



Request for Mutual Legal Assistance in Criminal Matters

Guidelines for Authorities outside of Jamaica.

3rd Edition – September 2019

Jamaica is committed to providing, to the extent possible under domestic law, the fullest measure of mutual legal assistance to all countries when called upon to do so. Jamaica recognizes that it is in the interest of all countries to do whatever possible to facilitate requests without erecting artificial borders, while at the same time respecting the rights of persons under investigation in the foreign country as well as the rights of persons in Jamaica whether or not they are citizens of Jamaica.

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SECTION 1 - INTRODUCTION

What is Mutual Legal Assistance?

Mutual legal Assistance (“MLA”) is a tool of cooperation used by countries to provide assistance to each other in the investigation and prosecution of criminal offences or proceedings that extend beyond their national borders. In general, MLA is mainly used to obtain assistance that cannot be obtained through law enforcement to law enforcement cooperation that is through police to police cooperation.

MLA can also be used to obtain assistance in the investigation of the proceeds of crime and extends to the making restraining and forfeiture applications.

The Mutual Assistance Criminal Matters Act, 1995.

Jamaica in fulfilment of its obligation under the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (“The Vienna Convention”) has enacted the Mutual Assistance (Criminal Matters) Act, (“MACMA”) 1995. The MACMA is primary piece of legislation that governs Jamaica’s participation in the global community in mutual legal assistance in criminal matters.

Other support legislation includes the **Extradition Act, Terrorism Prevention Act, Proceeds of Crime Act, 2007** and the **Financial Investigation Division Act**.

The Purpose and Objective of these Guidelines

Due to the increasingly global nature of crime, MLA has become a critical tool in the fight against transnational organized crime.

These guidelines are to ensure that requests for assistance received by Jamaica can be satisfied and executed in a timely, effective and efficient manner. They provide the following:

- Guidance to the authorities who wish to make a formal request for MLA to the Jamaica (requesting authorities);
- Guidance to the authorities on what can be requested without making a formal request for MLA to Jamaica.

The sole purpose of the guidelines is to provide essential basic information on Jamaica’s mutual legal assistance regime. It does not purport to express any legal opinion and should not be read as if it were a legal text.

SECTION 2 – The Central Authority of Jamaica

Who is The Central Authority for Jamaica?

The principal authority in Jamaica responsible for the execution of mutual legal assistance in criminal matters is the Office of the Director of Public Prosecutions (“ODPP”).

The responsibility was designated to the ODPP by the Minister with Responsibility for Justice. Section 2 of the MACMA empowers the Minister to delegate this function to any person or entity. In 1997, by an *Instrument of Designation of Central Authority*, ODPP was designated as the Central Authority for Mutual Legal Assistance for Jamaica.

In Jamaica, in addition to ODPP, there are a number of other competent authorities that assist in international cooperation. They primarily deal with matters that fall outside the formal channel that is police to police cooperation or informal cooperation. Additionally, they also assist the designated Central Authority to coordinate and facilitate the execution of requests made to Jamaica.

The Role of the Central Authority

The ODPP receives, accedes and ensures the execution of all formal MLA request. The ODPP will also accept request that require informal cooperation and direct them to the appropriate competent authority. Section 3 of the MACMA codifies the use of informal cooperation in this jurisdiction.

Is MLA Appropriate?

MLA request is not suitable because:

- The material can be obtained voluntarily without any assistance from the Jamaican authorities (although, the Jamaican law enforcement should be notified);
- The material can be obtained via law enforcement cooperation (because it is only required for intelligence or investigation purposes.
- It is often desirable for overseas authorities to obtain intelligence prior to making an MLA request. This can help improve the quality of the MLA request, and makes it less likely that a request will be returned to the requesting authority for lack of information or clarity.

Note that request for intelligence can be on a FIU to FIU basis, or police to police cooperation. Countries are urged to you use their own law enforcement counterparts or contacts in Jamaica when seeking to obtain intelligence or public information or document during an investigation. The Central Authority can also direct you to the relevant local law enforcement agent, if your country 5

does not have one based in Jamaica.

Competent Authorities

The Financial Investigation Division (“FID”)

The FID was formed on December 16, 2002, following the merger of the Financial Crimes Unit of the Office of the Director of Public Prosecution (ODPP) and the Revenue Protection Division (RPD) of the Ministry of Finance and Planning (MOFP).

The FID specialises in the investigation of tax related and financial crimes including money laundering, terrorism financing, advance fee fraud and other new emerging financial crimes. The FID is a multi-disciplinary body comprising forensic examiners, intelligence/financial analysts, attorneys-at-law and police officers with varying expertise in financial crimes. Some of the police officers are attached to the Counter Terrorism and Organised Crime Investigation Branch (“CTOC”). These officers have developed the expertise necessary to address the many intricacies involved in financial crimes and terrorism financing cases, which falls outside the traditional forms of criminal activities. The police officers also act upon the instructions (written and oral) given to them by the designated Central Authority when executing foreign request.

The main legislation which govern the operations of the Division are:

- **Proceeds of Crime Act(POCA), Regulations and (Money Laundering Prevention) Regulations, 2007,**
- **Financial Investigations Division Act (FIDA), 2010,**
- **Terrorism (Prevention) Act (TPA) and Regulations.**

The powers of the FID have been expanded by the *Proceeds of Crime Act, 2007*, (“POCA”). Under POCA, the FID is referred to as the Assets Recovery Agency, (the Agency). The FID and the designated Central Authority are the agencies authorized to apply for forfeiture and pecuniary penalty orders. In furtherance of the two agencies role under POCA, in 2013, the FID and the ODPP signed a memorandum of understanding between which outlines protocols between the agencies in relation to asset recovery post -conviction. For more information on the FID, please visit the website at: <http://www.fid.gov.jm>

The Counter- Terrorism and Organised Crime Investigation Branch (“CTOC”)

The CTOC formed in 2014, is an upgrade of the former Organised Crime Investigation Division (OCID). Previously, OCID was the sole law enforcement agent with direct responsibility in the execution of mutual legal assistance requests since 1997. Accordingly, it has developed the expertise in executing requests quickly and efficiently and working with foreign law enforcement agents.

Currently, CTOC is the main unit under the JCF that interface directly with the Central Authority in the execution of formal MLA Request. It does the necessary preparatory work in providing support to visiting foreign law enforcement officials, executes request on behalf of the foreign country and conduct search operation.

CTOC's overall objective is to strengthen the country's security framework to effectively combat terrorism and organised crime in all forms. It has responsibilities for the following units within the Jamaica Constabulary Force:

- Counter Terrorism and Special Investigation,
- National Strategic Anti-gang (NSAU)/ Transnational Crime,
- Communication Forensic and Cybercrime (CFCU),
- Operations and Special Enquiries (Stolen Motor Vehicle, Major Robberies)
- Constabulary Financial Unit,
- Fraud Squad (Electronic Fraud)
- Intelligence and Covert Evidence Gathering
- Anti-Trafficking in Person, Intellectual Property (Vice Squad)

THE MAJOR ORGANISED CRIME AND ANTI-CORRUPTION AGENCY (“MOCA”)

The MOCA was formed in August 2014 through the combining of the Anti-Corruption Branch (ACB) and the Major Organised Crime and Anti-Corruption Task Force (MOCA TF). MOCA is now an elite agency which focuses on tackling corruption in the public sector and bringing high-value criminal targets to justice. Their main legislation is the Major Organised Crime and Anti-Corruption Agency Act, 2018.

The goals of the agency are:

- To tackle serious organised crime and to stamp out corruption in Jamaica
- To focus on bringing high-value criminal targets to justice
- To improve governance and security in Jamaica through tackling serious transnational organised crime in all its forms and to provide deterrence

The FID, CTOC and MOCA work closely with a number of foreign law enforcement agents (“LEA”) that are based in Jamaica and act as a conduit to provide real time information during the preliminary stages of a criminal investigation without the need to go through the formal channel. Such preliminary contacts have been proven to be beneficial and in many instances obviate the need to make a formal request for mutual legal assistance. The foreign law enforcement agents include agents from the United States, Canada and United Kingdom.

A country wishing to contact any these agencies can email the ODPP, contact them directly or through INTERPOL.

The 24/7 POINT OF CONTACT FOR CYBER CRIME INVESTIGATIONS

Jamaica is a member of the 24/7 Point of Contact for Cyber Crime Investigations involving the sharing of electronic evidence and the preservation of them pending a formal request. In Jamaica a request can be made to the Counter- Terrorism and Organised Crime Investigation Branch for preservation of call data and other electronic records in order to effectively and successfully make an application through the formal channel.

Foreign States are encouraged, where possible; to make immediate contact with the 24-hour point of contact in their own country or autonomous law enforcement jurisdiction and that individual or entity will, if appropriate, contact the point of contact for Jamaica. The ODPP can also be contacted to facilitate the process.

Interpol

Jamaica is a member of the International Police Organisation (INTERPOL). By virtue of being a member, Jamaica receives and provides assistance to other police forces all over the world on non- intrusive evidence or material.

There is an Interpol liaison officer within the Jamaica Constabulary Force (JCF) who can also be contacted for assistance. This liaison officer can provide similar services as CTOC, however, it is considered desirable that overseas law enforcement agencies needing informal assistance contact CTOC, firstly, especially on less complicated request, such a locating a person, place, obtaining a name and address.

SECTION 3 - Format of the Requests

Request must be in writing

Requests for MLS must always be made in writing or where an oral request is made it must be reduced in writing before the request is executed.

At times, the Central Authority may require additional information that it considers necessary to execute a request. This additional information must also be reduced in writing and submitted as a Supplemental Request.

All requests should include an email and contact information of the relevant parties.

Language of the Request

All request to Jamaica must be in English. If an English translation is not provided, the request will be sent back to the requesting authority. Similarly, an incomplete request or a request that is not written properly, or is not carried out to a high professional standard will be sent back to the requesting authority.

Where to Send a Request for Mutual Legal Assistance

A Request for MLA can be sent directly to the ODPP.

The address is as follows:

The Director of Public Prosecutions
Designated Central Authority for Mutual Legal Assistance
Office of the Director of Public Prosecutions
Public Building West
P.O Box 633
King Street
Kingston
Jamaica
West Indies
Email: dpp@dpp.gov.jm or mlajamaica@dpp.gov.jm
Telephone number: 1-876- 922-6321-5
Facsimile: 1-876- 922-4318

Transmission of a request

The Central Authority of Jamaica accepts letters of request directly. Requests can also be routed through the foreign states Consulates, Embassies and High Commissions. However, the requesting state will need to comply with its own domestic laws relating to the transmission of requests.

Requests to the Central Authority of Jamaica can be sent via post, courier, fax or email (where sent by email it should be in a 'pdf' format), an original hardcopy may be requested at any time. A requesting state should consider whether speed is of the essence when undertaking its own method of transmission.

Where law enforcement to law enforcement assistance is needed, the relevant competent authorities may be contacted directly or the request can be sent to the Central Authority of Jamaica

Urgent Request

Once a request is marked urgent the central authority will make every effort to deal with the request immediately. A request must not be marked urgent if it is not. The requesting state must indicate the reasons why the request must be treated as urgent, for example: the dissipation of assets, pre-trial appearances, impending trial dates. The requesting state must provide details of any deadlines which must be met.

Collateral Use - Requests Made by Jamaica

Evidence obtained by Jamaica pursuant to an MLA request to a foreign authority will not be used for any purpose other than that specified in the original request without the consent of appropriate overseas authority.

Collateral Use - Requests Made to Jamaica

Where a requesting country or competent authority wishes to use evidence obtained from Jamaica for a purpose otherwise than that stated in the original MLA request, or to share the evidence with a third country, a formal request to do so must be made in writing by the original requesting state to Jamaica.

The request to share must also contain the following additional information:

- ❖ What evidence is to be shared/used?
- ❖ How the evidence will be used or shared?
- ❖ Why is the evidence needed or necessary in the investigation/court proceedings?

Notification where the request for assistance is no longer required

Once a request for assistance is no longer required, a letter of notification to that effect must be sent to the central authority of Jamaica with instructions for the file to be closed.

Dual Criminality/Reciprocity

Jamaica does not generally require for there to be dual criminality or reciprocity but would expect similar assistance from countries which are parties to relevant bilateral

and multilateral agreements with Jamaica. Jamaica would also expect reciprocity/dual criminality from countries that have obtained mutual legal assistance in the absence of bilateral and multilateral instruments.

Jamaica, however, expects dual criminality/reciprocity in the following instances as listed below:

- ❖ requests involving registration and enforcement of foreign forfeiture orders;
- ❖ requests involving the registration and enforcement of foreign pecuniary penalty orders;
- ❖ requests involving the issuing of a restraint order by a Jamaican court;
- ❖ requests involving the registration and enforcement of foreign restraint orders.

Reciprocity is not a legal requirement but it is expected that countries that request assistance from Jamaica should be willing to reciprocate.

Confidentiality

As it customary in MLA, Jamaica considers every request for assistance to be confidential. An MLA request will not be disclosed to a third party without the consent of the requesting authority, except where disclosure is necessary to obtain the co-operation of the witness or other persons concerned.

In general, requests are not shown or copied to any witness or other person, nor is any witness informed of the identity of any other witness. In the event that confidentiality requirements make execution of a request difficult or impossible, the central authority will consult the requesting authorities. In cases where disclosure of a request or part thereof is required by Jamaican domestic law in order to execute the request, it will normally be the case that the requesting authority will be given the opportunity to withdraw the request before disclosure to third parties is made. The Central Authority may refuse to honour a request if confidentiality is not obtained and the information supplied by Jamaica would not be restricted to the purpose stated in the request by the requesting state.

The Postponement of a Request

The Central Authority of Jamaica may refuse or postpone the execution of a request if the request is unclear or if the execution may interfere with an investigation or proceedings that are being conducted in Jamaica.

The Central Authority may also postpone the execution of the request for any other reason which, in his or her opinion, justifies the postponement. If the execution of the request is postponed or refused, the requesting state will be notified.

Requests to Jamaica will be executed in accordance with Jamaican law and procedure. If the request asks that a particular procedure be followed, this will be done to the extent that it is possible under the existing law and practice in Jamaica

SECTION 4 - The legal basis of obtaining assistance from Jamaica.

Designated Commonwealth Countries and Treaty Countries

Under the MACMA a country requesting assistance from Jamaica should either be (a) a designated Commonwealth country or (b) a treaty country.

A designated Commonwealth country is one that has been identified in an order made by the Minister with responsibility for justice as being a Commonwealth country that can receive assistance from Jamaica.

A treaty country is defined as a country that is a party to a relevant treaty (whether bilateral or multilateral) **and** that country has been so identified by an order of the Minister with responsibility for justice.

Within recent times Jamaica has designated a number of countries by a Ministerial Order who do not fall within the above formulation and may require a formal request.

Non-Commonwealth and non-treaty countries

Countries that do not fall into either of these categories have been able to receive assistance from Jamaica provided that the assistance requested does not require any intrusive methods of investigation such as a search warrant or access to financial records.

This means, in practice, that the assistance usually includes but is not necessarily limited to

- ❖ supplying information that is already in the public domain;
- ❖ making enquiries into matters that are not covered by secrecy obligations such as those relating to financial records;
- ❖ providing information that has been voluntarily provided by the holder of the information.

Informal Request

It is recognised that in some instances preliminary information is needed before a formal request can be made to the Central Authority. The CTOC, FID, MOCA and other competent authorities can be contacted to provide this kind of assistance. Through this process witnesses, property and owners of property, conviction records, company records and beneficial ownership can be obtained. Documents that are already accessible to the public such as records at the Registrar of Companies or the Registrar of Titles can be obtained without a formal request being made. Intrusive methods of gathering information such as, search warrants or Court Orders are, however, not permissible and are not available under this form of cooperation.

Since this document is a basic guide to the types of assistance that can be provided by Jamaica, the ODPP may be contacted to obtain more details on the precise formulation of the requests. This can be of particular assistance in instances where the request concerns restraint or forfeiture of assets.

Grounds for refusing to execute an MLA Request

Generally, the Central Authority of Jamaica aims execute all requests made to Jamaica. However, there are instances when a request will be refused. These instances are stipulated by law and so the Central Authority has no discretion and must decline to provide the assistance required.

The grounds for refusal arise where:

- Compliance with the request would contravene the provisions of the Jamaican Constitution, or prejudice the security, international relations or other essential public interests of Jamaica;
- There are substantial grounds for believing that compliance with the request would facilitate the prosecution or punishment of a person affected by the request on account of the person's race, religion, nationality or political opinions, or for any of the foregoing reasons, would cause prejudice to such persons;
- The request relates to an offence under military law only or under a law relating to military obligations;
- The request relates to an offence or proceedings of a political character not being an offence included in any relevant treaty to which Jamaica and the relevant requesting state are parties, and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of that offence;
- Any confidentiality requested in relation to information or evidence furnished by Jamaica would not be protected by the relevant requesting state;
- the steps required to be taken in order to comply with the request cannot be legally taken in Jamaica in respect of criminal matters arising in Jamaica;

- The request relates to conduct in respect of which the person accused or suspected of having committed an offence has been convicted or acquitted by a Court in Jamaica.

Once the Central Authority refuses to assist, the requesting state will be notified and the grounds for the refusal will be given.

SECTION 5 – Who Assistance Can be Provided to?

When and to whom assistance may be given.

- Assistance can only be provided to the criminal law enforcement authorities of the requesting state.
- Assistance may be provided in respect of investigations and proceedings in relation to a criminal matter.
- Criminal proceedings must have been instituted or there is reasonable cause to believe that criminal proceedings could be instituted in respect of an offence that has been or is likely to be committed.
- *Criminal investigation* means an investigation into an offence;
- *Criminal matter* includes a criminal matter relating to:
 - a) revenue;
 - b) the forfeiture or confiscation of property in respect of a prescribed offence;
 - c) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence;
 - d) the restraining of dealings in property or the freezing of assets that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed in respect of a prescribed offence. (our emphasis)

Criminal proceedings in relation to an offence means

- a) a trial of a person for the offence;
- b) any proceeding to determine whether any person should be tried for an offence; or
- c) the preferment of a voluntary bill of indictment.

Type of Assistance that can be provided

The Central Authority is able to provide assistance in the following areas:

- ❖ examination and taking of testimony of witnesses;

- ❖ location and identification of persons and objects;
- ❖ production of documents and other records including judicial and/or other official records as well as articles;
- ❖ making of arrangements for persons to give evidence or assist investigations;
- ❖ temporary transfer of persons in custody for the giving of testimony;
- ❖ search and seizure of documents and or articles;
- ❖ service of documents;
- ❖ restraining of dealings in property, or the freezing of assets that may be forfeited or may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of certain offences;
- ❖ tracing, seizure and forfeiture of property that may be subject to a forfeiture order in force for the time being in relation to certain offences in the requesting state;
- ❖ the interception of communication and data;
- ❖ such other matters as may be included in an agreement or arrangement in force between Jamaica and a requesting state.

General Information required in a request should include the following:

- ❖ The details of the agency or authority initiating the request;
- ❖ The title of the bi-lateral or multilateral agreement under consideration giving rise to the request for assistance;
- ❖ The contact information of persons who have conduct of the request including name, telephone number, and email address of contact person;
- ❖ For request not made in the English Language; one signed version of the non-English request and one translation of the request into English;
- ❖ The original request must be signed by the issuing authority;
- ❖ The purpose and nature of the assistance requested must be clearly articulated;
- ❖ Details of any special procedure that should be followed by Jamaica in executing the request must be clearly stated and where possible provide and a copy of such precedent;
- ❖ A definition or description and legal ingredients of the offence charged, under investigation must be clearly outlined in addition to the sentence or penalty or copy of the legislation or the relevant section that criminalises the conduct in the requesting country.
- ❖ The summary of facts should establish a clear connection between the person under investigation and the offence being investigated or offence believed to have been committed or likely to be committed and the connection to Jamaica;
- ❖ Details of the person or persons (including legal persons) named in the request including, where available, address/location, date of birth and nationality;
- ❖ The request must indicate whether the person of interest to the request is a suspect, accused before the court, victim or witness;

- ❖ The request must indicate whether the evidence of interest is exculpatory;
- ❖ The request must state the connection between the evidence requested and the offence under investigation or proceedings. A clear nexus must be established. This goes further than just stating that the requested material is relevant to the case under consideration.
- ❖ Time limit for compliance with the request if applicable, such as relevant court date and any reason for an urgent attention;
- ❖ A request must only be marked as urgent only if that is in fact so;
- ❖ Any restriction on dissemination/disclosure of the contents of the request.

Where Court Proceedings have been instituted in addition to the general requirements above, the request should include:

- ❖ the Court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
- ❖ the identity of the accused person unless prohibited by the law of the requesting country;
- ❖ the offence to which the request relates and a summary of the relevant facts;
- ❖ the stage reached in the proceedings and the dates fixed for further stages.

Where no Court Proceedings have been instituted in addition to the general requirements above, the request should also include:

- ❖ the offence that is believed to have been committed or is likely to be committed

Note: Failure to provide the fullest information to honour the request may result in delays or the request not being executed.

Timescales

ODPP will send an acknowledgement of receipt of the request for MLA within ten (10) days of receipt and indicate whether the request can be satisfied in whole or part.

Urgent Request

Where a request is marked as urgent the requesting state will receive a response within (3) three days notifying whether the request can be honoured. The ODPP will aim to satisfy the request within 30 days or within the time line stipulated by the requesting state. However, depending on the nature of the request this may not always be possible. All central authorities will take into account any reasons for urgency which are clearly stated in the request. Failure to follow the advice in these guidelines may also delay the acceptance and execution of the request.

Queries about a Request

Once the central authority received a request for MLA, the request will be logged and given a reference number. A Crown counsel and a Team Leader will be assigned to the case along with the support of a paralegal officer.

The requesting authority will be written to within ten (10) days of its receipt (where possible emailed) with the details of the persons dealing with their case.

Section 6 - Specific details to be included in the request

This section deals in more detail the form of assistance the Central Authority of Jamaica can provide and the outlines the specific information that should be included in a request.

Request for the Location and Identification of Persons and Objects

This request can be obtained through law enforcement to law enforcement.

Every such request should contain:

- name, address and telephone number of the person;
- location of the object;
- The last known address, if known
- A copy of identification of the subject, if available
- Names of any known family member or address
- Place of work, if known
- all such information that can lead to an accurate identification of the person or object.

Request for Interviews and Taking of Statements

This request can be obtained through law enforcement to law enforcement.

Every such request should contain:

- the name and address or official designations of the individual;
- the date of birth and occupation, if available;

- whether the person in question is a suspect, witness or victim to an incident;
- indicate whether the individual will be willing to give the statement
- the subject matter/summary in relation to which the request is required;
- provide a list of the questions to be asked;
- the language which the person understands should be provided, if possible;
- explain why it is necessary for the by a police interview rather than by a court;
- details of any procedure or manner to be followed in the taking of the statement or conduct of the interview, including any rules on privilege which a witness or suspect may be entitled to claim, this will be complied with in accordance to the Jamaican law;
- any caution or formal notification of rights which should be given to the witness or any suspect under the law of the requesting state. The Central Authority will aim to comply with such procedures and requirements as outlined by the requesting state, once it is possible under the Jamaican law.

Request for Examination and Taking of Testimony of Witnesses.

This request must be obtained through a formal MLA channel.

The request should contain:

- expressly state whether the evidence must be taken before a court;
- the name and address or official designation of the witness;
- the date of birth and occupation, if available;
- the subject matter in relation to which witness is to be examined;
- provide a list of the questions to be asked of the witnesses;
- explain why it is necessary for the evidence to be taken in court, rather than by a police interview;
- the manner in which any testimony is to be taken and recorded;
- whether the evidence must be taken without oath,
- instructions relating to whether the witness may affirm or take an oath;
- provide details of the procedure to be followed in the taking of the evidence, including any rules on privilege which the witness to be entitled to claim;
- provide specific instructions whether the witness must be compelled to attend the proceedings;

- any provision of any law of the requesting state that relates to privilege or other exemption from giving evidence or producing the document or article that is relevant to the request;
- any special requirements in the taking of the evidence that would make it admissible in the Court of the requesting state;
- any caution or formal notification of rights which should be given to the witness or any suspect under the law of the requesting state. The Central Authority will aim to comply with such procedures and requirements as outlined by the requesting state, once it is possible under the Jamaican law.

Request for contacting witnesses in Jamaica

Witnesses must not be contacted directly by letter, fax or telephone unless the Central Authority of Jamaica or a law enforcement agency has been notified. An exception may be if the witness was in past dialogue/contact with the requesting state and the witness's participation is voluntary. In such instance, as a matter of courtesy, the central authority should be informed of this arrangement.

Request for Production of Documents, judicial records, banking information and records

This request must be obtained through a formal MLA. This is a special procedure to obtain a wide list of matters, therefore, specificity is important to avoid delay in satisfying the request.

The central authority does not perform the role of tracing assets. This must be done before a formal request is made. That initial step can be done through law enforcement to law enforcement cooperation or through the Financial Investigation Division.

The request should contain:

- the names and addresses, date of birth or official designations of the person of interest in relation to the Order;
- copy of a photograph, if any;
- full name and address of the institution where the information is located;
- full information on the information in relation to the Order, such as account number, name of account holder, number of account;
- the procedure to be adopted when producing the record;

- where the information is contained in an institution such as bank, details and grounds for believing that banks in the Jamaica and to the extent available, which bank may be involved;
- details of the time period for which the information requested covers or holds the account(s),
- details of any specific document or information to be produced
- where known, documents or articles are to be produced with as complete a description of the document or article as possible;

REQUEST WHERE SERVICE OF DOCUMENTS IS SOUGHT;

The information sought must include:

- full information, including address of the person to be served;
- an original or certified copy of the document/order to be served;
- Must be sent at least six (6) weeks before the court appearance/ court proceedings in question;
- a summary of the proceedings to which the service relates and indicate why the service is necessary;
- the procedure or any law to be adopted to effect service, including whether the serving the person in person;
- whether a statement or affidavit showing proof of service must be sent back;
- whether proof of service must also be endorsed on the documents sent;
- whether the person to be served must signed a copy of the document, note, however, the person cannot be compelled;
- the date of the hearing of the matter or whether there is a deadline to be honoured;
- details of any allowances and expenses to which the person asked to appear in proceedings abroad is entitled;

- the address of the court where the proceedings are to take place;
- the contact information of the official of the overseas court from whom the person asked to appear can seek further information, if necessary;
- The central authority of Jamaica will supply an affidavit to the requesting state upon completion of the procedure.

Request for transfer of persons in custody for testimonial purposes or assistance in an ongoing investigation.

The request should contain:

- a summary of the facts of the case;
- whether the inmate is a witness, victim or an accomplice;
- an undertaking of the transfer costs will be covered by the requesting state;
- an undertaking that the transfer will not prolong the sentence of the inmate;
- statement that the inmate has consented;
- no other option is available to receive the evidence and the importance of the evidence requires the inmate personal appearance;
- subject matter in relation to which the inmate is to be examined; and the reasons for which the transfer is being sought and the importance of such transfer.
- The role with the witness played in the criminal conduct;
- The dates and place where the evidence is needed;
- Whether the inmate will have immunity from prosecution for previous offences;
- Details of all arrangements to collect and return the inmate to and from the requested jurisdiction;
- Details of the type of secure accommodation in which the inmate will be held in the requesting state and the evidence is taken;
- Details of the escort available to and from the secure location.

Request for Search and Seizure Property

Every such request should contain:

- undertaking that there is dual criminality
- a precise location and description of the place to be searched and things to be seized;

- all such information available to the requesting state as is required under its law for a warrant or authorization to carry out a search and seizure;
- information relating to the nature of the criminal investigations or proceedings;
- whether the request is urgent;
- a copy of a Court, where available;
- indicate whether the property maybe tainted property or not
- the reason why a search warrant is necessary and how the items seized are relevant to the investigation or prosecution of the matter;
- appropriate undertaking for the safe keeping and return of the seized evidence
- details of any officials of the requesting who may want to be present/or participate in the search. Further to indicate why there presence is necessary.
- must provide reasonable grounds for believing that the property, if tainted is at the location to be searched;
- information regarding any conviction of the person connected with the request for the search
- how the items are to be seized and listed, for example will there be a need for a chain of custody statement
- whether a witness statement will be necessary from the person involved;
- a description of any particular procedure to be followed in executing the request and time line to be observed.

Request for the Interception of Communication

The request for assistance must proceed by a formal mutual legal assistance.

The letter of request must include:

- There must be a mutual agreement between Jamaica and the requesting state before the request can be made;
- That the interception is necessary for the purpose of preventing and detecting a serious crime;
- Details as to why the objectives can be achieved by other means;
- No disclosure can be made to a third party with the consent of the Jamaica central authority;
- The request for data must come from the central authority of the requesting state;

- Confirmation that a warrant to intercept has been disclosed in connection with a criminal investigation in the requesting state
- An assurance the intercepted communication and data will be dealt with in accordance to the terms of the mutual agreement;

Request for Communication Data

The request must include:

- The name of the provider;
- The types of data required for example, subscriber details, incoming calls, outgoing calls;
- The time period under consideration and the date, time and place of the incident under consideration;
- Why the information is necessary to the investigation;
- Particulars of the offence under consideration and summary of the facts/allegations;
- The link with the data and the person(s) who are the subject of the investigation;
- How the data links to the offence and the person(s) involved;
- Why is the data proportionate to the investigation, for example what is expected to show and the data will be used;
- Any information regarding the source of the telephone numbers;
- Full details of all individual(s) involved and the role played;
- Why the objective of the investigation cannot be achieved by any other means.

Request for Registration of Restraining Orders

The request for assistance must proceed by a formal mutual legal assistance. The purpose of a request for restraint is to preserve the value of the asset located in Jamaica pending conviction.

Every such request should contain:

- proof that dual criminality applies;
- an original or certified copy of the Order, (seal of the Court must be present);
- a full description/details of the property to restrained and where it is located (including name of the owner, number and other relevant information);

- the name, address, nationality, date and place of birth and present location of the suspect (s) or defendant (s) whose conduct has given rise to an anticipated confiscation or forfeiture proceedings;
- details of whether the property is held in the name of third party and why there is need to restrain the property indicating the link to the property by the defendant or the accused;
- details of the current criminal investigation into the acquisitive crime or money laundering or proceedings in the requesting state;
- a summary of the material facts of the case and the role the accused or defendant plays;
- reasons or proof that there are reasonable grounds to believe that the defendant/accused has benefited from his criminal conduct and that property may dissipate if the order is not granted;
- particulars of the offence and the relevant law to which the Order relates and the date of conviction in the requesting state;
- why there is reasonable grounds to believe that the property may be needed to satisfy an external order which has been or which may be made;
- details of known property held by the suspect of the accused, if known;
- why the order is necessary- to include an explanation that will enable the court to consider whether there is a real risk that the identified property will be dissipated if no order is made;

Request for the Registration of a Forfeiture/Confiscation or Pecuniary Penalty Order.

Every letter of request should include:

- There is dual criminality;
- Full details of the convicted and named in the order and that no appeal is outstanding in respect to the order;
- That the order is still in force and not subject to any appeal;
- Details of the conviction of the offence (including an authenticated certificate of conviction) amounting to an offence under the *Proceeds of Crime Act, 2007 Jamaica*;
- An original or duly authenticated copy of the order
- The facts of the case and a reason why the order is necessary to be made, including the real likelihood that the property will be dissipated if the order is not made;
- a description of the property, located in Jamaica to which the offence relates, if a forfeiture order is to be sought;
- the name, address, nationality, date and place of birth of the defendant(s) whose criminal conduct has given rise to the confiscation proceedings;

- the present location of the defendant(s) including whether they are serving time and where or whether they have served time and released;
- whether any part payment of the order was made in the requesting state and what is the outstanding balance remaining;
- whether the order has the purpose of recovery property, or the value of the received/benefited in connection with the criminal conduct or commission of the crime;
- indicate whether a previous restraint order was obtained in Jamaica;
- details of how the property was used in the commission of the offence or derived therefrom, if a forfeiture/confiscation order is to be sought;
- grounds for believing that a person convicted of the offence derived a benefit directly or indirectly from the commission of the offence;
- grounds for believing the property should be forfeited/confiscated or a pecuniary penalty order should be made;
- name and address of the person who is believed to be in possession of the property;
- any documentation in relation to the ownership of the property;
- details of any third party interest in the property.
- Whether prior assistance has been provided (including asset tracing) if so give details of the Jamaican law enforcement involved and details of the assistance received.

Request for Passport Information and Immigration Status

A request for this information can be done by the formal channel or through law enforcement cooperation.

The letter of request should include:

- Details of the person of interest (name, date of birth, place of birth and address)
- Passport number (current or previous)
- State the criminal offence committed and the data is linked to such offence
- State whether it relates to the prevention and detection of crime or apprehension

of prosecution of another

Request for Company Records

A request for this information can be done by the formal channel or through law enforcement cooperation.

- General requirements for assistance will apply.

Request for Criminal Records, Birth Certificates and Marriage Certificates

A request for this information can be done by the formal channel or through law enforcement cooperation.

- General requirements for assistance will apply.
- A copy of the fingerprint of the subject of the request must be sent to Jamaica.

Request for DNA Records

This type of assistance must be obtained through the formal channel

- General requirements for assistance will apply.

SECTION 6: Foreign Officers coming to the Jamaica

If officers from the requesting state wish to be present during the execution of an MLA request, for example to participate in a search or to be present during the interview of witness, this must also be requested in the letter of request. The Central Authority, in conjunction with the authority executing the request in the Jamaica, will determine whether the request to allow such participation is appropriate.

The requesting authority must give reason as to why officers from the

requesting state should be present. For example, if it is a very complex case, or is a request for search and seizure, it may be beneficial to have the investigating officer present. However, if it is not justified for a foreign officer of the requesting state to be present the request will be refused,

Even if the presence of the foreign officer is accepted and the request is successfully executed, evidence will not automatically be given to the officers who were present during the execution. However, it may on occasion be practical to transfer the evidence through accompanying officers. In this case the Jamaican must seek authorization from the central authority.

APPENDIX ONE

LIST OF DESIGNATED COMMONWEALTH STATES

TREATY STATES

The United States of America

DESIGNATED COMMONWEALTH STATES

Antigua and Barbuda
Australia
The Bahamas
Bangladesh
Barbados
Belize
Botswana
Brunei Darussalam
Canada
The cayman Islands
Cyprus
Dominica
Ghana
Grenada
Guyana
India
Kenya
Kiribati
Lesotho
Malawi

Maldives
Malaysia
Malta
Mauritius
Namibia
Nauru
New Zealand
Nigeria
Papua New Guinea
Samoa
St. Kitts and Nevis
St. Lucia
St. Vincent and the Grenadines
Sierra Leone
Singapore
Solomon Islands
Sri Lanka
Swaziland
Tanzania
Trinidad and Tobago

Tuvalu
Uganda
United Kingdom and its British Overseas territories
Vanuatu
Zambia

STATES UNDER S. 31 (2) OF “THE ACT”

The Kingdom of the Netherlands