiation first begun in June 2000. Upon entry into force, the MLAT will significantly enhance the existing mutual assistance relationship with Bermuda, currently characterized by collegial but discretionary cooperation based upon the exchange of letters of request. For example, the MLAT will establish a direct channel of communication between designated Central Authorities. The Central Authority for each party will be its Attorney General, or a person designated by the Attorney General. In the United States, the authority to handle the duties of the Central Authority has been delegated to the Office of International Affairs in the Criminal Division of the Department of Justice. In addition, replacing the current practice of discretionary cooperation, the Treaty will establish a binding, legal obligation to provide assistance “in connection with the investigation, prosecution, and prevention of criminal offenses for which the maximum penalty is deprivation of liberty for at least one year, and in proceedings related to criminal matters.” Limiting applicability to offenses punishable by at least one year’s imprisonment, as measured by the penalty provisions in the Party seeking the assistance, makes clear that the Treaty is to be used for requests relating to serious offenses, while still providing for assistance in a wide spectrum of criminal matters, including terrorism, organized crime, narcotics trafficking, money laundering, fraud, tax offenses, intellectual property crimes and environmental offenses. For requests relating to investigations of multiple offenses, assistance will also be available for “lesser included offenses,” provided at least one of the offenses under investigation is punishable by at least one year’s imprisonment. Article 21 of the Treaty further clarifies that assistance would be available

for proceedings by the Securities and Exchange Commission when those proceedings are incidental to or connected with pending criminal investigations and proceedings.

The Treaty with Bermuda also provides for a broad range of different types of cooperation in criminal matters, including taking the testimony or statements of persons; providing documents, records, and other articles of evidence; locating or identifying persons or items; serving documents; transferring persons in custody for testimony or other purposes; conducting searches and seizures; assisting in proceedings related to the forfeiture of assets, restitution and the collection of criminal fines; and any other form of assistance not inconsistent with the laws of the Party granting the assistance.

As with our other MLATs, the Treaty with Bermuda also pierces bank secrecy and provides a mechanism for addressing legal and policy issues such as confidentiality, admissibility requirements for evidence, allocation of costs, confrontation of witnesses at foreign depositions, and custodial transfer of witnesses. Significantly, the Bermuda MLAT provides a framework for cooperation in the tracing, seizure and forfeiture of criminally-derived assets.

Finally, despite the many benefits offered by the Treaty with Bermuda, we realize that MLATs in themselves are not the solution to all aspects of law enforcement cooperation. Their success depends on our ability to implement them effectively, combining comprehensive and updated legal provisions with the competence and political will of our treaty partners. Our recognition of the importance of effective treaty implementation led to the development of a standard consultation clause for our MLATs, included in the Treaty with Bermuda, to ensure that we will have regular dialogues with our treaty partners on the handling of our cases.

### Conclusion

We appreciate the Committee's support for our efforts over the years to strengthen and enlarge the framework of treaties that assist us in combating international crime. We at the Department of Justice view mutual legal assistance treaties as particularly useful tools in this regard. In addition, as our network of international law enforcement treaties has grown in recent years, we have focused increasing efforts on implementing our existing treaties, with a view to making them as effective as possible in the investigation and prosecution of our most serious crimes, including those related to terrorism. We join our colleagues from the Department of State in urging the prompt and favorable consideration of the Mutual Legal Assistance Treaty with Bermuda. I will be pleased to respond to any questions the Committee may have.