

Procedures For Dealing With Requests For Assistance From Other Jurisdictions

1. The Establishment of the International Legal Co-operation Unit (ILCU)

On 1 July, 2000, the Office of The Attorney-General established the ILCU. This Unit is charged with the duty of dealing with all requests for legal assistance, which are sent from foreign jurisdictions. Such requests come in various forms, which include:-

1. Requests for assistance in criminal matters under the Mutual Legal Assistance Treaties, which the Government of The Bahamas has signed with:-

(a) The United States of America;

(b) The United Kingdom - in relation to Drug Trafficking and Confiscation of the proceeds of Drug Trafficking; and

(c) Canada.

2. Requests for obtaining evidence for use in criminal proceedings/investigations in foreign jurisdictions under the Criminal Justice (International Cooperation) Act, 2000.

3. Requests for obtaining evidence for use in civil proceedings/investigations in foreign jurisdictions under the Evidence (Proceedings in Other Jurisdictions) Act, 2000.

The ILCU has a complement of three (3) legal officers, and an administrative assistant. Two (2) other legal officers, assist when the need arises.

2. Requests covered by the Mutual Legal Assistance (Criminal Matters) Act, 1988

Under the Act the Attorney-General is designated as the Competent Authority to whom requests for legal assistance of this nature should be sent.

When a request is presented in accordance with the provisions of a Treaty, to the Attorney-General, by a foreign state, the Attorney-General deals with that request in such a way, as to discharge the obligations of Government of The Bahamas under the relevant Treaty.

(a) In the United States the Attorney-General is designated as the Central Authority from whom requests should emanate;

(b) In Canada the Minister of Justice or officials designated by him are designated as the Central Authority from whom requests should emanate; and

(c) In the United Kingdom the Home Office is designated as the Central Authority from whom requests should emanate.

All Requests for assistance should be sent to:

The Director of Legal Affairs

Office of The Attorney-General

Post Office Building

East Hill Street

P.O. Box N-3007

Nassau, N. P.,

The Bahamas

Ph: (242) 322-1141 thru 4

Fax: (242) 322-2255; or

(242) 356-4179

email: attgenrb@batelnet.bs

3. Vetting Requests for Assistance covered by the MLA(CM)A

When the Attorney-General receives a Letter of Request, it is given to a legal officer, who checks the request to ensure that it complies with the provisions of the Act.

The requesting Authority should provide The Attorney-General with:

- (i) A factual history of the proceedings/investigation commenced against the subject of the request;
- (ii) A detailed definition of the Law of the Requesting Country upon which the request is based;
- (iii) In the case of a request for the production of bank documents - the name and address of the relevant banking institution and/or the account name and number;
- (iv) In the case of a request for the production of documents - a detailed list of the documents required;
- (v) In the case of a request for interviews/depositions - questions should be submitted for each individual that needs to be interviewed; and

(In compliance with Rules 39 and 65 of The Rules of The Supreme Court of The Commonwealth of The Bahamas).

- (vi) If possible, supporting documentation, i.e. exhibits etc., which provide a sufficient connection between the subject of the request and the alleged offence(s)

If any part of the above-mentioned information has not been supplied by the requesting Authority, the legal officer dealing with the Request will write to the Authority to inform them of the same, and the missing information will be requested.

Please note that Requests for assistance should also be forwarded on DISKETTE, or in electronic form, as this expedites the drafting of the necessary court documents.

4. Court Procedures

If all of the necessary information has been submitted by the Authority:

(i) The legal officer will draft the necessary court documents that are needed to make an application to The Supreme Court. I.e., a Summons and Affidavit in Support of the Request, which incorporate all of the relevant information provided by the requesting Authority.

(ii) The Summons and Affidavit in Support are filed in the Registry of The Supreme Court.

(iii) A copy of the Summons is sent to the Listing Office of The Supreme Court for a date to be set for the hearing of the Ex-Parte Application, before a Justice of The Supreme Court in Chambers.

(iv) Once the Application is heard and the Order is granted as prayed, it is perfected by the Court and filed in the Registry of The Supreme Court. The Order is then served upon the relevant person/institution for the requested evidence. Such a person/institution is usually given two (2) weeks to comply with the Order.

(v) Once the documentation/bank records are received, they are forwarded to the requesting Authority.

Interviews/Depositions

(i) In the case of interviews/depositions, the Order is served upon the person(s) to be interviewed, and the legal officer dealing with the request writes to the Chief Magistrate, who is usually appointed as Examiner in criminal matters, or to the Registrar, who is appointed as Examiner in civil matters, for a date to be set for the taking of the said depositions/interviews.

(ii) Once the date has been set, a Notice of Hearing is filed in the Registry of The Supreme Court, and served on the relevant persons.

(iii) In The Bahamas witnesses are required to give evidence on oath or by affirmation. He/She attends the Magistrates Court or the Office of the Registrar of The Supreme Court, and takes a formal oath, or affirms that the evidence given is the truth. Witnesses give oral evidence, which is recorded by a court reporter.

(iv) The witness is then allowed to review the evidence, which is read over to him/her and he/she is invited to interrupt the Chief Magistrate/Registrar, to add, alter, correct, or change any of the evidence previously given.

(v) If any corrections or changes are made this is done in writing by the Chief Magistrate/Registrar, who signs the alteration/addition, and invites the witness to do the same.

(vi) The witness is then required to sign a Certificate, which is attached to the deposition, and which states that the deposition was read over to him/her by the Chief Magistrate/Registrar, in the particular Court, on a specific date, in the presence of the representative of The Attorney-General, and that the contents are true and correct to the best of his/her knowledge.

(v) In criminal matters once the depositions/interviews are completed, they are sent, by the Chief Magistrate, to The Registrar of The Supreme Court to be certified. The Registrar forwards them on to the Office of The Attorney-General for onward transmission to the requesting Authority.

(vi) In civil matters the Registrar certifies the depositions/interviews and forwards them on to the Office of The Attorney-General for onward transmission to the requesting Authority

Please note that in accordance with the Rules and Practices of The Supreme Court, foreign Counsel do not have a right of audience before the Courts in The Bahamas. Only persons, who have been called to The Bahamas Bar have a right of audience before Bahamian Courts. Therefore, all interviews/depositions are conducted by our Courts, with a legal officer from the Office of The Attorney-General presenting the Request.

If foreign Judges, Counsel, Investigators Prosecutors, or other persons involved with the Request wish to travel to The Bahamas to take part in the interview/deposition, the legal officer dealing with the request will include this information in the Summons and Affidavit in Support of the request. Therefore, this information should be sent along with the request.

If the Court grants permission for their attendance those persons would only be able to attend the interview/deposition as an observer. If these persons wish to put additional questions to a witness, which may arise out of the proceedings, these would have to be channeled through the legal officer from the Office of the Attorney-General.

5. Requests covered by the Evidence (Proceeding in Other Jurisdictions) Act, 2000 E(PO)JA

As stated above, this Act deals with requests for assistance in relation to civil proceedings/investigations. Requests should emanate from a "requesting court", and should be sent to the Registrar of The Supreme Court of The Commonwealth of The Bahamas.

On receipt of a request for assistance, the Registrar sends the request to the Attorney-General, and the Attorney-General makes an application to the Supreme Court for an order, and take such steps as may be necessary to give effect to the request.

All of the above-mentioned procedures used in relation to the MLA(CM)A are employed by the Attorney-General when dealing with requests under the E(PO)JA.

6. Request covered by the Criminal Justice (International Cooperation) Act, 2000 CJ(IC)A

Under this Act the Attorney-General is designated as the relevant authority to receive requests, which emanate from a court or tribunal exercising criminal jurisdiction in a country outside The Bahamas, or a prosecuting authority, or any other authority, which appears to him to have the function of making requests of this nature.

The Court/Tribunal/Authority should ensure that an offence under the law of its country has been committed or that there are reasonable grounds for suspecting that an offence has been committed. The Court/Tribunal/Authority must also show that proceedings in respect of that offence have been instituted in its country, or that an investigation has been initiated.

All of the above-mentioned procedures used in relation to the MLA(CM)A are employed by the Attorney-General when dealing with requests under the CJ(IC)A.

5. Supplemental Requests

After the foreign Authority has received the requested evidence, and has had an opportunity to review it, it may submit a Supplemental Request to the Attorney-General, asking for further evidence, which arises out of the evidence, which it has received from the Attorney-General

The processing of Supplemental Requests follows all of the above-mentioned procedures.