

MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND THE BAILIWICK OF GUERNSEY

FOREWORD BY HER MAJESTY'S ATTORNEY GENERAL FOR THE BAILIWICK OF GUERNSEY

In December 1999 the Law Officers of the Crown published a booklet entitled "Obtaining Evidence in the Bailiwick of Guernsey". That document was intended as a guide to foreign law enforcement authorities concerning the procedures to be followed if they believed that there was evidence in the Bailiwick of Guernsey which would be of help in either deciding whether a person should be prosecuted or for use in court proceedings. It anticipated the commencement of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

Since December 1999 there have been some major legislative developments in Guernsey for example:-

- (i) The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 - which consolidated and enhanced previous legislation. This legislation enabled the 1988 United Nations Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances ('the Vienna Convention') to be extended to the Bailiwick;
- (ii) The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 which has enabled the Bailiwick to seek ratification of the 1959 Strasbourg Council of Europe Convention on Mutual Assistance in Criminal Matters;
- (iii) The Company Securities (Insider Dealing) (Bailiwick of Guernsey) (Amendment) Law, 2001 - which provides additional gateways for assisting foreign authorities; and
- (iv) The Terrorism and Crime (Bailiwick of Guernsey) Law 2002.

This document deals essentially with the same subject matter as the previous guide for example:-

- (i) how to make requests for assistance under the various pieces of legislation;
- (ii) what should be included in letters of request; and
- (iii) the procedure which we will go through after receiving your request.

In addition detailed advice is provided concerning:

- (i) the restraint and confiscation of the proceeds and instrumentalities of crime;
- (ii) the service of process on behalf of other jurisdictions; and
- (iii) the transfer of prisoners to another jurisdiction for the purpose of giving evidence etc.

I hope that this revised guide will prove as useful as its predecessor in assisting overseas authorities. It will be revised periodically and the latest version will be posted on our website at <http://www.gov.gg/law>.

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HM Attorney General

MUTUAL ASSISTANCE IN CRIMINAL MATTERS AND THE BAILIWICK OF GUERNSEY

Contents:

This guide is divided into 14 sections dealing with the following:-

1. General notes concerning the Bailiwick of Guernsey (page 3);
2. Initial contact points for overseas authorities (page 6);
3. The obtaining of information in cases of serious or complex fraud (page 9);
4. The obtaining of information in drug trafficking cases (page 14);
5. The obtaining of information relating to the proceeds of non drug trafficking crime (page 19);
6. The obtaining of sworn evidence before a court in all types of criminal cases (page 24);
7. The restraint of the proceeds of crime (page 28);
8. The enforcement of overseas confiscation orders (page 32);
9. The enforcement of overseas orders relating to the instrumentalities of crime (page 34);
10. Anti-Terrorism measures (page 37);
11. The obtaining of evidence relating to insider dealing of company shares (page 42);
12. The service of process, etc (page 44);
13. The transfer of prisoners for the purpose of giving evidence, etc (page 45);
14. Evasion of Tax (page 47).

Throughout this part, reference is often made to “the Bailiwick”. The Bailiwick of Guernsey includes the islands of Guernsey, Alderney, Sark and various other small islands and islets.

Various pieces of legislation are mentioned in the text. Full copies of these can be found on the website of the Law Officers of the Crown at <http://www.gov.gg/law>.

(1) THE BAILIWICK OF GUERNSEY

Geography and Population:

The Channel Islands are a group of Islands located in the English Channel, within in the gulf of St. Malo off the north-west coast of France. Although geographically the Islands form part of the British Isles, politically they do not form part of the United Kingdom.

They are divided into the Bailiwicks of Guernsey and Jersey. The Bailiwick of Guernsey (“the Bailiwick”) comprises the principal Islands of Guernsey (population 62,000), Alderney (population 2,000) and Sark (population 600), together with other smaller islands.

The Bailiwick’s Relationship with the United Kingdom:

The Bailiwick was part of the Dukedom of Normandy during the time of the Norman Conquest of England. Subsequently, when the Dukes of Normandy who were the monarchs of England lost most of their possessions in France, the people of the Bailiwick chose to remain loyal to the English Crown. It is therefore evident that the Channel Islands were never conquered by the English Crown nor were they colonies. At no time since the Norman Conquest has the evolution of the Island’s constitution involved amalgamation with, or subjection to, the government of the United Kingdom. The Islands’ link with the United Kingdom is through the English Crown – Her Majesty the Queen is the successor of the Dukes of Normandy.

Under the Charters of successive English Kings and Queens the Islands secured their own judiciaries and the right to maintain their own criminal law and to have their own tax systems. They have no representatives in the UK Parliament.

Constitutional Relationship with the European Community (EC):

The Islands are not members of the EC nor do they have an associate relationship.

The Islands have a very limited special relationship with the EC as set out in Protocol 3 to the United Kingdom’s Act of Accession to the European Community in 1972. This relationship with the EC cannot be changed without the unanimous agreement of all EC Member States.

Under Protocol 3, the Islands are part of the customs territory of the EC. The Common Customs Tariff, levies and other agricultural import measures therefore apply to trade between the Islands and non-member countries and there is free movement of goods in trade between the Islands and EC States. However, the Bailiwick of Guernsey is not required to implement criminal law measures promulgated in the EC nor measures promoted by the EC’s Justice and Home Affairs directorate.

Legal System:

(i) Criminal Law System:

The criminal law of the Bailiwick of Guernsey is not identical to English Law, but is substantially similar. Many Guernsey Laws closely follow those in force in England because it is customary for Guernsey to look to English Law when enacting new criminal laws.

(ii) Criminal Courts:

The judicature of Guernsey is divided into three parts, namely the Magistrate's Court (which has limited jurisdiction), the Royal Court (which has unlimited criminal jurisdiction) and the Guernsey Court of Appeal. In Alderney there is the Court of Alderney and in Sark the Court of the Seneschal. They have limited jurisdiction. More serious cases from these Islands are tried in the Royal Court of Guernsey. Appeals lie from Alderney cases to the Royal Court of Guernsey.

Appeals lie from the Royal Court to the Guernsey Court of Appeal the majority of the judges of which are English Queen's Counsel. All judges are appointed by the Crown. From the Guernsey Court of Appeal there is an appeal to the Judicial Committee of the Privy Council in London.

Judges in the Bailiwick of Guernsey are independent of the governments in the Islands. The President of the Royal Court of Guernsey is the Bailiff of Guernsey. He and the Deputy Bailiff are appointed by the Crown. The senior judges in the other Islands are the Chairman of the Court of Alderney and the Seneschal of the Court of Sark.

(iii) Law Officers of the Crown:

There are two Law Officers of the Crown in the Bailiwick of Guernsey. They are appointed by the Crown. The senior Law Officer is Her Majesty's Procureur (Her Majesty's Attorney General) and the junior Law Officer, Her Majesty's Comptroller (Her Majesty's Solicitor General).

The Law Officers Chambers are, in effect, a non-political 'Department of Justice' for the entire Bailiwick. Their duties embrace work which in England would be carried out by the Home Secretary, the Attorney General, the Director of Public Prosecutions, and the Director of the Serious Fraud Office.

They supervise all prosecutions throughout the Bailiwick. In making prosecuting decisions the Law Officers act as independent officers – independent of the Islands' parliamentary assemblies and independent of the Courts before which they prosecute. All prosecutions in the Bailiwick of Guernsey are brought in the name of Law Officers. The Law Officers are supported by a small, specialised staff of eleven qualified lawyers and their support staff. Four of the lawyers are specialist criminal prosecutors.

The Law Officers have power under certain pieces of legislation to issue notices or orders requiring the production of information and in cases where a Court Order is necessary they approve the necessary documentation to be presented to the Court.

The Law Officers also act as the central authority in the Bailiwick dealing with agencies in the UK and other countries requesting assistance in investigating and prosecuting crime. Such applications will often be made after preliminary contact has been made at an early stage in an investigation and advice given by Police, Customs and Excise or the Financial Intelligence Service. Such preliminary contact is encouraged.

When formal requests for assistance need to be made to the Law Officers such requests should be sent to them directly and not through the UK Central Authority.

Police:

The Guernsey Police force has an authorised strength of 177 and is headed by the Chief Officer of Police.

It is usual for Police Forces in other jurisdictions to deal direct with their counterparts in Guernsey and indeed contact is encouraged during the early stages of any investigation. When the Law Officers direct that assistance shall be given to investigators from other jurisdictions, whether by way of preliminary enquiries or under a notice or order, the necessary investigation or enquiries will be carried out by the relevant department of the Police.

Customs and Excise:

The Guernsey Customs and Excise Department numbers 70. It is headed by the Chief Officer of Customs and Excise.

45 officers are employed in criminal law enquiries and investigations, principally in relation to illicit drug importation and trafficking and other serious smuggling cases. They also assist law enforcement authorities from other jurisdictions. Such cases cover enquiries connected with Customs and Excise related fraud, breaches of sanctions, control of exports and technology and international smuggling of the full range of prohibited and restricted goods.

As in the case with the Guernsey Police, it is usual for appropriate authorities in other jurisdictions to deal direct with their Customs counterparts in Guernsey and such contact is encouraged during the early stages of any investigation. When the Law Officers receive a formal request that Customs' assistance shall be given to investigators from other jurisdictions, whether by way of preliminary enquiries or under a notice or order, the necessary investigation or enquiries will be carried out by the relevant Customs Investigation Branch.

Financial Intelligence Service (FIS):

The FIS numbers six officers and is headed by the Director. Officers of the FIS are seconded to that Unit by Police and Customs and Excise. It receives, evaluates and disseminates locally and internationally suspicious transaction reports received under the Bailiwick's anti money laundering legislation.

The FIS is the Bailiwick agency which has responsibility for developing, maintaining and co-ordinating criminal intelligence to combat financial crime committed internationally and locally. It places special emphasis on money laundering.

(2) INITIAL CONTACT POINTS FOR OVERSEAS AUTHORITIES

The first problem which has to be overcome when obtaining assistance from another jurisdiction is to find out which person or agency should be contacted for a particular purpose. In the Bailiwick there are a number of departments all based in Guernsey which deal with mutual assistance matters. The following paragraphs will hopefully enable you to make contact with the person who will be able to provide you with assistance without the need to pass you on to another department.

Time Zone:

The Bailiwick of Guernsey is in the same time zone as the United Kingdom.

Financial Intelligence:

If your enquiry is one relating to intelligence concerning a financial enquiry you should contact the

Financial Intelligence Service (FIS)
Hospital Lane
St. Peter Port
Guernsey
Channel Islands
GY1 2QN

Tel: 00 44 (0)1481 714081 (725111 out of hours)
Fax: 00 44 (0)1481 710466
e-mail: director@guernseyfis.org

The FIS is open between 9.00am and 5.00pm Monday to Friday with the exception of Public Holidays. In the event of an emergency please telephone 00 44 (0)1481 725111 and ask for the Duty Police Inspector who will, if necessary, make contact with one of the FIS Officers outside of normal working hours.

The FIS is a member of the EGMONT Group of Financial Intelligence Units. It is therefore possible for other EGMONT FIUs to contact the FIS using the EGMONT secure channels of communication.

Drug Trafficking and Customs fraud including International Sanctions:

If your enquiry relates to drug trafficking offences being investigated by Customs authorities, smuggling of contraband, fraud against your country's Customs and Excise related legislation, the laundering of the proceeds of such crimes or infringements relating to International Sanctions you should contact the

Guernsey Customs and Excise Department
Investigation Division
Fraud and International Branch
White Rock
St. Peter Port
Guernsey
Channel Islands
GY1 3WJ

Tel: 00 44 (0)1481 741400
Fax: 00 44 (0)1481 715901

The Customs and Excise Fraud and International Branch is open from 8.30am to 5.00pm Monday to Friday with the exception of Public Holidays. If you require urgent assistance outside of the normal office hours then please telephone the Guernsey Customs and Excise Investigation Department on 00 44 (0)1481 726911 and one of the Duty Officers will be glad to provide assistance and if required contact one of the officers of the Fraud and International Branch.

General Fraud and Drug Trafficking:

If your enquiry relates to other types of fraud, drug trafficking offences being investigated by police or the laundering of the proceeds of crime you should contact the

Guernsey Police Commercial Fraud and External Affairs Department
Police Headquarters
Hospital Lane
St. Peter Port
Guernsey
Channel Islands
GY1 2QN

Tel: 00 44 (0)1481 719449
Fax: 00 44 (0)1481 719443
e-mail: fraud@guernsey.pnn.police.uk

The Guernsey Police Commercial Fraud and External Affairs Department is open between 9.00am and 5.00pm Monday to Friday with the exception of Public Holidays. If you require assistance outside of normal office hours please telephone 00 44 (0)1481 725111 and ask for the Duty Inspector. He will give whatever assistance he can and if required contact one of the Officers of the Commercial Fraud Department outside of normal office hours.

Legal Inquiries:

If you have a question relating to the legislation concerning mutual assistance matters in the Bailiwick you should contact:

The Criminal Team
The Chambers of the Law Officers of the Crown
St. James' Chambers
St. Peter Port
Guernsey
Channel Islands
GY1 2PA

Tel: 00 44 (0) 1481 723355
Fax: 00 44 (0)1481 725439
e-mail: law@gov.gg

The Chambers of the Law Officers of the Crown are open between 9.00am and 5.00pm Monday to Friday with the exception of Public Holidays.

Inquiries regarding regulatory matters:

If you require any regulatory information about a financial institution you should contact the

Fiduciary Services and Enforcement Division
Guernsey Financial Services Commission
La Plaiderie Chambers
La Plaiderie
St. Peter Port
Guernsey
Channel Islands
GY1 1WG

Tel: 00 44 (0)1481 712706
Fax: 00 44 (0)1481 726952
e-mail: kbown@gfc.guernseyci.com

The Guernsey Financial Services Commission is open between 9.00am and 5.00pm Monday to Friday with the exception of Public Holidays.

(3) THE OBTAINING OF INFORMATION IN CASES OF SERIOUS OR COMPLEX FRAUD

The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 (“the Fraud Investigation Law”) has proved a very effective tool in offering assistance to authorities in other jurisdictions. The Law gives power to HM Attorney General (within the Bailiwick of Guernsey known as HM Procureur) to require the production of documents and the provision of information in cases of serious **or** complex fraud.

Requirements to be met under the Law:

In exercising his powers there are two requirements which HM Attorney General must be satisfied are met:

- (i) that there are reasonable grounds to suspect an offence involving "serious **or** complex fraud" has been committed; and
- (ii) that there is good reason for him to exercise his powers.

Use of the Fraud Investigation Law is not restricted to fraud cases arising in the Bailiwick or in the United Kingdom. It applies to any serious **or** complex cases being investigated anywhere in the world.

What is meant by "serious or complex"?

There is no definition in the Law. It should be emphasised, however, that a matter can be serious without being complex, and vice versa. Guernsey Law does not have a specific offence of "fraud". Instead, it has a large number of individual criminal offences, all of which require proof of dishonest conduct, for example, theft, obtaining property by deception and false accounting. Ultimately whether a matter is serious or complex (or both) is a question of fact.

In determining whether a matter is serious HM Attorney General does not simply look at the amount of money involved. Obviously the more money that is involved the more likely it is that the matter will be considered serious but it is possible that a fraud involving less than £250,000 might be serious in certain circumstances for example, because it involves a serious breach of trust, or is a matter of substantial public concern.

In deciding whether a matter is complex account will obviously be taken of factors such as, the number of financial transactions involved to perpetrate or conceal the fraud, whether such transactions crossed national boundaries and, above all, the degree of sophistication in the commission of the offence.

Authorities when considering whether to make an application under the Fraud Investigation Law must remember that the matter under investigation need only be serious **or** complex - **not** both. If there are any doubts as to whether an investigation falls into either of those categories please do not hesitate to contact the Criminal Team at the Chambers of the Law Officers of the Crown.

The assistance which can be provided under the Fraud Investigation Law:

The powers given to HM Attorney General are coercive and enable him to issue a serious or complex fraud notice to require:-

- (i) any person within the Bailiwick (for example a bank, trust company or individual) to produce any relevant documents, **including** ones of a confidential nature. The only exception is if a document is covered by professional legal privilege in which case it need not be produced;
- (ii) any person (for example a bank officer or company director) to answer any relevant questions, including questions about confidential, but not legally privileged, matters.

How to make a request:

A request for assistance under the Fraud Investigation Law should be in writing in the form of a letter of request. Requests for assistance should be sent by a person authorised to do so to:-

HM Attorney General
The Chambers of the Law Officers of the Crown
St. James' Chambers
St. Peter Port
Guernsey
Channel Islands
GY1 2PA

Tel: 00 44 (0)1481 723355
Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for assistance under the Fraud Investigation Law and will be pleased to examine and comment upon drafts of letters of request before they are formally sent.

Requests may be sent by fax but a hard copy should then follow immediately by way of post or courier.

The stage at which assistance may be sought:

Generally speaking, HM Attorney General can receive a letter of request provided either that a criminal offence has been committed in your jurisdiction or that there are reasonable grounds for suspecting that a criminal offence has been committed and the matter is under active investigation. It is **not** necessary for a person to have been charged with committing a criminal offence, or for proceedings to have been commenced.

The contents of the letter of request:

The letter of request should contain:-

- (a) The identity of the person making the application and confirmation that he is authorised to make it;
- (b) details of either:-
 - (i) the charges faced by the person who is the subject of the enquiry in your jurisdiction;
 - or

- (ii) the charges which are likely to be laid;
- (c) a description of the facts of the case;
- (d) the reasons why you consider the alleged fraud under investigation to be serious or complex or both;
- (e) if you want us to obtain documents from a bank or other financial institution then please provide the full name and address of the bank or other institution and any details which you have about the account (including the number) and the types of documents that you want;
- (f) if a warrant to search premises is believed to be necessary the exact reasons for that belief;
- (g) the identity of any Magistrates, Prosecutors, Police or Customs Officers who wish to be present when the information requested is obtained;
- (h) if you consider your request should be treated as urgent, precise reasons why Guernsey resources should be deployed urgently should be given;
- (i) if you want us to show a particular document to a witness or to ask questions concerning, for example, specific transactions please state precisely what it is you want us to ask;
- (j) under your law it may be necessary for any documents obtained as a result of an order to be authenticated in a particular way. If that is the case please let us know what your courts require. We normally provide photocopies of documents and it would be helpful to know whether they require some sort of certification or seal. We would however ask that you do not make such a request unless it is a legal requirement; and
- (k) if you would like a person to be interviewed it would be helpful for us to know whether the interview, should be tape recorded.

Undertaking:

Your letter should either contain or be accompanied by an undertaking in the following form:-

"Undertaking

(name of case)

I *(name and description)* hereby UNDERTAKE that any information or material obtained in pursuance of a notice under the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 in respect of *(names of persons under investigation)* shall only be used for the purposes of the investigation into the affairs of the above persons, or any prosecution arising therefrom, and shall not be disclosed, directly or indirectly, to any other person or agency without the written consent of Her Majesty's Attorney General for the Bailiwick of Guernsey.

Signature

Date"

(The undertaking should be signed by a senior officer of the investigating agency or, where appropriate, an examining magistrate or the Prosecutor responsible for the conduct of the investigation or prosecution.)

Note: see below "Disclosure to a third party of information".

Warrants to search premises:

When HM Attorney General has reasonable grounds for believing that a person would fail to comply with a notice issued under the Fraud Investigation Law or that service of a notice would seriously prejudice an investigation, he may apply to the Bailiff (Senior Judge) for a warrant to enter premises by force if necessary and to take possession of any documentation which appears to be relevant.

Translation of letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request it will be sent back to you.

Supporting documents:

Letters of request in fraud cases are often accompanied by large quantities of supporting documents. This is generally not necessary unless you need us to ask specific questions about them or you want a witness to be shown a copy.

The provision of witness statements following the service of an order under the Fraud Investigation Law:

The Fraud Investigation Law does **not** compel persons who receive a production notice to make a formal witness statement which can be used in evidence. However, many financial institutions in the Bailiwick do allow their representatives to make witness statements in a form which would be admissible in evidence before the courts in your jurisdiction.

If the recipient of the notice declines to make a formal witness statement and his evidence is subsequently required for the purpose of proceedings before your court, if the individual concerned declines an invitation to travel to give evidence before your Court it is possible for his evidence to be taken under oath using the provisions of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 (please see Section 6).

Disclosure to a third party of information:

If for any reason you want to make available to a third party some or all of the material which you have obtained in the Bailiwick you must first seek, in writing, the permission of HM Attorney General. Please state clearly what material it is you wish to pass on, to whom and for what purpose. If the release of the material is authorised then the third party will need to provide their own separate undertaking as to the use to which they intend to put the material and that it will not be disclosed further without the consent of HM Attorney General

Fiscal Fraud:

Assistance can and is routinely provided under the Fraud Investigation Law in cases involving fiscal fraud

The time it takes to process an application under the Fraud Investigation Law:

Normally the procedure under the Fraud Investigation Law should be completed speedily. However, there may be cases where a large amount of material needs to be collated or where banks hold records in storage in another jurisdiction which will mean that a longer period will be taken to send the material you require.

If information in another jurisdiction is not held in storage to the order of the person or institution in Guernsey on whom a notice has been served, we will advise you of the need to seek assistance in that other jurisdiction.

If your request is extremely urgent then you should specifically draw attention to this and explain why it is urgent and why a request had not been made at an earlier date. Every effort will be made to complete the procedure as quickly as possible.

In order that we can deal with all requests on a timely basis it is important that a request is only categorised as urgent when it is truly urgent.

(4) THE OBTAINING OF INFORMATION IN DRUG TRAFFICKING CASES

The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (“the Drug Trafficking Law”) allows us to provide assistance to other jurisdictions in connection with investigations into drug trafficking. The United Nations Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances signed at Vienna in 1988 has been extended to the Bailiwick of Guernsey (the Vienna Convention).

It is essential that requests under this Law are confined to genuine drugs related investigations. Applications under this Law should not be used for any other type of enquiry. The Law allows for information to be obtained by way of either the service of a production order or the execution of a warrant to search premises. The usual method is by way of production order.

Requirements to be met under the Law:

Before assistance can be provided under the Drug Trafficking Law the following requirements need to be satisfied:-

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal professional privilege or excluded material; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard -
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it,
 that the material should be produced or that access to it should be given.

The term "excluded material" relates to personal records concerning a person's physical or mental health, counselling for the purposes of personal welfare and material acquired or created for the purposes of journalism.

How to make a request:

There are two ways in which you can make your request under the Drug Trafficking Law.:-

- (1) By way of affidavit - the officer responsible for the investigation in your jurisdiction may apply for assistance by sending a sworn affidavit accompanied by an explanatory letter direct to:-

In Customs Cases:-

Guernsey Customs and Excise Department
 Investigation Division
 Fraud and International Branch
 White Rock
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 3WJ

Tel: 00 44 (0)1481 741400

Fax: 00 44 (0)1481 715901

In Police Cases:-

Guernsey Police Commercial Fraud and External Affairs Department
 Police Headquarters
 Hospital Lane
 St Peter Port
 Guernsey
 Channel Islands
 GY1 2QN

Tel: 00 44 (0) 1481 719449

Fax: 00 44 (0) 1481 719443

The Guernsey Police Commercial Fraud and External Affairs Department and the Guernsey Customs and Excise Fraud and International Branch are always pleased to give preliminary advice concerning potential requests under the Drug Trafficking Law and to check over draft affidavits prior to their being sworn to ensure that sufficient information is included to enable an application for a production order or warrant to be made. If necessary they will seek advice from the criminal team at the Chambers of the Law Officers of the Crown.

- (2) Letter of request - if your national legislation or departmental policy does not permit an investigating officer to make an application for assistance in another jurisdiction a letter of request should be sent by a person authorised to do so to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355

Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for assistance in Drug Trafficking

cases and will be pleased to examine and comment upon draft letters of request before they are formally sent.

Affidavits and letters of request may be sent by fax but a hard copy should then follow by way of post or courier.

The contents of the affidavit or letter of request:

The affidavit or letter of request for assistance should contain:-

- (a) the identity of the person making the application and confirmation that he is authorised to make it;
- (b) details of either:-
 - (i) the charges faced by the person who is the subject of the enquiry in your jurisdiction; or
 - (ii) the charges which are likely to be laid,
- (c) a description of the facts of the case. It is very important that enough information is given to satisfy the conditions which were mentioned earlier;
- (d) exact details of the assistance required;
- (e) If you want us to obtain documents from a bank or other financial institution then please provide the full name and address of the bank or institution and any details which you have about the account (including its number) and the type of documents that you want;
- (f) if a warrant is believed to be necessary the exact reasons for that belief;
- (g) the identity of any Magistrates, Prosecutors, Police or Customs Officers who wish to be present when the information requested is obtained;
- (h) if you consider your request should be treated as urgent, precise reasons why Guernsey resources should be deployed urgently should be given; and
- (i) if you would like a person to be interviewed it would be helpful for us to know whether the interview should be tape recorded

Undertaking:

Your affidavit or letter should either contain or be accompanied by a undertaking in the following form:-

"Undertaking

(name of case)

I *(name and description)* hereby UNDERTAKE that any information or material obtained in pursuance of a notice under the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 in respect of *(names of persons under investigation)* shall only be used for the purposes of the investigation into the affairs of the above persons, or any

prosecution arising therefrom, and shall not be disclosed, directly or indirectly, to any other person or agency without the written consent of Her Majesty's Attorney General for the Bailiwick of Guernsey.

(The undertaking should be signed by a Senior Officer of the Investigating agency or, where appropriate, an examining Magistrate or the Prosecutor responsible for the conduct of the investigation or prosecution.)

Signature

Date"

Note: see below "Disclosure to a third party of information".

Warrants to search premises:

The usual way of obtaining evidence under the Drug Trafficking Law is by the service of a production order. However, if for example there are reasonable grounds to suspect that the investigation might be seriously prejudiced by the service of a production order it is possible for an application to be made by a police officer (with the consent of HM Attorney General) to the Bailiff (Senior Judge) for a warrant to enter premises by force if necessary and to take possession of any documentation which appears to be relevant.

Translation of affidavits and letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the affidavit or letter of request, it will be sent back to you.

Procedure following receipt of a request:

Your request will, in Customs cases, be allocated to one of the investigation officers in the Guernsey Customs and Excise Fraud and International Branch and in police cases to an Officer of the Guernsey Police Commercial Fraud and External Affairs Department. The officer will prepare a draft application (referred to locally as "an information") to which will usually be attached your investigating officer's affidavit or your letter of request. The draft application will then be checked by a lawyer from the criminal team in the Chambers of the Law Officers of the Crown.

Once the document is complete it will be presented to HM Attorney General for consideration and signature as it is a requirement that he consents to the application being made. If consent is obtained, the signed information will then be presented to the Bailiff (Senior Judge) by the officer who prepared the application and hopefully, a production order or warrant will be granted. The officer will then make arrangements to serve the production order or execute the warrant.

Any material relevant to your enquiry obtained following the service of a production order or the execution of a warrant will be copied and the copies sent to you as soon as possible.

The provision of witness statements following service of an order under the Drug Trafficking Law:

The Drug Trafficking Law does not compel persons who receive a production order to make a formal witness statement which can be used in evidence. However, many financial institutions in the Bailiwick do allow their representatives to make statements in a form which would be admissible before the courts in your jurisdiction.

If the recipient of the order declines to make a formal witness statement and his evidence is subsequently required for the purposes of proceedings before your court, if the individual concerned declines an invitation to travel to give evidence, it is possible for his evidence to be taken under oath using the provisions of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 (please see section 6).

The time it takes to process an application under the Drug Trafficking Law:

Normally the procedure under the Drug Trafficking Law should be completed speedily. However, there may be cases where a large amount of material needs to be collated or where banks hold records in storage in another jurisdiction which will mean that a longer period will be taken to send you the material you require. If information in another jurisdiction is not held in storage to the order of the person or institution in Guernsey on whom a notice has been served, we will advise you of the need to seek assistance in that other jurisdiction.

If your request is extremely urgent then you should specifically draw our attention to this and explain why it is urgent and why a request has not been made at an earlier date. Every effort will be made to complete the procedure as quickly as possible.

In order that we can deal with all requests on a timely basis it is important that a request is only categorised as urgent when it is truly urgent.

Disclosure to a third party of information:

If for any reason you want to make available to a third party some or all of the material which you have obtained in the Bailiwick, you must first seek in writing, the permission of HM Attorney General. Please state clearly what material it is you wish to pass on, to whom, and for what purpose. If the release of the material is authorised then the third party will need to provide their own separate undertaking as to the use to which they intend to put the material and that it will not be disclosed further without the consent of HM Attorney General.

(5) THE OBTAINING OF INFORMATION RELATING TO THE PROCEEDS OF NON-DRUG TRAFFICKING CRIME

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“the Proceeds of Crime Law”) allows us to provide assistance to other jurisdictions in connection with investigations concerning **the proceeds of crime** which are not connected with Drug Trafficking.

It is essential that requests under this Law do not relate to drugs related investigations. If drug trafficking is suspected then your application should be made under the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (see section 4)

The Proceeds of Crime Law allows for information to be obtained by way of either the service of a production order or the execution of a warrant to search premises. The usual method is by way of a production order.

The conditions which need to be satisfied before assistance can be provided

Before assistance can be provided under the Proceeds of Crime Law the following conditions need to be satisfied:-

- (a) that the criminal conduct under investigation would constitute an indictable offence under the law of the Bailiwick if it had taken place here; and
- (b) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from criminal conduct;
- (c) that there are reasonable grounds for suspecting that the material to which the application relates -
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal professional privilege; and
- (d) that there are reasonable grounds for believing that it is in the public interest, having regard:-
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of the material holds it;
 that the material should be produced or that access to it should be given.

What offences are classified as indictable offences?

All offences which are not classified as exclusively summary offences are indictable. There are very few summary offences and they are mostly minor public order or traffic offences.

How to make a request:

There are two ways in which you can make your request under the Proceeds of Crime Law:-

(1) By way of affidavit - the officer responsible for the investigation in your jurisdiction may apply for assistance by sending a sworn affidavit accompanied by an explanatory letter direct:-

(i) for cases involving violations of Customs or Customs related legislation to:-

Guernsey Customs and Excise Department
Investigation Division
Fraud and International Branch
White Rock
St Peter Port
Guernsey
Channel Islands
GY1 3WJ

Tel: 00 44 (0) 1481 741400
Fax: 00 44 (0) 1481 715901

(ii) for cases involving the proceeds of other types of non drug trafficking cases to:-

The Guernsey Police Commercial Fraud and External Affairs
Department
Police Headquarters
Hospital Lane
St Peter Port
Guernsey
Channel Islands
GY1 2QN

Tel: 00 44 (0)1481 725111
Fax: 00 44 (0)1481 710466

The officers of the Guernsey Customs and Excise Fraud and International Branch and the Guernsey Police Commercial Fraud and External Affairs Department are always pleased to give preliminary advice concerning potential requests under the Proceeds of Crime Law and to check over draft affidavits prior to their being sworn to ensure that sufficient information is included to enable an application for a production order or warrant to be made.

(2) Letter of request - if your national legislation or departmental policy does not permit an officer responsible for the investigation to make an application for assistance in another jurisdiction a letter of request should be sent to:-

HM Attorney General
The Chambers of the Law Officers of the Crown
St. James Chambers
St. Peter Port
Guernsey
Channel Islands
GY1 2PA

Tel: 00 44 (0)1481 723355
Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for assistance under the Proceeds of Crime Law and will be pleased to examine and comment upon draft letters of request before they are formally sent.

Affidavits and letters of request may be sent by fax, but a hard copy should then follow by way of post or courier

The contents of the affidavit or letter of request:

The affidavit or letter of request asking for assistance should contain:-

- (a) the identity of the person making the application and confirmation that he is authorised to make it;
- (b) details of either:-
 - (i) the charges faced by the person who is the subject of the enquiry in your jurisdiction; or
 - (ii) the charges which are likely to be laid;
- (c) a description of the facts of the case. It is very important that enough information is given to satisfy the conditions which were mentioned earlier;
- (d) exact details of the assistance required;
- (e) if you want us to obtain documents from a bank or other financial institution, then please provide the full name and address of the bank or other institution and any details which you have about the account (including its number) and the type of documents you want;
- (f) if a warrant is believed to be necessary the exact reasons for that belief;
- (g) the identity of any Magistrates, Prosecutors, Police or Customs Officers, who wish to be present when the information requested is obtained;
- (h) if you consider your request should be treated as urgent, precise reasons why Guernsey resources should be deployed urgently should be given; and
- (i) if you would like a person to be interviewed it would be helpful for us to know whether the interview should be tape recorded.

Undertaking:

Your affidavit or letter should either contain or be accompanied by an undertaking in the following form:-

"Undertaking

(name of case)

I *(name and description)* hereby UNDERTAKE that any information or material obtained in pursuance of an order under the Criminal Justice (Proceeds of Crime)

(Bailiwick of Guernsey) Law, 1999 in respect of (*names of persons under investigation*) shall only be used for the purposes of the investigation into the affairs of the above persons, or any prosecution arising therefrom, and shall not be disclosed, directly or indirectly, to any other person or agency without the written consent of Her Majesty's Attorney General for the Bailiwick of Guernsey.

Signature

Date"

(The undertaking should be signed by a Senior Officer of the Investigating agency or, where appropriate, an examining Magistrate or the Prosecutor responsible for the conduct of the investigation or prosecution.)

Note: see below "Disclosure to a third party of information".

Warrants to search premises:

The usual way of obtaining evidence under the Proceeds of Crime Law is by the service of a production order. However, if for example there are reasonable grounds to suspect that the investigation might be seriously prejudiced by the service of a production order it is possible for an application to be made by a police officer (with the consent of HM Attorney General) to the Bailiff (Senior Judge) for a warrant to enter premises by force if necessary and to take possession of any documentation which appears to be relevant.

Translation of affidavits and letters of request:

If your affidavit or letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the Affidavit or letter of request, it will be sent back to you.

Procedure following receipt of a request:

Your request will in Customs cases, be allocated to one of the investigation officers in Guernsey Customs and Excise Fraud and International Branch and in police cases to an officer of the Police Commercial Fraud External Affairs Department. The officer will prepare a draft application (referred to locally as "an information") to which will usually be attached your investigating officer's affidavit or your letter of request. The draft application will then be checked by a lawyer from the criminal team in the Chambers of the Law Officers of the Crown.

Once the document is complete it will be presented to HM Attorney General for consideration and signature, as it is a requirement that he consents to the application being made. If consent is obtained, the signed information will then be presented to the Bailiff (Senior Judge) by the officer who prepared the application and hopefully a production order or warrant will be granted. The officer will then make arrangements to serve the production order or execute the warrant.

Any material relevant to your enquiry obtained following the service of a production order or the execution of a warrant will be copied and the copies sent to you as soon as possible.

The provision of witness statements following service of an order under the Proceeds of Crime Law:

The Proceeds of Crime Law does not compel anyone who receives a production order to make a formal witness statement which can be used in evidence. However, many financial institutions in the Bailiwick, do allow their representatives to make statements in a form which would be admissible before the courts in your jurisdiction.

If the recipient of the order declines to make a formal witness statement and his evidence is subsequently required for the purposes of proceedings before your court, if the individual concerned declines an invitation to travel to give evidence, it is possible for his evidence to be taken under oath using the provisions of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 (please see section 6)

The time it takes to process an application under the Proceeds of Crime Law:

Normally the procedure under the Proceeds of Crime Law should be completed speedily. However, there may be cases where a large amount of material needs to be collated or where banks hold records in storage in, for example, another jurisdiction, which will mean that a longer period will be taken to send you the material you require. If information in another jurisdiction is not held in storage to the order of the person or institutions in Guernsey on whom a notice has been served we will advise you of the need to seek assistance in that other jurisdiction.

If your request is extremely urgent then you should specifically draw our attention to this and explain why it is urgent and why a request has not been made at an earlier date. Every effort will be made to complete the procedure as quickly as possible.

In order that we can deal with all requests on a timely basis it is important that a request is only categorised as urgent when it is truly urgent.

Disclosure to a third party of information:

If for any reason you want to make available to a third party, some or all of the material which you have obtained in the Bailiwick you must first seek in writing, the permission of HM Attorney General. Please state clearly what material it is you wish to pass on, to whom and for what purpose. If the release of the material is authorised then the third party will need to provide their own separate undertaking as to the use to which they intend to put the material and that it will not be disclosed further without the consent of HM Attorney General.

(6) THE OBTAINING OF SWORN EVIDENCE BEFORE A COURT IN ALL TYPES OF CRIMINAL CASES

The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 (“the International Co-operation Law”) allows for sworn evidence to be taken before a court for use in another jurisdiction. The procedures under the International Co-operation Law should be used in the following circumstances:-

- (1) if the case under investigation or before the criminal courts of your jurisdiction does **not** relate to an allegation of serious or complex fraud, drug trafficking, money laundering or terrorism or terrorist activity; or
- (2) if, following the provision by us of information concerning a case of serious **or** complex fraud, drug trafficking, money laundering or terrorism under the procedures described in sections 3, 4, 5 and 10, you require sworn evidence before the information can be heard as evidence by your court.

The International Co-operation Law does **not** impose any restriction on the type of offence under investigation or being prosecuted in your jurisdiction before assistance can be provided.

The procedure to be followed:

If you wish to apply for sworn evidence to be taken before one of our courts a letter of Request should be sent by:

- (i) either the court or tribunal in your jurisdiction which has control over the case in question or;
- (ii) from any other authority in your jurisdiction which has the power to issue a letter of Request to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James’ Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel. 00 44 (0)1481 723355
 Fax. 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for assistance under the International Cooperation Law and to examine and comment on draft letters of request before they are formally sent.

Letters of requests may be sent by fax but a hard copy should then follow immediately by way of post or courier.

The contents of a letter of request:

Your letter of request for assistance should contain:-

- (a) the details of the court or tribunal or the authority making the request. The letter should state that the person making the request is permitted to do so;
- (b) if criminal proceedings have been commenced a description of the charges should be included. However if your case is at the investigation stage, details of the charges which the person under investigation may face should be included;
- (c) a summary of the facts of the case under investigation;
- (d) details of the evidence you require to be taken;
- (e) the names of the individual or institutions whose representatives are required to give evidence;
- (f) whether the prosecuting and/or defence lawyers wish to be present when the witnesses give their testimony before our court; and
- (g) if you consider your request should be treated as urgent, precise reasons why Guernsey resources should be deployed urgently should be given.

Translation of letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

The conditions applicable before assistance can be provided:

Before help can be provided under the International Co-operation Law HM Attorney General must be satisfied that:

- (a) an offence under the law of your jurisdiction has been committed or that there are reasonable grounds for suspecting that such an offence has been committed; and
- (b) proceedings in respect of the offence have been instituted in your jurisdiction **or** that an investigation into the offence is being carried on.

Even if these conditions are met HM Attorney General does have an ultimate discretion as to whether assistance is provided. If, for example, there is an investigation into an alleged criminal offence in your jurisdiction but the request for assistance received by HM Attorney General does not relate in any way to the investigation he would be entitled to exercise his ultimate discretion to decline to give assistance.

Fiscal Offences:

Assistance **can** be provided under The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 in cases involving an investigation into fiscal offences.

The procedure following acceptance of a request by HM Attorney General:

If HM Attorney General agrees that assistance should be provided, he will refer it to one of the courts in the Bailiwick so that witnesses can be summoned to give their evidence. In Guernsey the court will be the Royal Court, in Alderney the Court of Alderney and in Sark the Court of the Seneschal.

The case will be assigned to a member of the criminal team in the Chambers of the Law Officers of the Crown who will arrange the date on which the evidence will be given before the court, inform you of the date and summons the witnesses required.

The procedure before the court:

In most cases the evidence is likely to be given in the form of an acceptable pre-written statement.

If either the prosecution or defence lawyers responsible for the case in your jurisdiction wish to attend when evidence is given in compliance to your request they will be allowed to question and cross-examine witnesses.

It must be understood that the presiding judge will ultimately be responsible for the procedure during the taking of evidence. The judge will be prepared to listen to argument from both the prosecution and defence so that every effort is made to take the evidence in such a way as to make it admissible before your domestic court. Any visiting Prosecutor will be accompanied in court by a lawyer from the Chambers of the Law Officers of the Crown. Usually foreign lawyers for the defence are asked to arrange that they are accompanied by a Guernsey Advocate. A current list of the Advocates firms can be seen in Annexe VI.

In the event of no lawyers from your jurisdiction deciding to attend when evidence is given a lawyer from HM Attorney General's Chambers will conduct the examination of the prosecution witnesses. If a Guernsey Advocate is appointed to look after the interests of the defendant or potential defendant he will be allowed an opportunity to cross-examine the witnesses.

If evidence is not presented in the form of a pre-written statement it will be tape-recorded. If the evidence is tape-recorded a transcript will need to be prepared. The sworn witness statement or transcript of the evidence recorded on tape will be signed by the presiding judge and a court seal affixed.

Request for assistance by the defence:

It is possible for defendants to make applications for evidence to be taken before our court. If a defence lawyer in your jurisdiction wishes to make such a request he should be advised to ask for a letter of request to be issued either by one of your courts or tribunals or a person authorised to issue letters of request on behalf of the defence. The letter should be sent to HM Attorney General.

On receipt of a letter of request HM Attorney General will follow the same procedure as he would do for a request from the prosecuting authority. A lawyer from the criminal team from the Chambers of the Law Officers of the Crown after liaising with the parties involved in your jurisdiction and any Advocates appointed in Guernsey will arrange the date for the court hearing. However, a Guernsey Advocate will have to be appointed by the defence

lawyers in your jurisdiction to arrange for the summoning of witnesses and to examine potential defence witnesses before the court.

The time it takes to process an application for evidence to be taken before a court:

It is hard to give a general estimate as to the time it is likely to take to process an application to take evidence before a Court. If the evidence to be taken is not too complex then the time taken will usually be relatively short particularly if an acceptable pre-written statement is prepared. In complex matters it may take several months to complete the process.

If your request is extremely urgent then you should specifically draw our attention to this and explain why it is urgent and why a request has not been made at an earlier date. Every effort will be made to complete the procedure as quickly as possible. In order that we can deal with all requests on a timely basis it is important that a request is only categorised as urgent when it is truly urgent.

(7) THE RESTRAINT OF THE PROCEEDS OF CRIME

The Royal Court has the power to issue restraint orders prohibiting the removal from the Bailiwick of money or any other thing which is believed to be or represent the proceeds of crime. In cases where the proceeds are believed to be from drug trafficking, application for a restraint order can be made under the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 ("the Drug Trafficking Law"). If the proceeds are from other types of crime the application should be made under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Proceeds of Crime Law").

Jurisdictions which can apply for a restraint order:

We can receive applications for restraint orders from jurisdictions which are designated by secondary legislation under the Drug Trafficking or the Proceeds of Crime Laws. We designate those countries which are designated by the United Kingdom under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. The United Kingdom has the resources to negotiate the necessary agreements for countries to become designated for the purposes of making restraint orders on behalf of foreign jurisdictions. It is convenient for us to replicate their designations.

The countries designated under the Drug Trafficking Law are listed in Annexe I and those under the Proceeds of Crime Law in Annexe II.

Conditions to be met before an application for a restraint order can be made:

Before a restraint order can be made on your behalf there must of course be identifiable assets within the Bailiwick which can properly be said to be the proceeds of either drug trafficking or other crimes. The Royal Court's power to make a restraint order can be made when either -

- (i) proceedings have been instituted against a person in a designated country and they have not been concluded and there is reasonable cause to believe the person has benefited from drug trafficking or other criminal conduct; or
- (ii) proceedings are to be instituted against a person in a designated country and that there are reasonable grounds for believing that a confiscation order will be made during those proceedings. However before the Royal Court will consider making a restraint order prior to a person being charged it must be satisfied that first, the person is definitely going to be charged with an offence and second, that the person will be charged within a relatively short period of time.

When the proceeds are believed to come from the commission of non drug trafficking cases, the criminal conduct must be capable of consisting of an indictable offence under the law of the Bailiwick if it had taken place here.

What offences are classified as indictable offences?

All offences which are not classified as exclusively summary offences are indictable. There are very few summary offences and they are mostly minor public order and traffic offences.

How an application for a restraint order should be made:

An application for a restraint order under either the Drug Trafficking or the Proceeds of Crime Laws should be made by letter of request and sent to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355

Fax: 00 44 (0)1481 725439

It is very important that your request is made under the correct piece of legislation.

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for restraint orders and will be pleased to examine draft letters of request before they are formally sent.

Letters of request may be sent by fax but a hard copy should then follow by way of post or courier.

The contents of the letter of request:

Your letter of request should include the following:-

- (a) the identity of the person making the application and confirmation that he is authorised to make it;
- (b) a statement as to whether the application for a restraint order is under the Drug Trafficking Law or the Proceeds of Crime Law;
- (c) details of either:-
 - (i) the charges which the person who is the subject of your enquiry, faces in your jurisdiction; or
 - (ii) any charges which are going to be laid and an indication as to when the suspect will be charged;
- (d) a description of the facts of the case;
- (e) details of the property which is believed to be the proceeds of either drug trafficking or other crime. You should also include details of how it is believed the property came to be in the Bailiwick;
- (f) details of the believed whereabouts of the property in the Bailiwick. If your application relates to money held in bank accounts you should give details of the name and address of the bank and bank account numbers;

- (g) confirmation that it is likely a confiscation order will be made during the proceedings in your jurisdiction and that a request will be made for the Royal Court to enforce the confiscation order; and
- (h) if a restraint order has been issued by a court in your jurisdiction this fact should be mentioned and a copy of the restraint order attached to your letter of request. If the order is not in English, a translation should be provided.

Translation of letters of request:

If your letter of request is not in the English language it should be accompanied by a full English translation. If it is not possible to understand the letter of request it will be sent back to you.

The procedure following the receipt of a letter of request:

Your letter of request will be examined by a member of the criminal team in the Chambers of the Law Officers of the Crown. If all is in order your request will be passed to either the Police Commercial Fraud and External Affairs Department or the Customs and Excise Fraud and International Branch so that an affidavit can be prepared by one of their officers. Whilst the affidavit is being prepared a member of the criminal team in the Chambers of the Law Officers of the Crown will draw up the necessary application and draft restraint order which will be required by the Royal Court.

Once all the paperwork is in order an application will be made in private to the Bailiff (Senior Judge). If the application is successful, the court document evidencing the restraint order will be issued immediately after the court hearing by the office of the Clerk to the Royal Court (HM Greffier).

The restraint order will immediately be served on the person, bank or other institution which holds the money or other property which is the subject of the restraint order. The order will be accompanied by a brief notice of explanation to the person holding the assets.

We will then send you a copy of the restraint order together with a notice of explanation for the defendant or potential defendant for you to serve upon the defendant.

Variation of restraint orders:

Any person whether it be HM Attorney General, the defendant in your jurisdiction or the person holding the restrained assets may make an application to the Royal Court for the restraint order to be varied. The defendant may make an application if, for example, it is believed that the restraint order was made improperly. HM Attorney General or the person holding the assets may ask for a variation to release money to cover any reasonable expenses incurred in, for example, administering the assets which are the subject of the restraint order.

The discharge of the restraint order:

The restraint order will be discharged by the Royal Court if:-

- (a) the defendant in your jurisdiction is found not guilty;
- (b) the defendant consents to the repatriation to your jurisdiction of the assets which are subject to the restraint order;

- (c) a confiscation order made in your jurisdiction is enforced in the Bailiwick; or
- (d) if a restraint order has been obtained prior to the person being charged in your jurisdiction and no charge is laid within a reasonable period of time.

Voluntary repatriation of assets:

When a person has been charged with an offence and either pleaded guilty or intends to plead guilty if some of the proceeds of his crimes are in other jurisdictions it is not unknown for a defendant to want to assist the authorities by arranging for the repatriation of the proceeds. If a defendant in your jurisdiction has managed to lodge some proceeds of his crimes in the Bailiwick, the members of the criminal team in the Chambers of the Law Officers of the Crown, would be willing to give what assistance they can in negotiations with financial institutions, lawyers etc., with the aim of repatriating the proceeds of crime to your jurisdiction.

In the event of substantial assets being repatriated, HM Attorney General may in appropriate cases approach the relevant authority in your jurisdiction to enquire whether there is any possibility of the Bailiwick receiving a share of the repatriated assets.

Progress reports:

When we have obtained a restraint order on your behalf we will periodically review our file to ascertain whether it is necessary for the restraint order to continue and we will expect you to do the same. It is essential that you keep us informed of progress in your case.

(8) THE ENFORCEMENT OF OVERSEAS CONFISCATION ORDERS

If a court in your jurisdiction makes a confiscation order relating to the proceeds of drug trafficking or any other crime it is possible for the Royal Court to enforce the order against any assets which are held in the Bailiwick by or on behalf of the defendant. The Laws which make this possible are the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 ("the Drug Trafficking Law") and the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Proceeds of Crime Law").

Jurisdictions which can apply for the enforcement of a confiscation order:

We can receive applications for the enforcement of confiscation orders from jurisdictions which are designated by secondary legislation under the Drug Trafficking or the Proceeds of Crime Laws. We designate those countries which are designated by the United Kingdom under the Criminal Justice Act 1988 and the Drug Trafficking Act 1994. The United Kingdom has the resources to negotiate the necessary agreements for countries to become designated for the purposes of enforcing confiscation orders on behalf of foreign jurisdictions. It is convenient for us to replicate their designations.

The countries designated under the Drug Trafficking Law are listed in Annexe I and those under the Proceeds of Crime Law in Annexe II.

Requests for the enforcement of confiscation orders:

An application for the enforcement under either the Drug Trafficking or Proceeds of Crime Laws of a confiscation order made in your jurisdiction should be made by letter of request and sent to:-

HM Attorney General
The Chambers of the Law Officers of the Crown
St. James' Chambers
St. Peter Port
Guernsey
Channel Islands
GY1 2PA

Tel: 00 44 (0)1481 723355

Fax: 00 44 (0)1481 725439

It is very important that your request is made under the correct piece of legislation.

The members of the criminal team in the Chambers of the Law Officers of the Crown, are willing to give advice on how to make applications for the enforcement of overseas confiscation orders and will be pleased to examine draft letters of request before they are formally sent.

Letters of request may be sent by fax but a hard copy should then follow by way of post or courier.

The contents of the letter of request:

The letter of request should contain the following:-

- (a) details of the person making the request and confirmation that he is authorised to make it;
- (b) a statement as to whether the request is under the Drug Trafficking or the Proceeds of Crime Laws;
- (c) details of the offences for which the defendant was convicted and the sentence and confiscation order imposed. A copy of the confiscation order (together with a translation, if it is not in English), should be attached to the letter of request;
- (d) a statement of the facts of the case;
- (e) details of the property subject to the confiscation order which is believed to be in the Bailiwick. If money is held by a bank or other financial institution details of the name and address should be given together with account numbers if known; and
- (f) confirmation that the sentence and/or confiscation order are not subject to proceedings before a Court of Appeal in your jurisdiction.

Procedure following the receipt of the letter of request:

A member of the criminal team of the Chambers of the Law Officers of the Crown, if satisfied that your request is in order, will apply to have the confiscation order registered by the Royal Court. Before this is done however notice has to be provided to all interested parties. We will serve notice on the person or institution holding property in the Bailiwick. We will ask you to serve notice of the intention to make the application on the defendant.

Once the order has been registered by the Royal Court it may appoint Her Majesty's Sheriff (an official responsible for enforcing Court orders) as a receiver. HM Sheriff will then go about realising all the property which is capable of being realised. Money which is in bank accounts will be transferred into an account in HM Sheriff's name, other assets, for example houses, jewellery and motor cars will be sold at the highest possible price.

Once all the defendant's assets in the Bailiwick have been realised HM Sheriff will tell the authority which made the request for enforcement of a confiscation order how much money he has in his possession. If the amount is in excess of the sum ordered by the confiscation order in your jurisdiction, HM Sheriff will pay the balance to the defendant.

Translation of letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

The sharing of the proceeds following the enforcement of a confiscation order:

In our Law there is no provision for the sharing of property realised following the enforcement of a confiscation order made in another jurisdiction. However, the authorities in Guernsey are prepared on receipt of a formal request to enter into negotiations to share with your jurisdiction the money obtained by HM Sheriff if the sum involved is high.

(9) THE ENFORCEMENT OF OVERSEAS ORDERS RELATING TO THE INSTRUMENTALITIES OF CRIME

Courts around the world can make orders for the forfeiture of cars, boats, or aircraft which are used or intended for use by criminals to commit their crimes. In the event of any instrumentalities which are subject to a forfeiture order in your jurisdiction being located in the Bailiwick it is possible for the Royal Court to enforce the forfeiture order of your court under the provisions of The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 or the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 ("the International Co-operation Law").

Jurisdictions which can apply for the enforcement of a forfeiture order:

We can receive applications for the enforcement of forfeiture orders from jurisdictions which are designated under the Drug Trafficking or the International Co-operation Laws. The United Kingdom has the resources to negotiate the necessary agreements for countries to become designated for the purposes of enforcing forfeiture orders on behalf of foreign jurisdictions. It is convenient for us to replicate their designations.

The list's of countries designated under the Drug Trafficking Law are listed in Annexe III and those under the International Co-operation Law in Annexe IV.

Restraint orders:

It is possible to obtain a restraint order prior to the making of a forfeiture order concerning an instrumentality. A restraint order can be obtained if:-

- (a) proceedings have been instituted in your jurisdiction which have not been concluded and there are reasonable grounds for believing that a forfeiture order will be made during them; or
- (b) proceedings are going to be instituted against a person in your jurisdiction and there are reasonable grounds that a forfeiture order will be made during those proceedings. There must however be an intention to charge a person within a reasonable period of time.

Applications for a restraint order or enforcement of a forfeiture order:

Application should be made by a letter of request and sent to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355
 Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice to how to make applications for restraint orders or the enforcement of

forfeiture orders concerning instrumentalities and will be pleased to examine and comment on draft Letters of Request before they are formally sent.

Letters of request may be sent by fax but a hard copy should then follow by way of post or courier.

The contents of the letter of request:

The letter of request should include the following:-

- (a) the identity of the person making the request and confirmation that he is authorised to make it;
- (b) if you are seeking a restraint order details should be given either of the charges faced by a person in your jurisdiction or the charges which will be laid and an estimate as to when this will be done;
- (c) a statement of the facts of the case;
- (d) a description of the property which is to be restrained or forfeited. A description should be given as to how it is believed the property came to be in the Bailiwick; and
- (e) if enforcement of a forfeiture order is being sought a copy of the court order requiring the forfeiture should be attached to the letter of request. If the order is not in English, a translation should be provided.

Translation of letters of request:

If your letter of request is not in the English Language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

Procedure following receipt of the letter of request:

(a) Restraint orders:

Your application will be considered by a member of the criminal team in the Chambers of the Law Officers of the Crown. If the application appears to be in order it will be sent if it relates to a drug trafficking case or customs offence, to the Guernsey Customs and Excise Fraud and International Branch and for other types of criminal conduct to the Police Commercial Fraud and External Affairs Department for an officer to prepare an affidavit. In the meantime a lawyer in the Chambers of the Law Officers of the Crown will prepare the necessary application and draft order for the Royal Court. An application will then be made in private to the Bailiff (Senior Judge) and if successful a restraint order will be immediately issued by the office of the Clerk of the Royal Court (HM Greffier).

If a restraint order is issued, the instrumentalities subject to the application will be seized and held pending the outcome of the proceedings in your jurisdiction. If however it is likely that the asset will physically deteriorate during the period of the restraint order there is provision for it to be sold and the proceeds of the sale invested.

(b) Enforcement of forfeiture orders:

If your request is for the enforcement of a forfeiture order an application will be made to register the order with the Royal Court. Prior to this occurring, all interested parties have to be notified. Once the order is registered, an application will be made for the forfeiture of the property. It will then be dealt with in accordance with directions given by the Royal Court. It is very likely that the Court will direct HM Sheriff (an official responsible for enforcing court orders) to arrange for the sale of the asset.

Sharing of assets or proceeds of sale following forfeiture of an instrumentality:

Under our legislation there is no requirement that a forfeited instrumentality or the proceeds of its sale should be returned to the jurisdiction which made the request for its forfeiture. However, in cases where a very valuable asset is involved the authorities in Guernsey, on receipt of a formal request are willing to enter into discussions with you with a view to either the instrumentality being returned to your jurisdiction intact or for the sharing of the proceeds of sale.

Progress reports:

When we have obtained a restraint order on your behalf we will periodically review our file to ascertain whether it is necessary for the restraint order to continue. It is therefore essential that you keep us informed of progress in your case.

(10) TERRORISM

Meaning of "Terrorist Investigation":

Under the Terrorism and Crime (Bailiwick of Guernsey) Law 2002 ("the Terrorism Law") "terrorist investigation" means an investigation of:-

- (a) the commission, preparation or instigation of acts of terrorism;
- (b) an act which appears to have been done for the purposes of terrorism;
- (c) the resources of a proscribed organisation; or
- (d) the commission, preparation or instigation of an offence under the Terrorism Law.

(A) Orders which can be obtained:

Under the provisions of the Terrorism Law, comprehensive assistance can be provided in connection with investigations into terrorists activities. Orders may be granted to:-

- (a) obtain information concerning the existence of accounts, etc. ("financial information orders");
- (b) monitor accounts ("account monitoring orders");
- (c) require production of information ("production orders");

(a) Financial information orders:

It is possible for a police officer with the consent of HM Attorney General to obtain an order from the Bailiff (Senior Judge) requiring financial services businesses in the Bailiwick to search their records to ascertain whether any of the persons or entities named in the order are customers of theirs, and give to the police information such as the customer's account number, their date of birth, and full name and address, and evidence of the customer's identity obtained by the financial services business.

(b) Account monitoring orders:

Orders for the monitoring of an account or accounts held by a financial services business may, with the consent of HM Attorney General, be obtained from the Bailiff.

Before making the order the Bailiff must be satisfied that -

- (i) the order is sought for the purpose of a terrorist investigation;
- (ii) the tracing of terrorist property is desirable for the purposes of the investigation;
and
- (iii) the order will enhance the effectiveness of the investigation.

The order will describe the type of information which the financial services business has to provide to the police. Orders may last for up to 90 days and are renewable.

(c) Production orders

The Bailiff may issue an order requiring a person or institution to produce to a police officer information which may be of assistance to a terrorist investigation. The Bailiff must be satisfied as follows:-

- (a) that a terrorist investigation is being carried out and that there are reasonable grounds for believing that the material requested is likely to be of substantial value to the investigation;
- (b) that there are reasonable grounds for believing that it is in the public interest having regard to:-
 - (i) the benefit likely to accrue to the investigation if the material is obtained;
 - (ii) the circumstances under which the person in possession of the material holds it, that the material should be produced or access to it should be given; and
- (c) that the material does not consist of or include items subject to legal professional privilege.

It is also possible for the Bailiff to issue warrants to search premises for material which may be of assistance to a terrorist investigation.

Procedure to be followed for (a) to (c):

If you believe that a financial information order, account monitoring order or production order would be of assistance to a terrorist investigation being conducted in your jurisdiction, you should send a letter of request to

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355
 Fax: 00 44 (0)1481 725439

The members of the Criminal Team in the Chambers of the Law Officers of the Crown are willing to give advice as to how to make an application for assistance and will be pleased to examine and comment upon draft Letters of Request before they are formally sent.

Letters of Requests may be sent by fax but a hard copy should then follow by way of post or courier.

The Contents of letters of request:

Letters of request asking for assistance should contain:-

- (a) the identity of the person making the application and confirmation that he is authorised to make it;
- (b) either:-
 - (i) details of the charges faced by the person who is the subject of the enquiry in your jurisdiction; or
 - (ii) confirmation that an investigation has commenced and the charges which may eventually be faced;
- (c) a description of the facts of the case;
- (d) exact details of the assistance required; and
- (e) If you believe that assets connected with terrorism are held by a particular bank or financial institution then please provide the full name and address of the bank or institution and any details which you have about the account, including its number.

Translation of letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

(B) Registration and enforcement of restraint orders and forfeiture orders made in other jurisdictions

The Royal Court has the power to register restraint orders or forfeiture orders made in other jurisdictions concerning assets connected with terrorism and then enforce the orders as if they were made locally

The jurisdictions which can apply for the registration of an order

We can receive applications for the registration of an external restraint order or an external forfeiture orders from jurisdictions which are designated by secondary legislation under the Terrorism Law. We designate those countries which are designated by the United Kingdom under its equivalent legislation. The United Kingdom has the resources to negotiate the necessary agreements for countries to become designated for the purposes of registering orders on behalf of foreign jurisdictions. It is convenient for us to replicate their designation.

Countries designated under the Terrorism Law are listed in Annex V.

How an application for the registration of an order should be made

An application for the registration of an order under the Terrorism Law should be made by letter of request and sent to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James Chambers
 St. Peter Port

Guernsey
Channel Islands
GY1 2PA

Tel: 00 44 (0)1481 723355
Fax: 00 44 (0)1481 725439

The members of the Criminal Team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for restraint orders and will be pleased to examine draft letters of request before they are formally sent.

The contents of the letter of request

Your letter of request should include the following:-

- (a) the identity of the person making the application and confirmation that he is authorised to make it;
- (b) if you are seeking the registration of a restraint order:-
 - (i) details of the charges faced by the person who is the subject of the enquiry in your jurisdiction; or
 - (ii) confirmation that an investigation has been commenced and the charges which may be eventually faced;
- (c) if you are seeking the registration of a forfeiture order made in your jurisdiction, confirmation that the sentence and/or forfeiture order are not subject to proceedings before a Court of Appeal in your jurisdiction;
- (d) a description of the facts of the case;
- (e) details of the property which is believed to be in the Bailiwick to be connected with terrorism. You should also include details of how it is believed the property came to be in the Bailiwick;
- (f) if you believe that assets connected with terrorism are held by a particular bank or financial institution then please provide the full name and address of the bank or institution and any details which you have including the account number;
- (g) a copy of the restraint order or the forfeiture order issued in your jurisdiction should be attached to your letter of request. If the order is not in English a translation should be provided.

The procedure following the receipt of a letter of request:

Your letter of request will be examined by a member of the Criminal Team in the Chambers of the Law Officers of the Crown. If all is in order the necessary application will be drafted to apply to the Royal Court for the registration of your restraint or forfeiture order.

Once all the paperwork is in order an application will be made in private to the Bailiff (Senior Judge). The Bailiff will register the order if he is satisfied that it is in force and he is of the opinion that enforcing the order would not be contrary to the interests of justice.

The Bailiff must also be satisfied when registering a restraint order that proceedings have been commenced in your jurisdiction or an investigation has commenced.

Also with regard to forfeiture orders the order must not be the subject of an appeal in your jurisdiction.

Once the order has been registered it will be enforced as if it had been made by the Royal Court.

Translation of letters of request:

If your letter of request is not in the English language it should be accompanied by a full English translation. If it is not possible to understand the letter of request it will be sent back to you.

Progress reports:

Where we have registered a restraint order on your behalf we will periodically review our file to ascertain whether it is necessary for the registration to continue. We will expect you to do the same. It is essential that you keep us informed of progress in your case.

(11) EVIDENCE RELATING TO INSIDER DEALING OF COMPANY SHARES

Assistance can be provided under the Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1996 as amended, (“the Insider Dealing Law”) to the authorities in foreign jurisdictions in investigations into insider dealing in company shares. Before help can be given HM Attorney General must be satisfied that there are circumstances suggesting that an offence of insider dealing has been committed under the Insider Dealing Laws of another jurisdiction and that a person in the Bailiwick:

- (a) may be concerned (either directly or indirectly) in the commission of an insider dealing offence; **or**
- (b) may have information or documents which may be of assistance in the investigation of an insider dealing case.

Following an amendment to the Insider Dealing Law in 2001 it is possible to assist both prosecutors **and** financial services regulatory bodies.

Requests for assistance:

Requests for assistance on insider dealing investigations should be made by letter of request to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355

Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make applications for assistance under the Insider Dealing Law and will be pleased to examine and comment on draft Letters of Request before they are formally sent.

Letters of request may be sent by fax but a hard copy should then follow by way of post or courier.

Contents of letters of request:

The letter of request should contain the following:-

- (a) the identity of the person making the request and confirmation that he is authorised to make it;
- (b) details of the offence under investigation and why it is believed that there is information which may be of help in the Bailiwick; and
- (c) details of the person or institution believed to hold relevant information.

Translation of letters of request:

If your letter of request is not in the English language, it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

Procedure following receipt of the letter of request:

If HM Attorney General is satisfied that that assistance should be provided, he will usually appoint two Inspectors. One will be a lawyer from the criminal team in the Chambers of the Law Officers of the Crown, and the other either a Police Officer or an official from the Guernsey Financial Services Commission (the Bailiwick's financial services regulator).

The Inspectors have the power to question persons believed to hold relevant information and to require the production and copying of documents. Once their enquiry is complete the Inspectors will prepare a report for HM Attorney General.

If HM Attorney General is satisfied that the material produced to the Inspectors is likely to be of relevance to criminal proceedings or an investigation in your jurisdiction related to insider dealing, he is able to send the material to either prosecuting **or** supervisory authorities. HM Attorney General is able to impose conditions, for example, that the material provided will only be used for the proceedings or investigation which was the subject of your request unless his prior consent is obtained to other use being made of it.

The time it takes to process an application under the Insider Dealing Law:

Normally the procedure under the Insider Dealing Law should be completed speedily. If information in another Jurisdiction is not held to the order of the person or institution in Guernsey on whom a notice has been served we will advise you of the need to seek assistance in that other Jurisdiction.

If your request is extremely urgent then you should specifically draw our attention to this and explain why it is urgent and why a request has not been made at an earlier date. Every effort will be made to complete the procedure as quickly as possible.

In order that we can deal with all requests on a timely basis it is important that a request is only categorised as urgent when it is truly urgent.

Disclosure to a third party of information:

If for any reason you want to make available to a third party some or all of the material which you have obtained in the Bailiwick, you must first seek in writing, the permission of HM Attorney General. Please state clearly what material it is you wish to pass on, to whom, and for what purpose. If the release of the material is authorised then the third party will need to provide their own separate undertaking as to the use to which they intend to put the material and that it will not be disclosed further without the consent of HM Attorney General.

(12) THE SERVICE OF PROCESS, ETC.

The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 allows for the service in the Bailiwick of the following documents issued in your jurisdiction:-

- (a) a summons or other form of process which requires a person to appear as a defendant or attend as a witness in criminal proceedings; or
- (b) a document issued by a court recording a decision in criminal proceedings.

Who can make an application:

An application for the service of documents can only be made by your government or any other authority authorised to make a request for service.

How to make a request for service:

You should send the document which you would like served along with sufficient details to identify the person to be served to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355
 Fax: 00 44 (0)1481 725439

When making a request you should indicate if you would like the document served personally or whether service by ordinary post would be sufficient for your purposes.

The procedure for service:

If you require your document to be served personally HM Attorney General will ask the relevant court official (HM Sergeant or the equivalent officers in Alderney or Sark) to serve it and to obtain a receipt signed by the person on whom it was served. If it is not possible to obtain a signed receipt the official will provide a certificate of service. The receipt or certificate of service will be sent back to you.

Every effort will be made to effect service on your behalf. However, there will be some cases where the person has moved away from the Bailiwick and as a result service will not be achieved.

The legal effect of the service of a document:

It is important that you realise that when a document is served using the procedure described the person on whom the document is served is not under any obligation under our Law to comply with any instructions contained within the document. This does not of course prevent you taking action with regard to the person concerned should he ever travel to your jurisdiction.

(13) THE TRANSFER OF PRISONERS FOR THE PURPOSE OF GIVING EVIDENCE, ETC.

The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 allows for the transfer of a prisoner being held in Guernsey to another jurisdiction for the purposes of:-

- (a) giving evidence in criminal proceedings there; or
- (b) being identified in or otherwise assisting criminal proceedings or the investigation of an offence.

The prisoner must consent to this transfer.

Requests for the Transfer of a Prisoner:

If you believe that a prisoner being held in Guernsey's Prison could provide assistance to a criminal investigation or trial in your jurisdiction you should send a letter of request to:-

HM Attorney General
 The Chambers of the Law Officers of the Crown
 St. James' Chambers
 St. Peter Port
 Guernsey
 Channel Islands
 GY1 2PA

Tel: 00 44 (0)1481 723355
 Fax: 00 44 (0)1481 725439

The members of the criminal team in the Chambers of the Law Officers of the Crown are willing to give advice on how to make an application for the transfer of a prisoner and will be pleased to examine draft letters of request before they are formally sent.

The contents of the letter of request:

Your letter of request should contain:-

- (a) The identity of the person making the application and confirmation that he is authorised to make it;
- (b) the identity of the prisoner being held in Guernsey you believe will be able to give evidence or otherwise be of assistance to you;
- (c) the details of the facts of the case under investigation or subject to court proceedings;
- (d) the assistance you believe the prisoner being held in Guernsey can provide;
- (e) where it is proposed that the prisoner transferred to your jurisdiction will be held; and

- (f) an undertaking signed by the person in charge of the investigation or prosecution stating that the prisoner will be returned to Guernsey once he has given evidence or provided the assistance required.

Translation of letters of request:

If your letter of request is not in the English language it should be accompanied by a full English translation. If it is not possible to understand the letter of request, it will be sent back to you.

Procedure following receipt of a request to transfer:

Following receipt of your request a member of the criminal team in the Chambers of the Law Officers of the Crown will contact the Guernsey Police and Prison authorities to ascertain whether the prisoner identified in the request is willing to be transferred and provide the assistance asked for. The prisoner will be informed of his right to have independent legal advice and if necessary an Advocate will be appointed to advise him and look after his interests.

If the prisoner indicates that he is willing to agree to be transferred he will be asked to sign a declaration confirming his consent. An application will then be made to the Bailiff (Senior Judge) for a warrant permitting the transfer of the prisoner to your jurisdiction.

Once the prisoner has confirmed his consent to be transferred, it cannot be withdrawn after the Bailiff has issued his warrant.

The Guernsey Police and Prison authorities will be responsible for making the arrangement with you for the transfer of the prisoner.

(14) THE EVASION OF TAX

The Bailiwick authorities are willing and often have provided assistance to other jurisdictions which are conducting enquiries into the fraudulent evasion of tax.

We treat requests concerning fiscal offences in exactly the same way as other types of crime. In view of this we will not reject requests for assistance in criminal investigations into fiscal offences under the Criminal Justice (Fraud Investigations) (Bailiwick of Guernsey) Law, 1991 (see Section 3) and the Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001 (see Section 6).

ANNEXE I

**Enforcement of external confiscation orders
Countries Designated under the Drug Trafficking (Bailiwick of Guernsey) Law, 2000**

Afghanistan	Cuba
Albania	Cyprus
Algeria	Costa Rica
Andorra	Cote d'Ivoire
Anguilla	Croatia
Antigua & Barbuda	Czech Republic
Argentina	Denmark
Armenia	Djibouti
Australia	Dominica
Austria	Dominican Republic
Azerbaijan	Ecuador
Bahamas, The	El Salvador
Bahrain	Estonia
Bangladesh	Ethiopia
Barbados	Fiji
Belarus	Finland
Belgium	France
Belize	Gambia
Bermuda	Georgia
Bhutan	Germany
Bolivia	Ghana
Bosnia & Herzegovina	Gibraltar
Brazil	Greece
British Virgin Islands	Grenada
Brunei Darussalam	Guatemala
Bulgaria	Guinea
Burkina Faso	Guinea-Bissau
Burundi	Guyana
Cameroon	Haiti
Canada	Honduras
Cape Verde	Hong Kong, special administrative region
Chad	Iceland
Chile	India
China	Indonesia
Colombia	Iran
Comoros	Ireland, Republic of

Isle of Man	Pakistan
Italy	Panama
Jamaica	Paraguay
Japan	Peru
Jersey	Philippines
Jordan	Poland
Kenya	Portugal
Korea	Qatar
Kuwait, Republic of	Romania
Kyrgyzstan	Russian Federation, The
Latvia	Saint Kitts & Nevis
Lebanon	Saint Lucia
Lesotho	Saint Vincent & The Grenadines
Libya	San Marino
Lithuania	Sao Tome & Principe
Luxembourg	Saudi Arabia
Macedonia, The Former Yugoslav	Senegal
Madagascar, Republic of	Seychelles
Malawi	Sierra Leone
Malaysia	Singapore
Maldives, The	Slovakia
Mali	Slovenia
Malta	South Africa
Mauritania	Spain
Mauritius	Sri Lanka
Moldova	Sudan
Monaco	Suriname
Montserrat	Swaziland
Morocco	Sweden
Mozambique	Switzerland
Myanmar	Syrian Arab Republic
Nepal	Tajikistan
Netherlands	Thailand
Netherlands Antilles and Aruba,. The	Togo
New Zealand	Trinidad & Tobago
Nicaragua	Tunisia
Niger	Turkey
Nigeria	Turkmenistan
Norway	Turks and Caicos Islands
Oman	Uganda

Ukraine

United Kingdom

United Arab Emirates

United Mexican States

United States of America

Uruguay

Venezuela

Vietnam

Yemen

Yugoslavia, the Federal Republic

Zambia

Zimbabwe

ANNEXE II

**Enforcement of external confiscation orders
Countries Designated under the Criminal Justice (Proceeds of Crime)
(Bailiwick of Guernsey) Law, 1999**

Albania	Liechtenstein
Andorra	Lithuania
Antigua and Barbuda	Macedonia, the Former Yugoslavia Republic of
Australia	Maldives, The
Austria	Malta
Belgium	Mauritius
Bhutan	Netherlands Antilles and Aruba, The
Bulgaria	Netherlands
Canada	Nigeria
Colombia	Norway
Croatia	Poland
Cyprus	Portugal
Czech Republic, The	Romania
Denmark	Russian Federation, The
Djibouti	San Marino
Estonia	Slovakia
Finland	Slovenia
France	Spain
Germany	Sweden
Greece	Switzerland
Hong Kong	Thailand
Hungary	Trinidad and Tobago
Iceland	Ukraine
India	United Kingdom
Ireland, Republic of	United Mexican States
Isle of Man	United States of America
Italy	
Jersey	
Kuwait	
Latvia	

ANNEXE III

**Enforcement of external orders regarding the instrumentalities of crime
Countries designated under the Drug Trafficking (Bailiwick of Guernsey) Law, 2000**

Afghanistan	Croatia
Algeria	Cuba
Anguilla	Cyprus
Argentina	Czech Republic, The
Armenia	Denmark
Australia	Dominica
Austria	Dominican Republic
Azerbaijan	Ecuador
Bahamas, the	Ethiopia
Bahrain	Egypt
Bangladesh	El Salvador
Barbados	Finland
Belgium	France
Belize	Gambia
Bermuda	Germany
Bhutan	Ghana
Bolivia	Gibraltar
Bosnia and Herzegovina	Greece
Brazil	Grenada
British Virgin Islands	Guatemala
Brunei	Guinea
Burma	Guinea-Bissau
Cameroon	Guyana
Canada	Haiti
Cape Verde	Honduras
Cayman Islands, The	Hong Kong, the special administrative region
Chad	Hungary
Chile	India
China	Isle of Man
Colombia	Italy
Costa Rica	Ivory Coast

Jamaica	Senegal
Jersey	Seychelles
Jordan	Sierra Leone
Kyrgyzstan	Slovakia
Latvia	Spain
Lesotho	Sri Lanka
Lithuania	Sudan
Luxembourg	Swaziland
Macedonia, The former Yugoslav	Sweden
Madagascar	Switzerland
Malawi	Syria
Malaysia	Tajikistan
Mali	Thailand
Mauritius	Togo
Moldova	Trinidad and Tobago
Monaco	Tunisia
Montserrat	Turkey
Nepal	Turkmenistan
Netherlands	Turks and Caicos Islands
Nicaragua	Uganda
Nigeria	United Arab Emirates
Norway	United Kingdom
Oman	United Mexican States
Pakistan	United States of America
Paraguay	Uruguay
Peru	Uzbekistan
Poland	Venezuela
Portugal	Yemen
Qatar	Yugoslavia
Russian Federation, The	Zambia
Saint Kitts and Nevis	Zimbabwe
Saint Lucia	
Saint Vincent and The Grenadines	
Sao Tome and Principe	
Saudi Arabia	

ANNEXE IV

**Enforcement of external orders regarding the instrumentalities of crime
Countries designated under the Criminal Justice (International Co-operation)
(Bailiwick of Guernsey) Law, 2001**

Andorra	Latvia
Australia	Lithuania
Austria	Macedonia, the Former Yugoslavia Republic
Belgium	Malta
Bulgaria	Netherlands Antilles and Aruba, The
Canada	Netherlands
Croatia	Nigeria
Cyprus	Norway
Czech Republic, The	Poland
Denmark	Portugal
Estonia	Romania
Finland	San Marino
France	Slovenia
Germany	Spain
Greece	Sweden
Hungary	Switzerland
Iceland	Thailand
India	Trinidad and Tobago
Ireland, Republic of	Ukraine
Isle of Man	United Kingdom
Italy	United Mexican States
Jersey	United States of America

ANNEXE V

**Countries designated under the Terrorism and Crime
(Bailiwick of Guernsey) Law, 2002**

Austria
Belgium
Canada
Denmark
Finland
France
Germany
Greece
India
Ireland, Republic of
Italy
Japan
Luxembourg
Netherlands, the
Portugal
Spain
Sweden
United Kingdom
United States of America

LIST OF ADVOCATES PRACTICES

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