

Civil Asset Recovery

I. Before you start

Types of assistance

1. In broad terms, under Guernsey's legal framework HM Procureur can assist other jurisdictions with the following –
 - a. obtaining documentary and oral evidence and information for use in civil forfeiture investigations in the requesting state;
 - b. freezing assets that are the subject of a civil forfeiture investigation or proceedings in the requesting state; and
 - c. enforcing forfeiture orders made in the requesting state.

Definitions

2. In Guernsey law,
 - a. a civil forfeiture investigation is an investigation in the requesting state into whether specific assets are the proceeds of unlawful conduct or are intended for use in unlawful conduct, with a view to taking non-conviction based proceedings for the forfeiture of the assets in the requesting state;
 - b. an overseas forfeiture is a court order made in non-conviction based proceedings in the requesting state for the forfeiture of assets that are found by the court to be the proceeds of unlawful conduct or are intended for use in unlawful conduct; and
 - c. unlawful conduct is subject to dual criminality, as it means conduct that;
 - i. is a criminal offence under the law of the jurisdiction where it occurs; **and**
 - ii. would be a criminal offence under Guernsey law if it had occurred in Guernsey

Jurisdictions that can be assisted

3. Guernsey's civil forfeiture legislation provides for assistance to be provided to designated jurisdictions. The following jurisdictions are currently designated:
 - a. England and Wales;
 - b. Scotland;
 - c. Northern Ireland;
 - d. United States of America;
 - e. Brazil; and
 - f. Colombia.
4. If your jurisdiction has not been designated, please contact the MLA Team to discuss the information you may be able to provide that would allow a designation to be made.
5. HM Procureur accepts LORs directly from the following authorities in your jurisdiction:
 - a. a court or tribunal exercising jurisdiction in civil forfeiture proceedings;
 - b. an authority responsible for making applications in civil forfeiture proceedings;
 - c. another authority that HM Procureur deems to exercise such functions.

6. The LOR must relate to:
 - a. civil forfeiture proceedings that have been instituted in your jurisdiction; or
 - b. a civil forfeiture investigation that is being carried on in your jurisdiction.

II. The Letter of Request (LOR)

The letter generally

7. Each LOR should include the following information:
 - a. the identity of the person making the request, and confirmation that that person is authorised to make it;
 - b. confirmation that a civil forfeiture investigation or civil forfeiture proceedings have commenced, and that the request is being made in support of that investigation and/or proceedings;
 - c. details of the assets under investigation and/or in respect of which civil forfeiture proceedings have been instigated;
 - d. the name(s) and details of any person or entity by whom (or on behalf of whom) the assets are held;
 - e. a description of the facts and current status of the case;
 - f. exact details of the assistance required;
 - g. copies of the relevant provisions of your criminal and civil forfeiture laws;
 - h. the date by which you wish the assistance to be provided, and if you consider your request should be treated as urgent, precise reasons as to why; and
 - i. confirmation that your jurisdiction would provide the reciprocal assistance that is sought in your LOR.
8. It is very important that the LOR contains sufficient information. We will need to use this to determine whether we are able to assist, and if so, to determine how we can best obtain what you need.
9. Depending on the type of assistance requested, there may be further requirements. These are outlined in section III of this Part below.

Undertakings to be given

10. All requests for evidence must be accompanied by an undertaking which sets out the purpose for which any evidence provided may be used. The signed undertaking is set out in Annex C.
11. The undertaking should be signed by a senior officer of the investigating agency or, where appropriate, an examining magistrate or the person responsible for the conduct of the investigation or proceedings.
12. Where an undertaking is required, an MLA Request will not be processed until the MLA Team receives the undertaking.

III. Types of Requests and additional requirements for each

13. After HM Procureur receives an MLA Request, Guernsey law provides a number of ways for the MLA Team to procure the material you have requested. The additional information this section asks you to provide in the LOR helps us fulfil your request as efficiently as possible.

A. Documentary evidence

14. Please set out in the LOR the grounds on which you believe that:

- a. the assets you specify are the proceeds of unlawful conduct or intended for use in unlawful conduct;
- b. the person you specify is in possession of the documents or information you seek;
- c. the documents or information you seek would be of substantial value to your investigation; and
- d. it is in the public interest for the information to be obtained.

15. Please confirm the types of documents required and the relevant date range for which material is needed (limited to relevance to the period of unlawful conduct and subsequent movement of the assets). You should also explain how having these documents will assist your investigation, and if not having them may prejudice your investigation.

16. Further to the standard documents available from banks and other financial institutions, we can also help with customer information orders and account monitoring orders (up to 90 days). Please provide the full name and address of the financial institution, any details you have about relevant accounts (such as account numbers), and the types of documents you require.

17. If you require the material to be obtained by way of a search warrant (for example, because there is a real danger the financial institution or witness may destroy documents), please state the location to be searched, the material to be seized, and the exact reasons for believing that a search warrant is necessary. In particular, there would need to be strong grounds for suggesting that evidence or documents might be destroyed by reputable law firms, banks or other institutions that are subject to Guernsey's rigorous regulatory, licensing and supervisory regimes.

18. Please state whether you need documentary evidence to be accompanied by a witness statement. If you need a witness statement, please also read section B below (*Oral evidence*).

19. Under your law it may be necessary for documents to be authenticated in a particular way. If that is the case, please let us know what is required. We normally provide photocopies of documents, and please let us know if they require certification, sealing or other formalities. Please do not make such a request unless it is a legal requirement.

B. Oral evidence (including sworn evidence)

20. In the context of a Civil Forfeiture Investigation, HM Procureur can assist with applying for an order from the Royal Court to require persons to answer questions at a specified time and place.

21. If you require oral evidence, please set out in the LOR the grounds on which you believe that:

- a. the money you are investigating is the proceeds of unlawful conduct or intended for use in unlawful conduct;
 - b. imposing compliance with the order is likely to yield substantial value to your Civil Forfeiture Investigation; and
 - c. it is in the public interest for the information to be obtained.
22. Because an application seeking this order lies outside of the criminal regime, information obtained as a result cannot generally be used in criminal proceedings.

C. Freezing assets

23. Upon a request, assets can be frozen to prevent their removal from the jurisdiction. In Guernsey, this is an application that must be made by HM Procureur to the Royal Court, which can provide the order only if various conditions are met.
24. The LOR should include details of the following:
- a. the details of the bank account within Guernsey that you wish to be frozen;
 - b. grounds for suspecting the funds are:
 - i. proceeds of unlawful conduct; or
 - ii. intended by any person for use in unlawful conduct;
 - c. whether civil forfeiture proceedings have been commenced in your jurisdiction, or your grounds for believing that a civil forfeiture application may be made;
 - d. whether a request will later be made to Guernsey for enforcement of any civil forfeiture order that may be made; and
 - e. confirmation that the value of the relevant assets exceeds £1,000.
25. Freezing orders under the Civil Forfeiture Law expire after four months, unless extended by a further application to the Court. We will therefore require periodic progress reports from you to ascertain whether or not it is appropriate to seek an extension of the freezing order. If we do not receive timely responses to requests for updates on the progress of investigations and/or proceedings in your jurisdiction we will not be able to maintain the freezing order.

D. Enforcement of external forfeiture orders

26. Your external forfeiture orders can be registered in Guernsey's Royal Court upon the application of HM Procureur. After such registration, your forfeiture order would be enforceable in all respects as if it were an order of the Royal Court of Guernsey, without the right to appeal.
27. The LOR should include the following further information:
- a. A copy of the civil forfeiture order issued in your jurisdiction. If the order is not in English a translation should be provided;
 - b. Confirmation that at the time of your LOR the external civil forfeiture order is in force and is not subject to appeal;
 - c. Details of the assets subject to the forfeiture order that is believed to be in Guernsey, including details of who holds the money and how it is believed the money came to be in Guernsey;

- d. If you believe that the money is held by a particular bank or financial institution, the full name and address of the bank or institution and any details that you have about relevant accounts (including account numbers).

Relevant legislation

The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, particularly ss. 3, 10, 18, 20–22, 28–29 35–36, 41–42, 47, 49, 53 and 60.