



MUTUAL LEGAL ASSISTANCE GUIDELINES

1. Introduction

These guidelines are designed to give a broad overview of the essential provisions of the principal pieces of legislation routinely employed by Her Majesty's Attorney General for Jersey to assist overseas authorities. It is hoped they will be informative and helpful but as Jersey takes pride in its co-operative approach with other jurisdictions, we ask you not to hesitate to contact us for further information if there is anything which is unclear.

The Attorney General has powers under local legislation to assist overseas authorities in: -

- (i) obtaining documentary and oral evidence for use in criminal investigations, prosecutions and confiscations (and serving overseas process including summonses issued in the context of criminal proceedings);
- (ii) conducting investigative interviews for use in criminal investigations relating to offences of serious or complex fraud, wherever committed;
- (iii) freezing and confiscating terrorist property, the proceeds of crime or drug trafficking;
- (iv) obtaining documentary and oral evidence for use in civil asset recovery investigations and proceedings (and serving external civil asset recovery process), as well as freezing and confiscating assets subject to external civil asset recovery proceedings (please go to Annexe B); and
- (v) rendition of suspects (please go to Annexe D).

If you require assistance from Jersey you will need to send a Request to the Attorney General (contact details appear at paragraph 3 below). If English is not your first language you will also need to provide a translation of the Request.

2. The Request

(a) Who can the Attorney General assist?

Although the Attorney General has some discretion, he can generally assist the following authorities where evidence is required from Jersey in relation to a criminal investigation, prosecution or confiscation: -

Prosecuting authorities; and
Courts or tribunals exercising criminal jurisdiction.

There is no need to send your Request through the UK Central Authority and, unless the domestic law of the requesting jurisdiction makes this essential, both the UK and Jersey would prefer you not to do so. Jersey gives mutual legal assistance in accordance with international standards provided that requesting jurisdictions are prepared to offer reciprocity in principle. Accordingly, the Attorney General accepts Requests directly from the above authorities. The United Kingdom has also now ratified on behalf of Jersey the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters and the Additional Protocol signed on 17th March 1978.

Tax Information Exchange Agreements are also in place with certain countries and these agreements can be found on <http://www.gov.je/TaxesMoney/InternationalTaxAgreements/TIEA/Pages/index.aspx>

(b) What information should the Request contain?

(i) Requests in general

All Requests seeking evidence in relation to a criminal investigation, prosecution or confiscation should please contain the following information: -

The name(s) and details of the person/s and company/companies under investigation and/or charged and/or convicted.

The stage of proceedings (i.e. whether the matter is at the investigation, prosecution or confiscation stage).

The offences under investigation in your country (extracts of relevant legislation should be appended to the Request).

How the suspect(s) or accused person(s) is/are alleged to have committed the offences, i.e. a summary of the background to the offences.

What is required from Jersey, e.g. documents for use as evidence and/or investigative interviews and/or oral evidence on oath and/or a Saisie judiciaire (restraint or freezing order)/registration of an external restraint order and/or registration of an external confiscation order/registration of an external forfeiture order.

The name(s) and details of the relevant financial institution(s) or witness(es) in Jersey from which/whom evidence, etc, is required.

Details of the relevant account(s)/company/companies/trust(s) in respect of which assistance is required.

A signed Undertaking in the form set out at Annexe A (regarding the use to which evidence obtained from Jersey may potentially be put).

In addition, some further information may need to be included in the Request. This will be dependent on what you seek from Jersey (i.e. documentary evidence, etc). The following should assist in determining what information – in addition to the above - you may need to include in the Request.

(ii) Requests for documentary evidence

If you are requesting documents you will need to confirm the types of documents required and the relevant date range for which material is needed (limited to a range relevant to the period of offending).

If the Request is granted we normally require the production of documents within a 21 day period. Should a shorter production period be required (e.g. 7 or 14 days) the Request should please state why.

If you require the material to be obtained by way of a search warrant (e.g. because there is a real danger the financial institution or witness may destroy documents) you should specify in the Request the location to be searched, the material to be seized and why a search warrant is considered by you to be necessary. You should also provide details of any relevant officers from your country who would wish to assist with the search/seizure. We would expect strong grounds for thinking an otherwise reputable financial institution, all of whom are likely to be regulated by the Jersey Financial Services Commission, would destroy evidence or documents.

Relevant legislation: -

Articles 5, 5B and 6 of the Criminal Justice (International Co-operation)(Jersey) Law, 2001, as amended.

Article 2 of the Investigation of Fraud (Jersey) Law, 1991, as amended.

(iii) Requests for witness statements

If you need documentary evidence to be accompanied by a witness statement you should stress this in the Request and provide a draft for consideration by the relevant witness(es). The usual practice is to ask the witness(es) whether they would be prepared to provide a statement on a voluntary basis. If they are not prepared to do so a hearing on oath can be arranged instead (see (v) below) or, if your Request is from a Court or tribunal and proceedings have already been instituted, it may be possible to apply for an Order from the Royal Court compelling the witness(es) to provide a written statement.

Relevant legislation: -

Evidence (Proceedings in Other Jurisdictions)(Jersey) Order, 1983

(iv) Requests for investigative interviews

If you are investigating a serious or complex fraud it may be possible for an investigative interview to be held with a witness or witnesses in Jersey, at which you may be designated to ask questions relevant to your investigation. If this is desired you should ask in the Request for such an interview to be arranged.

Relevant legislation: -

Article 2 of the Investigation of Fraud (Jersey) Law, 1991, as amended.

(v) Requests for oral evidence on oath

(a) In Jersey

If you require oral evidence on oath to be taken from a witness or witnesses in Jersey you should ask in the Request for a hearing to be arranged. As such hearings are usually held before the Viscount (the Viscount is the executive officer of the Royal Court) or Viscount Substitute, lawyers with rights of audience in countries outside Jersey may examine the witness(es). You should accordingly provide the names and details of the person(s) you wish to conduct the examination in Jersey, as well as details of the witness(es) to be examined and whether the defendant and/or his or her counsel will also be attending to cross-examine the witness(es). If you do not propose attending the hearing a comprehensive list of questions for the witness(es) annexing copies of any relevant documents will need to be provided with your Request. These will then be put to the witness by a Crown Advocate employed in the Attorney General's office. Alternatively, if you wish to participate via a live video-link this can be arranged.

Relevant legislation: -

Articles 5 and 5A Criminal Justice (International Co-operation)(Jersey) Law, 2001, as amended.

(b) In your jurisdiction (i.e. service of overseas process in Jersey)

If you enclose with your Request a summons or other process requiring a Jersey resident witness to attend to give evidence in your country the Attorney General may issue a Notice to the witness enclosing the summons or other process. However, the witness cannot be compelled to give evidence outside Jersey.

Relevant legislation: -

Article 2 Criminal Justice (International Co-operation)(Jersey) Law, 2001, as amended.

- (vi) Requests for Saisies judiciaires (restraint or freezing orders)/registration of external restraint orders

The Attorney General may apply to the Royal Court for a Saisie judiciaire (a restraint or freezing order), or for registration of an external restraint order, on your behalf.

If you are requesting a Saisie judiciaire/registration of an external restraint order you will need to confirm that: -

- (a) proceedings have been instituted against the defendant in your country;
the proceedings have not been concluded; and
an external confiscation order (or external forfeiture order) has been made in the proceedings or there are reasonable grounds for believing that such an order may be made in them; or
- (b) proceedings are to be instituted against the defendant in your country and there are reasonable grounds for believing that an external confiscation order (or external forfeiture order) may be made in them.

Relevant legislation: -

Articles 15 and 16 of the Proceeds of Crime (Jersey) Law, 1999, as amended and applied by the Proceeds of Crime (Enforcement of Confiscation Orders)(Jersey) Regulations, 2008.

Articles 15 and 16 of the Drug Trafficking (Jersey) Law, 1988, as amended and applied by the Drug Trafficking Offences (Enforcement of Confiscation Orders)(Jersey) Regulations, 2008.

Article 7 of the Terrorism (Enforcement of External Orders)(Jersey) Regulations, 2008.

- (vii) Requests for registration of external confiscation orders/external forfeiture orders

If you are seeking registration of an external confiscation order, or external forfeiture order, in Jersey you will need to confirm that: -

the external confiscation order/external forfeiture order is in force and is not subject to appeal;
where the person against whom the order is made did not appear in the proceedings, that he or she received notice of the

proceedings in sufficient time to enable him or her to defend them; and enforcing the order in Jersey would not be contrary to the interests of justice.

The legislation provides for the funds to be retained in Jersey and the usual practice is for an Act of Court recording the Court's Order to be provided to you as confirmation that the funds in Jersey have been applied towards satisfaction of the external confiscation order. The Attorney General is, however, willing to discuss asset-sharing or repatriation on a case by case basis.

Relevant legislation: -

Article 39 of the Proceeds of Crime (Jersey) Law, 1999, as amended and applied by the Proceeds of Crime (Enforcement of Confiscation Orders)(Jersey) Regulations, 2008.

Article 39 of the Drug Trafficking (Jersey) Law, 1988 as amended and applied by the Drug Trafficking Offences (Enforcement of Confiscation Orders)(Jersey) Regulations, 2008.

Article 6 of the Terrorism (Enforcement of External Orders)(Jersey) Regulations, 2008.

3. Contact details and general process

(a) Who should Requests be sent to?

Timothy J. Le Cocq Q.C.,
HM Attorney General,
Law Officers' Department,
Morier House,
St Helier,
Jersey, JE1 1DD

Telephone: +44 (0)1534 441200

Facsimile: +44 (0) 1534 441299

Email: law.officers@gov.je

Website: www.lawofficers.gov.je

(b) What happens next?

The matter will be allocated to an Assistant Legal Adviser in the Criminal Division for initial consideration (they will also acknowledge receipt of the Request). They will deal with the Request in conjunction with a Legal Adviser and/or Crown Advocate from the Division and the Attorney General. If any queries in relation to the Request arise they will contact you to seek clarification.

(c) How quickly will the Request be dealt with?

This depends on the workload of the Division and the complexity of the Request. In general terms it would be our target to deal with Requests within three months from receipt. If your Request is particularly urgent you should specify this in the Request, providing reasons.

(d) Are Requests kept confidential?

Requests are generally considered confidential as between the Attorney General and the requesting authority. Where, however, the Request seeks a Saisie judiciaire (restraint or freezing order)/registration of an external restraint order and the order is subsequently challenged before the Royal Court it will usually be necessary to disclose a copy of the Request to the party challenging the Saisie/application for registration of an external restraint order.

Where a Notice is challenged (most commonly by way of judicial review proceedings) it will probably also be necessary to disclose the substance of the Request, but the Request itself would usually not be provided to the person challenging the issue of the Notice.

4. Relevant legislation – the legal framework to providing assistance

The Attorney General can only assist overseas countries where he has legal powers to do so. There are various laws which enable him to assist as long as certain requirements are met. These are set out in brief above. For further detail in relation to these legal requirements the laws listed above can be accessed at www.jerseylaw.je.

5. Policy

The Attorney General has a general policy that he will not provide assistance where Jersey itself would not request the help of another country in the same circumstances on grounds of cost and/or seriousness. Each Request will be considered on its merits but where a case involves financial prejudice the Attorney General will be hesitant to provide assistance where the figure falls below £10,000 (or equivalent) unless there are good public policy grounds to do so. In the case of serious or complex fraud this guideline figure is £2,000,000 (or equivalent).

6. Assistance from other Jersey authorities

If you are a police authority requiring material from Jersey on an intelligence-only basis or if you require financial information and/or account-monitoring in relation to a person connected with terrorism, proceeds of crime or drug trafficking offences The Joint Financial Crimes Unit of the States of Jersey Police may be able to assist (details below).

Joint Financial Crimes Unit

Detective Inspector Dave Burmingham,
Joint Financial Crimes Unit,
P.O. Box 789,
Rouge Bouillon,
St. Helier,
Jersey

Telephone: +44 (0)1534 612250 or 612259 (direct)
Facsimile: +44 (0) 1534 870537
Email: d.burmingham@jersey.pnn.police.uk

If you seek information in relation to market abuse or regulatory matters The Jersey Financial Services Commission may be able to assist (details below).

Jersey Financial Services Commission

Mr. B. Faudemer,
Director – Enforcement,
Jersey Financial Services Commission,
PO Box 267,
14-18 Castle Street,
St Helier,
Jersey,
JE4 8TP

Telephone: +44 (0) 1534 822000
Facsimile: +44 (0) 1534 822001
Email: b.faudemer@jerseyfsc.org
Website: www.jerseyfsc.org

7. Further information

For further information please contact: -

John Edmonds, Director of Criminal Division: - +44 (0) 1534
441245 (j.edmonds@gov.je)

Andrew Belhomme, Crown Advocate: -
+44 (0) 1534 441236 (a.belhomme@gov.je)

Rebecca Boxall, Legal Adviser: -
+44 (0) 1534 441227 (r.boxall@gov.je)

ANNEXE A

Undertaking

Investigation of Fraud (Jersey) Law, 1991, or Criminal Justice
(International Co-operation) (Jersey) Law, 2001

Person/s under Investigation:

.....

I,(name), undertake that any information and documents obtained for the purposes of the above investigation on behalf of(name of authority) by Her Majesty's Attorney General for Jersey, pursuant to the powers conferred upon him by the Investigation of Fraud (Jersey) Law, or the Criminal Justice (International Co-operation) (Jersey) Law, 2001, will only be used by the said(name of authority) for the purposes of that investigation, any prosecution arising out of that investigation and any connected criminal confiscation proceedings and will not be released by the said(name of authority) to any person or any other enforcement agency without the express consent of Her Majesty's Attorney General for Jersey.

I further undertake that in the event of any application to a court or tribunal in respect of which(name of authority) has notice to disclose the information and documents obtained from Jersey in relation to the above criminal investigation/prosecution, Her Majesty's Attorney General for Jersey will be notified and consulted on the approach the (name of authority) might take in relation to that application.

Signature:

Position:

Date:

ANNEXE B

Civil Asset Recovery

(a) Who can the Attorney General assist?

The Attorney General can accept Requests relating to civil asset recovery investigations or proceedings from a court, tribunal or other body of persons authorised by the domestic law of the requesting country to conduct investigations relating to external civil asset recovery proceedings that are or may be instituted, where they are conducting such an investigation, or any other authority which appears to the Attorney General to have the function of making such Requests.

(b) What information should the Request contain?

The Request should contain broadly the same information as that set out at paragraph 2(b)(i) above. You should also confirm that there are reasonable grounds to suspect that the evidence required from Jersey is, or relates to, property that has been used in, or is intended to be used in, unlawful conduct; or has been, or was intended to be, obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.

In addition, you should supply an Undertaking in the form set out in Annexe C.

(i) Requests for documentary evidence

If you are requesting documents you will need to confirm the types of documents required and the relevant date range over which material is needed (limited to a date range relevant to the period of unlawful conduct).

Relevant legislation: -

Article 3 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007

(ii) Requests for witness statements

If you need documentary evidence to be accompanied by a witness statement you should stress this in the Request and provide a draft for consideration by the relevant witness(es). The usual practice is to

ask the witness(es) whether they would be prepared to provide a statement on a voluntary basis. If they are not prepared to do so, a hearing on oath can be arranged instead (see (iii) below).

Relevant legislation: -

Article 3 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007.

(iii) Requests for oral evidence on oath

(a) In Jersey

If you require oral evidence on oath to be taken from a witness or witnesses in Jersey you should ask in the Request for a hearing to be arranged. As such hearings are usually held before the Viscount or Viscount Substitute, lawyers with rights of audience in countries outside Jersey may examine the witness(es). You should accordingly provide the names and details of the person(s) you wish to conduct the examination in Jersey, as well as details of the witness(es) to be examined and whether the respondent and/or his or her counsel will also be attending to cross-examine the witness(es). If you do not propose attending the hearing a comprehensive list of questions for the witness(es) annexing copies of any relevant documents will need to be provided with your Request. These will then be put to the witness by a Crown Advocate. Alternatively, if you wish to participate via a live video-link this can be arranged.

Relevant legislation: -

Article 3 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007.

(b) In your jurisdiction (i.e. service of external civil asset recovery process in Jersey)

If you enclose with your Request a summons or other process requiring a Jersey resident respondent or witness to attend to give evidence in your country the Attorney General may issue a Notice to the respondent or witness enclosing the summons or other process. However, the respondent or witness cannot be compelled to attend or give evidence outside Jersey.

The same applies to a document recording a decision issued by an external decision making body as part of external civil asset recovery proceedings.

Relevant legislation: -

Article 2 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007.

(iv) Requests for property restraint orders

If you are requesting a property restraint order you will need to give details of the respondent/recoverable property and confirm that: -

external civil asset recovery proceedings that relate to property in Jersey have been instituted in your country;
the proceedings have not been concluded; and
there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings; or
external civil asset recovery proceedings that relate to property in Jersey are to be instituted in your country; and
there are reasonable grounds for believing that an external civil asset recovery order may be made in the proceedings.

Relevant legislation: -

Article 6 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007.

(v) Requests for registration of external civil asset recovery orders

If you are seeking registration of an external civil asset recovery order in Jersey you will need to confirm that: -

the external civil asset recovery order is in force and is not subject to appeal;
where the respondent in relation to the order did not appear in the proceedings, that he or she received notice of the proceedings in sufficient time to enable him or her to defend them; and
enforcing the order in Jersey would not be contrary to the interests of justice.

The legislation provides for confiscated funds to be retained in Jersey and an Acte of Court recording the Court's Order will be provided to you as confirmation that the funds in Jersey have been applied towards satisfaction of the external civil asset recovery order. The Attorney General is, however, willing to discuss asset-sharing or repatriation on a case by case basis.

Relevant legislation:

Article 9 Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007.

(c) Further information

For further information please contact: -

Andrew Belhomme, Crown Advocate: -
+44 (0) 1534 441236 (a.belhomme@gov.je)

Rebecca Boxall, Legal Adviser: -
+44 (0) 1534 441227 (r.boxall@gov.je)

ANNEXE C

Undertaking

Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007

Person/s under Investigation:

.....

I,(name), undertake that any information and documents obtained for the purposes of the above investigation on behalf of(name of authority) by Her Majesty's Attorney General for Jersey, pursuant to the powers conferred upon him by the Civil Asset Recovery (International Co-operation)(Jersey) Law, 2007, will only be used by the said

.....(name of authority) for the purposes of that civil asset recovery investigation and any civil asset recovery proceedings arising out of that investigation and will not be released by the said(name of authority) to any person or any other enforcement agency without the express consent of Her Majesty's Attorney General for Jersey.

I further undertake that in the event of any application to a court or tribunal in respect of which(name of authority) has notice to disclose the information and documents obtained from Jersey in relation to the above investigation/proceedings, Her Majesty's Attorney General for Jersey will be notified and consulted on the approach the (name of authority) might take in relation to that application.

Signature:

Position:

Date:

ANNEXE D

Rendition

(a) Requests from the UK

The process of arresting suspects in Jersey on warrant and returning them to England and Wales is governed by Section 13 of the Indictable Offences Act 1848, and by Orders in Council in respect of Scotland and Northern Ireland.

If you require the arrest of a suspect in Jersey it must be for an offence which is an indictable offence under English law and for which you have reasonable grounds to arrest. An arrest warrant from a competent court in England and Wales, Scotland or Northern Ireland as the case may be must first be obtained.

Contact should then be made with the States of Jersey Police and/or the Attorney General. Arrangements will be made for a police or other law enforcement officer who has a power of arrest to travel to Jersey.

If the matter is urgent assistance can usually be provided swiftly. Once your officer arrives in Jersey he, together with a Jersey police officer, will attend on the Bailiff (the senior judge) or one of his deputies. You will need to bring with you the original arrest warrant together with any affidavit or other supporting documentation which was used to obtain the UK warrant. You will need to give or show confirmation to the Bailiff that the warrant is a true warrant and that the writing on it is authentic. If the arrest warrant carries a court stamp and the signature of the judge or magistrate granting it, this will usually be sufficient taken together with the officer's confirmation to the Bailiff that this is the warrant which he has personally obtained from the judge or magistrate.

If the Bailiff is satisfied that the warrant is genuine and properly issued he will back the warrant with an endorsement authorising its execution in the Island. The suspect can then be arrested and returned to the UK.

(b) Requests for Extradition from non UK jurisdictions

(i) General requirement

Jersey can only extradite suspects to 'Designated Territories'.

(ii) Extradition offences

Jersey can only extradite a person for an 'extradition offence.'
An offence is an extradition offence if:

it is an offence which can be prosecuted in your territory (whether or not committed within your territory); and
the same conduct, if committed in Jersey, would also be an offence under Jersey law or, if committed outside Jersey, could be prosecuted in Jersey; and
the offence is punishable in your territory with a prison sentence of at least 12 months and would be punishable under Jersey law with a prison sentence of at least 12 months; or
the person whose extradition you seek has already been convicted of such an offence by a court in your territory and has been sentenced to a prison sentence of not less than 4 months but has escaped and is unlawfully at large.

(iii) Making the Request for extradition

The Request should be sent to the Attorney General but you are welcome to contact the persons listed below in advance.

The Request should come from whichever authority in your territory has the legal power to issue such Requests – please ensure you know who this is before sending a Request. Your law may additionally require the Request to be sent through a diplomatic/consular channel.

In cases of urgency the Request can be faxed or e-mailed, provided an original written Request is sent as soon as possible afterwards. In cases of extreme urgency (for example there are good grounds to believe the suspect is due to leave Jersey imminently) the Request may even be made orally by telephone, provided a written Request follows as soon as possible afterwards. In such cases the Attorney General has power to apply for a provisional extradition arrest warrant on short notice (in such cases please make immediate contact with the persons listed below and/or the States of Jersey Police for advice and assistance).

(iv) What information should the Request contain?

To be valid the Request must state:-

that the person you want to extradite is accused in your territory of an 'extradition offence' (please see paragraph b)(ii) above);
what that offence is and the relevant law (whether statutory or common law) which creates the offence (extracts of relevant legislation should be appended to the Request);

that under your law the maximum sentence for that offence is not less than 12 months' imprisonment; and in the case of a convicted and sentenced prisoner who is unlawfully at large, the length of prison sentence the person received – he must have received a sentence of not less than 4 months' imprisonment.

(v) Evidential requirements

The Request should also contain sufficient material to enable the Jersey court to conclude that there are reasonable grounds to justify the person's arrest – that means material which provides reasonable grounds to suspect that the person you want to extradite has committed an extradition offence.

If the Request is from a Designated Territory of the First Category the material need not be in the form of evidence (i.e. it does not need to be in a sworn affidavit or witness statement). It is sufficient for you to provide the Attorney General with information only, which can come from an investigating officer, Examining Magistrate or Juge d'Instruction, or any other person who is properly qualified and authorised to provide accurate information about your case.

If the Request is not from a Designated Territory of the First Category you will need to provide the material in the form of evidence – i.e. in sworn affidavits or witness statements, together with copies of any documentary exhibits.

(vi) What happens next?

Once you have made the Request and the Attorney General is satisfied that it is a proper Request which he can lawfully assist with you should – if you have not already – make direct contact with the persons listed below.

From this point on the person with responsibility for the Request will work directly with you to ensure that the Request proceeds appropriately and that you are kept informed throughout of all matters which may affect it.

Relevant legislation:

Extradition (Jersey) Law, 2004, as amended (www.jerseylaw.je)

EU Member States are asked to note that the EU Arrest warrant is not valid in Jersey. Extradition is made in accordance with the Council of Europe Convention on Extradition 1956.

(c) Further information

For further information please contact: -

- John Edmonds, Director of Criminal Division: - +44 (0) 1534 441245 (j.edmonds@gov.je)