

**THE CENTRAL AUTHORITY OF JAMAICA
FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS
GUIDELINES FOR FOREIGN COUNTRIES SEEKING MUTUAL
LEGAL ASSISTANCE FROM JAMAICA
(FIRST EDITION)**

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CONTENTS

Chapter 1: Introduction	3
Chapter 2: Bases of assistance	6
Chapter 3: Types of assistance	8
Chapter 4: Form and content of request	12
Appendix one: Format of request suggested by the Central Authority of Jamaica	21
Appendix two: Contact information	26
Appendix three: Designated Commonwealth countries	27
Appendix four: Treaty countries	28

CHAPTER ONE: INTRODUCTION

Jamaica in fulfilment of its obligations under the 1988 United Nations Convention Against Illicit Traffic in Drugs and Psychotropic Substances (the Vienna Convention) has enacted the Mutual Assistance (Criminal Matters) Act, 1995 (**MACMA**). This is the primary domestic legislation that guides Jamaica's mutual legal assistance to foreign countries.

Jamaica is committed to providing, to the extent possible under Jamaican law, the fullest measure of mutual legal assistance to its neighbours in the America's and beyond. It is recognised that it is in the interest of all countries to do whatever possible to facilitate requests without erecting artificial barriers, while at the same time respecting the rights of person under investigation in the *foreign country* as well as the rights of persons in Jamaica whether or not they are citizens of Jamaica.

This document is intended to provide essential basic information on Jamaica's mutual legal assistance programme. It does not purport to express any legal opinion and should not be read as if it were a legal text.

The Central Authority

The principal organisations in Jamaica that are responsible for the execution of mutual legal assistance requests are the Central Authority (i.e. the Minister with responsibility for justice and the Director of Public Prosecutions) as well as the Organised Crime Investigation Unit of the Jamaica Constabulary Force.

By virtue of section 2 of the **MACMA** the Central Authority is the Minister with responsibility for justice or any person to whom he delegates any of his functions.

While some powers were retained by the Minister most of the powers that are necessary for the daily operation of the statute were delegated to the Director of Public Prosecutions. The Director has responsibility for executing virtually all requests. In respect of those powers retained by the Minister, the Director of Public Prosecutions is the main coordinator in executing those requests. Thus for all practical purposes the Director is the Central Authority of Jamaica. The delegation of powers by the Minister is reviewed from time to time having regard to the experience gained in executing requests on behalf of foreign countries.

Within the Office of the Director of Public Prosecutions there are seven attorneys who receive, analyse and supervise the execution of mutual legal assistance requests from foreign countries. They perform this very important task in addition to their normal prosecutorial duties.

The Organised Crime Investigation Unit

The Organised Crime Investigation Unit has been involved in the execution of mutual legal assistance requests since 1997. It has developed the expertise in executing requests quickly and efficiently. This unit does the necessary preparatory work for visiting foreign law enforcement officials or executes the request on behalf of the foreign country. The officers of this unit accompany visiting law enforcement officials on their investigations during their sojourn in Jamaica in order to ensure that the request is executed in accordance with laws of Jamaica and in the most efficient and non-contentious manner.

Interpol (Jamaica)

In addition to the Organised Crime Investigation Unit there is an Interpol Liaison officer within the Jamaica Constabulary Force that can also be contacted for assistance. This Liaison Officer can provide similar services to the Organised Crime Investigation Unit but it is considered desirable that overseas law enforcement agencies that need informal assistance contact the Organised Crime Investigation Unit since this is the main police body that deals with mutual legal assistance requests.

CHAPTER TWO: BASES OF ASSISTANCE

Designated Commonwealth Countries and Treaty Countries

The **MACMA** allows Jamaica to facilitate overseas law enforcement agencies by assisting in investigations and proceedings in relation to a criminal matter. Such assistance is available only to the criminal law enforcement authorities of the requesting country.

Under the Act the 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.

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.

Requests can be routed through Foreign Ministries, Consulates, Embassies and High Commissions of the requesting countries to the Central Authority. This method should be used sparingly if speed is of the essence.

Dual Criminality/Reciprocity

Dual criminality is not generally required. However dual criminality is required in the instances 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.

CHAPTER THREE: TYPE OF ASSISTANCE THAT CAN BE PROVIDED

The Central Authority can provide assistance in the following areas:

1. location and identification of persons and objects;
2. examination and taking of testimony of witnesses;
3. production of documents and other records including judicial and/or other official records as well as articles;
4. making of arrangements for persons to give evidence or assist investigations;
5. temporary transfer of persons in custody for the giving of testimony;
6. carrying out of search and seizure;
7. service of documents;
8. 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;
9. 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 foreign country which makes the request;

While the Central Authority makes all effort to comply with requests, there are instances in which the assistance cannot be granted. These instances are stipulated by law and so the Central Authority has no discretion and **must decline** to provide the assistance required. These instances are:

- (a) 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;
- (b) 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;
- (c) the request relates to an offence under military law only or under a law relating to military obligations;
- (d) 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;
- (e) 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;
- (f) 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 foreign country

are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of that offence;

(g) any confidentiality requested in relation to information or evidence furnished by Jamaica would not be protected by the relevant foreign country.

If the conduct in respect of which assistance is requested is not an offence under Jamaican law then the Central Authority **may** refuse to assist. The Central Authority may also refuse to assist if the information supplied by Jamaica would not be restricted to the purpose stated in the request by the requesting country.

Execution of Requests

The Central Authority may postpone the execution of any request if the execution may interfere with any investigation or proceeding that is being conducted in Jamaica.

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

Before refusing or delaying the execution of any request the Central Authority of Jamaica will notify the requesting country of the refusal or delay and the reasons for such refusal or delay.

CHAPTER FOUR: FORM AND CONTENT OF REQUEST

A. Informal Requests

It is recognised that in some instances preliminary information is needed before a formal request can be made to the Central Authority. The Organised Crime Investigation Unit can be contacted to provide this kind of assistance. Through this process witnesses, property and property owners can be identified. 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 available under this kind of informal arrangement.

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

When informal avenues have been exhausted, then a written formal request to the Central Authority is necessary.

The contact information for the Organised Crime Investigation Unit and Interpol (Jamaica) is provided in appendix two.

B. Formal Requests

All requests must be in writing and should contain such information as set out in the format shown in appendix one. The request should be addressed to the Central Authority of Jamaica. Even if the requirements set out in the documents have been met the Central Authority may require additional information that it considers necessary to execute the request. This additional information must also be in writing and should be submitted as a supplemental request.

Appendix one contains at least three formats. It is recognised that a single request can contain all the elements of the three formats. It is expected that the requesting country would modify the precedent as they see fit. However the modification should still retain the basic format indicated.

C. At what stage can assistance be provided?

The Central Authority can assist at any stage of a criminal investigation or court proceeding in connection with any matter. It is necessary that:

(a) the requesting country makes the request solely on behalf of the criminal law enforcement authorities of that country; **and**

(b) (i) Court proceedings must have been instituted or (ii) there is reasonable cause to believe that an offence has been committed or is likely be committed, and in either case Court proceedings could be instituted.

GENERAL INFORMATION REQUIRED IN ALL REQUESTS

- ❖ The nature of the assistance requested.
- ❖ The agency or authority initiating the request.
- ❖ State that it is from the Central Authority of the requesting country.
- ❖ Time limit for compliance with the request if applicable.
- ❖ Any restriction on dissemination/disclosure of the contents of the request.
- ❖ The subject matter and nature of the investigation or proceeding and a summary of the relevant facts.
- ❖ Definition of offence and legal ingredients.
- ❖ 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.
- ❖ The purpose for which the assistance is being sought.
- ❖ Details of any special procedure that should be followed by Jamaica in executing the request.

CONTENT OF REQUEST WHERE COURT PROCEEDINGS HAVE BEEN INSTITUTED

In addition to the general requirements above the request should state:

- ❖ 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.

CONTENT OF REQUEST WHERE NO COURT PROCEEDINGS HAVE BEEN INSTITUTED

In addition to the general requirements above the request should state:

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

CONTENT OF REQUEST WHERE IDENTIFICATION AND LOCATION OF PERSONS AND OBJECTS IS SOUGHT

The general requirements above and

- ❖ name, address and telephone number of the person;
- ❖ location of the object;

- ❖ all such information that can lead to an accurate identification of the person or object.

CONTENT OF REQUEST WHERE EXAMINATION AND TAKING OF TESTIMONY OF WITNESSES AND PRODUCTION OF DOCUMENTS IS SOUGHT

The general requirements above as well as:

- ❖ the names and addresses or official designations of the witnesses;
- ❖ the subject matter in relation to which witnesses are to be examined;
- ❖ the questions to be put to witnesses;
- ❖ the manner in which any testimony is to be taken and recorded;
- ❖ whether the witness should affirm or take an oath;
- ❖ any provision of any law of the requesting country that relates to privilege or other exemption from giving evidence 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 country.

CONTENT OF REQUEST WHERE APPEARANCE OF WITNESSES IN THE REQUESTING COUNTRY IS SOUGHT

General requirements above as well as

- ❖ the subject matter in relation to which the witness is to be examined;
- ❖ reasons for which the appearance is required and the importance of such appearance.
- ❖ details as to the kinds and amounts of allowances and expenses payable in respect of the appearance in the foreign country.

CONTENT OF REQUEST WHERE TRANSFER OF PERSONS IN CUSTODY IS SOUGHT

General requirements above as well as:

- ❖ subject matter in relation to which the witness is to be examined;
- ❖ reasons for which the transfer is being sought and the importance of such transfer.

CONTENT OF REQUEST WHERE SEARCH AND SEIZURE IS SOUGHT

General requirements above as well as:

- ❖ precise description of the place to be searched and things to be seized;

- ❖ all such information as is available to the requesting country as is required under its law for a warrant or authorization to carry out a search and seizure;
- ❖ description of any particular procedure to be followed in executing the request.

CONTENT OF REQUEST WHERE PRODUCTION OF JUDICIAL AND/OR OFFICIAL RECORDS IS BEING SOUGHT

General requirement above as well as:

- ❖ as accurate a description of the documents as possible.

CONTENT OF REQUEST WHERE SERVICE OF DOCUMENTS IS SOUGHT

General requirement above as well as:

- ❖ any particular method of service that is desired.

CONTENT OF REQUEST WHERE ENFORCEMENT OF FORFEITURE ORDERS OR PECUNIARY PENALTY ORDERS AND REGISTRATION OF A FOREIGN RESTRAINT ORDER IS SOUGHT

General requirements above as well as

- ❖ description of the order to be enforced;
- ❖ description of the property, located in Jamaica to which the order relates;
- ❖ particulars of the offence to which the order relates and the date of conviction in the foreign country;
- ❖ whether the conviction or the order is subject to any further any appeal;
- ❖ authenticated copy of the order to be enforced.

CONTENT OF REQUEST WHERE ISSUE OF RESTRAINT ORDER FROM A JAMAICAN COURT IS SOUGHT

General requirement above as well as

- ❖ description and location of the property to be restrained;
- ❖ particulars of the offence which is the subject matter of the criminal proceedings in the requesting country;
- ❖ whether any person has been charged with or convicted of the offence and whether an appeal has been lodged against the conviction and/or order;
- ❖ name and address of the person who is believed to be in possession of the property;

- ❖ grounds for believing the property should be restrained;
- ❖ grounds for believing that a person charged with or convicted of the offence derived a benefit directly or indirectly from the commission of the offence;
- ❖ the grounds for believing that the property in question is subject to the effective control of the person charged with or convicted of the offence.

APPENDIX ONE

REQUEST FOR MUTUAL LEGAL ASSISTANCE FROM JAMAICA TO: CENTRAL AUTHORITY OF JAMAICA FROM: CENTRAL AUTHORITY OF [REQUESTING COUNTRY]

INTRODUCTION

The agency or authority initiating the request.

The purpose for which the assistance is being sought [set out whether or not court proceedings have commenced].

The subject of the investigation.

SUMMARY OF FACTS

The subject matter and nature of the investigation or proceeding and a summary of the relevant facts.

Where the person has been charged with a criminal offence the request **MUST STATE**:

- ❖ the court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceedings;
- ❖ the identity of the accused person(s)[this portion should be placed in the introduction];
- ❖ the offences to which the request relates;
- ❖ the stage reached in the proceedings and the dates fixed for further stages.

Where **no court proceedings** have been instituted the request **MUST STATE**:

- ❖ the offence believed to have been committed or likely to be committed by the person(s) under investigation;
- ❖ the identity of the person(s) under investigation.

N.B. In either case the summary of facts must clearly show the connection between the person under investigation and the offence committed or likely to be or believed to have been committed.

ASSISTANCE REQUESTED

Set out clearly the nature of the assistance required.

If a specific person is named to be interviewed the request should indicate clearly whether this person is regarded as a suspect by the requesting country and if so the information connecting the person to the crime committed or believed to have been committed should be stated.

Include details of the manner and form in which any information, document or article is to be supplied.

Make specific mention of any special procedure that must be followed.

The time, if any, within which the request should be executed.

Any request for confidentiality.

DATED THE [DATE] DAY OF [MONTH] [YEAR]

SIGNATURE OF AUTHORISED PERSON

B. REQUEST FOR ASSISTANCE FOR RESTRAINT OF ASSETS

TO: CENTRAL AUTHORITY OF JAMAICA
FROM: CENTRAL AUTHORITY OF [REQUESTING COUNTRY]

INTRODUCTION

The agency or authority initiating the request.

The purpose for which the assistance is being sought [**contact Central Authority - MACMA has intricacies**].

The person who is the subject of the request.

SUMMARY OF FACTS

The grounds for believing that the property should be made the subject of a restraint order.

The grounds for believing that the person charged with or convicted of the offence derived a benefit directly or indirectly from the commission of the offence.

The grounds for believing that the property in question is subject to the effective control of the person charged with or convicted of, the offence.

The subject matter and nature of the investigation or proceeding and a summary of the relevant facts.

Where the person has been **charged** with a criminal offence the request **MUST STATE**:

- ❖ the court exercising jurisdiction in the proceedings or any other law enforcement agency or authority conducting such proceeding;
- ❖ the identity of the accused person(s);
- ❖ the offences to which the request relates;
- ❖ the stage reached in the proceedings and the dates fixed for further stages.

Where the person has been **convicted** of a relevant offence the request **MUST STATE:**
the offence for which the person has been convicted;
whether the conviction is subject to any further appeal;
that the property is the subject of forfeiture proceedings or a forfeiture order in the requesting country;
whether the forfeiture or pecuniary penalty order, if already obtained, is subject to any further appeal.

N.B. The summary of facts must clearly show the connection between the defendant and the offence committed.

ASSISTANCE REQUESTED

A description and the location of the property to be restrained.

The name and address of the person who is believed to be in possession of the property.

Any request for confidentiality.

DATED THE [DATE] DAY OF [MONTH] [YEAR]

SIGNATURE OF AUTHORISED PERSON

C. REQUEST FOR ASSISTANCE FOR ENFORCEMENT OF A FOREIGN FORFEITURE ORDER OR FOREIGN PECUNIARY PENALTY ORDER AGAINST ASSETS LOCATED IN JAMAICA TO: CENTRAL AUTHORITY OF JAMAICA FROM: CENTRAL AUTHORITY OF [REQUESTING COUNTRY]

INTRODUCTION

The agency or authority initiating the request.

The purpose for which the assistance is being sought.

The person who is the subject of the request.

SUMMARY OF FACTS

A summary of the facts upon which the conviction is based.

Particulars of the offence to which the order relates and the date of the conviction.

Information as to whether the conviction and/or order is subject to further appeal.

ASSISTANCE REQUESTED

A description of the order to be enforced.

A description and location of the property to which the order relates.

The name and address of the person who is believed to be in possession of the property.

N.B. A properly authenticated copy of the original order should be included in the request as an appendix.

DATED THE [DATE] DAY OF [MONTH] [YEAR]

SIGNATURE OF AUTHORISED PERSON

APPENDIX TWO

CONTACTS FOR ASSISTANCE

Central Authority of Jamaica Ministry of Justice
Office of the Director of Public Prosecutions Mutual Life Building
Public Buildings West North Tower
P.O. Box 633 2 Oxford Road
King Street Kingston 5
Kingston Jamaica
Jamaica Telephone: (876) 906-4909-24

Fax :(876) 906-1713

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Organised Crime Investigation Unite

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Interpol (Jamaica)
Office Building
12 Ocean Boulevard
P.O. Box 467
Kingston Mall
Kingston
Jamaica
Telephone number: (876) 922-8208

(876) 922-0692 (876) 922-8134
Fax (876) 922-8214

APPENDIX THREE

Antigua and Barbuda
Australia
The Commonwealth of the Bahamas
Bangladesh
Barbados
Belize
Botswana
Britain
Brunei Barussalam
Canada
Cyprus
The Commonwealth of Dominica
The Gambia
Ghana
Grenada
Guyana
India
Kenya
Kiribati
Lesotho
Malawi
Maldives
Malaysia
Malta
Mauritius
Namibia
Nauru
New Zealand
Nigeria
Papua New Guinea
St. Kitts Nevis
St. Lucia
St. Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Solomon Islands
Sri Lanka
Swaziland
Tanzania
Tongo
The Republic of Trinidad and Tobago
Tuvalu
Uganda
Vanuatu
Western Somoa
Zambia
Zimbabwe

APPENDIX FOUR

The United States of America
Canada (treaty not yet in force)