



Requests for Mutual Legal Assistance in the Turks and Caicos Islands

**Guidelines for authorities outside of the Turks and
Caicos Islands (TCI)**

2nd Edition – May 2018

Contents

SECTION 1: INTRODUCTION	5
The role of competent authorities in the TCI	5
When MLA requests to the TCI are appropriate	6
Types of MLA that can be provided	6
Countries which the TCI can assist	6
Reciprocity	6
Confidentiality	6
SECTION 2: HOW TO MAKE A REQUEST FOR MLA	8
Prior to making an MLA request	8
Proportionality / <i>de minimis</i> requests	8
Who can send a Letter of Request (LOR)	8
Format of a request	8
Language of requests	8
What must be included in a LOR	8
Where to send MLA requests	10
Requesting more than one form of MLA where restraint or confiscation is involved	11
Timescales in executing a request	11
Urgent requests for assistance	11
Costs for MLA requests	11
Notification where assistance is no longer required	12
Transmission	12
Supplementary requests	12
Queries about requests	12
SECTION 3: FORMS OF MLA THE TCI CAN PROVIDE	13
Legislative Framework for processing Requests	13
I. REQUESTS FOR ASSISTANCE UNDER THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (TURKS AND CAICOS ISLANDS) ORDER	13
Making an application under the EPOJO	13
Civil Proceedings	14
Criminal Proceedings	14
International Proceedings	15
Processing of Request	15

II. REQUESTS FOR ASSISTANCE FROM THE TCI UNDER THE CRIMINAL JUSTICE (INTERNATIONAL COOPERATION) ORDINANCE	16
Search & Seizure.....	17
External Forfeiture Orders under CJICO	18
What is needed for the application	18
Restraint Orders under CJICO	19
What is needed for the application	19
Form of affidavit.....	19
Legal principles	20
III. REQUESTS FOR ASSISTANCE UNDER THE PROCEEDS OF CRIME ORDINANCE.....	21
Restraint Orders under POCO	21
What is needed for the application	21
Form of affidavit.....	22
Legal principles	22
External Forfeiture Orders under POCO	23
What is needed for the application	23
Production Orders under POCO.....	24
IV. REQUESTS FOR ASSISTANCE UNDER THE MUTUAL LEGAL ASSISTANCE (USA) ORDINANCE	27
V. REQUESTS FOR ASSISTANCE UNDER THE TAX INFORMATION (EXCHANGE AND MUTUAL ADMINISTRATIVE ASSISTANCE) ORDINANCE (and other Ordinances relating to Tax Information Exchange) - (TIEO)	28
Countries which the TCI can assist.....	28
Making the request.....	28
Types of Assistance that may be given.....	29
Providing Information	29
Automatic and Spontaneous Exchange of Information	29
Search & Seizure.....	29
Interviews by Representatives of another Country	30
Confidentiality	30
Referrals to the Attorney General	31
OTHER REQUESTS FOR MUTAL LEGAL ASSISTANCE	32
Service of Process Documents	32
Requests for Service of Process / Procedural Documents	32
Additional information to include in an MLA service of process request.....	32

SECTION 4: OFFICERS PRESENT FROM THE REQUESTING STATE AND TRANSMISSION OF EVIDENCE	33
Officers from the Requesting State present at the execution of a MLA request.....	33
Notifying the TCI of law enforcement officers travelling to the TCI.....	33
Transmission of evidence.....	33
SECTION 5: MLA REQUESTS FROM THE TCI	34
SECTION 6: REQUESTS FOR INTELLIGENCE	35
How to make requests for intelligence from a TCI law enforcement agency	36
Assistance which can be requested from the TCI via Police to Police or FIU to FIU enquiries.....	36
Assistance which cannot be requested from the TCI via Police to Police enquiries.....	36
Assistance from the Integrity Commission.....	37
Contacting witnesses in the TCI	37
SECTION 7: REQUESTS FOR CRIMINAL RECORDS	38
Where to send requests	38
Requests for Certificate of Conviction / Memorandum of Conviction.....	38
Requests for Transcripts / Sentencing Remarks	39
SECTION 8: INFORMATION ABOUT COMPANIES	40
SECTION 9: CIVIL MATTERS	41
Requests for Service of Process / Procedural Documents	41
ANNEX A.....	43
<i>Designated Countries pursuant to Section 10 of the CJICO</i>	<i>43</i>

SECTION 1: INTRODUCTION

Mutual Legal Assistance (“MLA”) is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country. Due to the increasingly global nature of crime, MLA is critical to criminal proceedings and ensuring justice for victims of crime. The TCI is committed to assisting investigative, prosecuting and judicial authorities in combating international crime and is able to provide a wide range of MLA.

These guidelines are to ensure that requests for MLA received by the TCI can be executed quickly and efficiently. The guidelines include:

- Guidance to authorities who wish to make a formal request for MLA **to the TCI** (“requesting authorities”);
- Guidance to authorities on what can be requested **from the TCI** without making a formal request for MLA;
- Guidance on which authorities **in the TCI** can send a formal request for MLA abroad.

The role of competent authorities in the TCI

By virtue of the wide array of laws within the TCI and the extensive ambit of these laws, the competent authorities and the courts of the TCI have a full range of legal resources to deal with international requests for assistance. Competent authorities have the function of receiving, acceding to and ensuring the execution of MLA requests. All formal requests for assistance must be sent to a TCI competent authority for processing. The TCI has four competent authorities:

- The Governor for MLA requests under the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order
- The Attorney General, under the Criminal Justice (International Cooperation) Ordinance, the Proceeds of Crime Ordinance and the Prevention of Terrorism Ordinance
- Chief Magistrate under the Mutual Legal Assistance (USA) Ordinance
- The Director of Exchange of Information under the Tax Information (Exchange and Mutual Administrative Assistance) Ordinance.

In addition to the competent authorities, there are a number of other authorities that deal with MLA matters:

- The Financial Intelligence Agency (FIA)
- Financial Services Commission (FSC)
- The Integrity Commission (IC)
- The Royal Turks and Caicos Islands Police Force (RTCIPF)

When MLA requests to the TCI are appropriate

A request for MLA in criminal matters is only appropriate if evidence (as opposed to intelligence) from the TCI is required for a criminal matter.

Requests for intelligence can be made on a FIU to FIU basis, or police to police basis and a different process for this is followed. Please refer to Section 6 of this guide for how to make a request for intelligence from the TCI.

Requests for assistance in civil matters are dealt with via a different process, as explained in Section 8 of this guidance.

Types of MLA that can be provided

There is a wide range of MLA that can be provided by the TCI conditional on the correct criteria being met. Please refer to Section 3 of this guide for information about each of the different types of MLA.

Countries which the TCI can assist

The TCI can assist any country or territory in the world, whether or not that country is able to assist the TCI. The TCI can provide most forms of legal assistance without bilateral or international agreements.

However, where a bilateral or international agreement imposes specific conditions or procedures on the provision or requesting of MLA, the TCI expects such conditions or procedures to be adhered to.

Reciprocity

The TCI does not generally require reciprocity¹ but would expect assistance from countries which are parties to relevant bilateral or international agreements with the TCI. The TCI would also expect reciprocity from countries to which we give assistance without a treaty or international agreement. Reciprocity is required in all requests for assistance in indirect tax matters.

Confidentiality

In line with established international practice, the competent authorities will neither confirm nor deny the existence of an MLA request, nor disclose any of its content outside government departments, agencies, the courts or enforcement agencies in the TCI without the consent of the requesting authority. Requests are not disclosed further than is necessary to obtain the co-operation of the witness or other person concerned. However, a Letter of Request (LOR, see Section 2) can be disclosed in connected TCI proceedings if the request has been fully executed.

¹ Section 29 (5) of the Financial Services Commission provides that one of the conditions which will be taken into consideration in deciding whether or not to give a foreign regulatory body assistance is whether the request relates to the breach of a law, or other requirement, which has no close parallel in the Islands or involves the assertion of a jurisdiction not recognised by the Islands.

From time to time, the TCI competent authorities release statistical data on the number of MLA requests sent and received. Such data is only released where to do so would not breach the confidentiality of any individual request.

To the extent permitted by TCI law, evidence obtained from foreign jurisdictions pursuant to an MLA request will not be used in the TCI for any other purpose other than that specified in the request without the consent of the foreign jurisdiction.

SECTION 2: HOW TO MAKE A REQUEST FOR MLA

Requests for MLA must be sent to one of the TCI's competent authorities. This section gives information on what should be contained within a Letter of Request (LOR) and where it should be sent. However, this should be read in conjunction with Section 3 as the contents of the LOR are dependent on the type of assistance required by the requesting authority.

Prior to making an MLA request

It is possible, and often desirable, for overseas authorities to use FIU to FIU, police to police enquiries (for intelligence) or other intelligence sharing networks prior to making an MLA request. This can help improve the quality of the MLA request and the subsequent service received. Please refer to Section 6 (Requests for Intelligence) for more information.

Proportionality / *de minimis* requests

Please ensure that the request is proportionate (i.e. the request for assistance is proportionate to the level of crime being investigated), particularly for intrusive and time-consuming measures (such as search warrants and other court-ordered assistance). The TCI is a small jurisdiction and the Police force will have to prioritise the execution of MLA requests alongside domestic work. Consequently, and given the limited resources available to TCI law enforcement, *de minimis* cases (requests for minor or trivial offences), are unlikely to be prioritised and we would urge requesting countries to consider the need for the evidence in question.

Cases are evaluated in their entirety. Priority will instead be granted to requests that involve:

- Serious criminal offences (e.g. murder or other crimes of violence, organized crime, terrorism, corruption, or wide-scale fraud)
- Evidence that is at risk of being concealed or destroyed
- Ongoing offences or where the safety of witnesses or the public is at risk
- An imminent trial date

Who can send a Letter of Request (LOR)

Any competent body under the law of the requesting country may make a request to the TCI.

Format of a request

These must always be made in writing and should be sent via the courier or email in urgent cases. However, LORs to the Governor must be sent through diplomatic channels to His Excellency the Governor of the Turks and Caicos Islands.

Language of requests

All LORs should be in English. Requests not in English must be accompanied by translated copies. If an English translation is not provided, the request will be sent back to the requesting authority.

What must be included in a LOR

Please observe the following conditions when sending a request to the TCI:

- Headed notepaper of the issuing authority must be used
- The request must be signed by the issuing authority
- For requests made in the English language; one signed hard copy
- For requests not made in the English language; one signed hard version of the non-English request and one translation of the request into English.

The LOR must include the following (if applicable):

- Details of the authority making the request, including the name, telephone number and email address (where available) of a contact person;
- Purpose for which assistance is sought;
- The type of assistance being requested (for example, if this is a request for evidence, service of process or enforcement of restraint and confiscation, etc) and any additional information that is required for requests of this type of assistance (see Section 3 of these guidelines);
- A description of the offences charged or under investigation and sentence or penalty;
- A copy or the text of the legislation that criminalises the conduct in the requesting country and gives information on the offence, penalty and rights a person may be afforded;
- A summary of the facts giving rise to the request and connection this case has to the TCI;
- Details of the person or persons (including legal) named in the request including, where available, address, date of birth and nationality;
- Details of the location of a company / person evidence is needed from;
- If a person needs to be visited, state whether they are a witness or a suspect;
- The name of the suspect and what they are being charged with;
- The connection between the evidence requested and the offence under investigation or proceedings. A clear nexus (direct link) must be established between the facts of the case as detailed in the request and the evidence requested. This goes further than just stating that the requested material is relevant to the case and should specify how it is relevant and will assist the prosecution of the case;
- Relevant dates e.g. date of court hearing (reason for special urgency or attention should be included in the covering letter of request);
- Details, including the telephone number and e-mail address if available, of any British law enforcement agency or officers who are familiar with the investigation (including, if relevant, the names of any TCI based operations which the requesting authority is aware of)
- The title of the relevant convention or bilateral treaty under which the request is being made;
- If this is a request for evidence, specify exactly what evidence is required (e.g. not just „banking evidence“ but what kind of banking evidence);
- Confidentiality - the extent to which confidentiality applies;
- Details of any media attention, sensitivities or reasons for high profile interest in the case in the Requesting State.

Failure to provide the fullest information possible may result in delays or in a request not being executed in whole or in part.

Where to send MLA requests

- The Evidence (Proceedings in Other Jurisdiction) (Turks and Caicos Islands) Order should be directed to:

His Excellency The Governor
Governor's Office
Waterloo
Grand Turk
Turks and Caicos Islands

Fax: +649 946 2903
Telephone: +649 946 2309
Email: governorgt@fco.gov.uk

- General MLA requests and LORs and requests pursuant to Criminal Justice (International Cooperation) Ordinance, Proceeds of Crime or Anti-money Laundering, Prevention of Terrorism requests should be directed to:

The Attorney General
Attorney General's Chambers
Grand Turk
Turks and Caicos Islands

Fax: +649 946 1329
Telephone: +649 338 3281
Email: AG_Chambers@gov.tc

- Requests pursuant to the Mutual Legal Assistance (USA) Ordinance to:

The Chief Magistrate
Supreme Court Building
Providenciales
Turks and Caicos Islands

Fax: +649 946-5493
Tel: +649 338-4201
Email: tajackson@gov.tc

- Tax Information Exchange requests to:

Director of Exchange of Information
Exchange of Information Unit
Wilma House, Hibiscus Square

Pond Street
Grand Turk
Turks and Caicos Islands

Tel: (649) 338-2065

Fax: (649) 946-2686

Email: HSaunders@gov.tc

Requesting more than one form of MLA where restraint or confiscation is involved

Consideration should be given as to whether it is appropriate to separate out requests for restraint and confiscation in the same case. In the TCI it is often easier to prepare the court papers when the request for restraint or confiscation is separate from the other forms of MLA requested. However, if it is made as a separate request this should be sent at the same time as the initial request (if possible).

Timescales in executing a request

This will depend on the nature of the request. Competent authorities will take into account any reasons for urgency such as statutory and/or custody time limits, pre-trial court appearances or trial dates which are clearly stated in the request. The requesting authority should also update the competent authority on any changes to these which will impact on the request.

The authorities in the TCI aim to take initial action as quickly as possible. Initial actions will include acknowledging receipt of the request and providing the requesting authority with the name of the executing authority, the contact person in that authority and their contact details. Failure to adhere to the advice in these guidelines may also cause delay to the execution of the request.

Urgent requests for assistance

If a LOR is urgent the competent authority will deal with the request as quickly as possible. Please adhere to the following when submitting an urgent request:

- Do not mark a request as urgent unless it is urgent
- Detail why a request is urgent. Examples of why a request may be urgent include: somebody is being detained in custody; somebody is due to be released from custody; there is an immediate risk to individuals; risk of dissipation of assets
- Clearly state any dates which need to be met
- Please inform the competent authority if the assistance is no longer needed so the use of our resources can be prioritized

Costs for MLA requests

Ordinarily, the TCI will meet the costs of executing an MLA request. Exceptions include:

- fees and reasonable expenses of expert witnesses;
- the costs of establishing and operating video-conferencing or television links and the interpretation and transcription of such proceedings;
- the costs of transferring persons in custody;
- the costs of obtaining transcripts of proceedings and judges' sentencing remarks; and
- costs of an extraordinary nature agreed with the requesting authority (these will be agreed before costs are incurred).

Notification where assistance is no longer required

Should the requested assistance no longer be required, the TCI authority should be informed immediately.

Transmission

The TCI does not require requests to come via diplomatic channels and competent authorities are happy to receive requests directly. However, the requesting authority will clearly need to comply with its own domestic laws relating to the transmission of requests.

Supplementary requests

MLA requests which relate to a previous LOR can be sent to the competent authority as a supplementary request. Any supplementary requests should include the following:

- a statement that this is a request for supplementary information
- the TCI authority's reference number for the previous request
- all the information relevant to a standard MLA request (see above), plus any further information relating to the specific type of request that it is.

Requesting authorities must include the original competent authority reference number on all follow-up correspondence or supplementary documents.

Queries about requests

Once a competent authority has received a request for MLA the request will be logged. The requesting authority will be written to with the details of the person assigned to progress the request. Any subsequent correspondence relating to the MLA request should be sent to the correct person. The TCI contact person should be informed if a request for assistance is no longer required, or if the case has been concluded by the requesting authority.

SECTION 3: FORMS OF MLA THE TCI CAN PROVIDE

This section details the form of the assistance the TCI can provide and the specific information which should be included in requests from foreign authorities according to the form of assistance sought.

Legislative Framework for processing Requests

There are five main laws in the TCI that govern how particular MLA requests are to be made and processed:

- I. The Evidence (Proceedings in Other Jurisdiction) (Turks and Caicos Islands) Order (“EPOJO”)
- II. The Criminal Justice (International Cooperation) Ordinance (“CJICO”)
- III. The Proceeds of Crime Ordinance (“POCO”)
- IV. The Mutual Legal Assistance (USA) Ordinance (“MLAO”)
- V. The Tax Information (Exchange and Mutual Administrative Assistance) Ordinance (“TIEO”)
- VI. Financial Intelligence Agency Ordinance (“FIAO”)

These laws set out the authority to which requests should be directed, the nature of the request that can be made and the procedures that will be followed in order to fulfill the request.

I. REQUESTS FOR ASSISTANCE UNDER THE EVIDENCE (PROCEEDINGS IN OTHER JURISDICTIONS) (TURKS AND CAICOS ISLANDS) ORDER

Section 10(3) of the United Kingdom's Evidence (Proceedings in Other Jurisdictions) Act 1975 provided for the extension of the Act or any part of the Act to (inter alia) the TCI by way of an Order in Council.

EPOJO came into force in the TCI on the 14th May 1995, and extended sections 1 to 3 and 5 to 7 and section 9 of the UK Act to the TCI.

The Order applies to both civil and criminal proceedings.

Making an application under the EPOJO

Overseas countries may request the assistance of the TCI under the EPOJO.

The letter of request must originate from a Court or Tribunal exercising jurisdiction in a country or territory outside the TCI.

The requesting court or tribunal must forward the letter of request to the Supreme Court of the TCI through His Excellency the Governor of the TCI, Government House, Grand Turk, Turks and Caicos Islands, British West Indies. The Governor is the Competent Authority for the purposes of requests under EPOJO.

In preparing the Letter of Request the requesting court should ensure that the nature of the proceedings commenced against a person or entity (whether civil or criminal) are described in detail, and in the case of criminal proceedings the precise criminal charge brought against the accused person should be particularised. Please refer to Section 2 for what must be contained in a LOR.

NOTE: Requests that do not satisfy the above criteria may result in delays and the Request may be returned for additional details.

Civil Proceedings

The letter of request must originate from a Court or Tribunal exercising jurisdiction in a territory outside the TCI. The request cannot be made by an overseas authority on behalf of the requesting court.

The evidence that is being requested must relate to civil proceedings instituted before the requesting court. In obtaining the evidence no particular steps may be taken by the Court outside of what could normally be taken in obtaining evidence in civil proceedings.

The following orders can be sought in a request under civil proceedings:

- the examination of witnesses, either orally or in writing;
- the production of documents specified in the Order
- the inspection, photographing, preservation, custody or detention of any property;
- the taking of samples of any property and the carrying out of any experiments on or with any property;
- the medical examination of any person; and
- the taking and testing of samples of blood from any person.

A person shall not be required to state what documents relevant to the proceedings to which the application for the order relates are or have been in his possession, custody or power.

A person cannot be compelled to give any evidence under an order that they would not have been compelled to give in civil proceedings in the TCI or in the country where the requesting court exercises its jurisdiction.

Criminal Proceedings

The letter of request must originate from a Court or Tribunal exercising jurisdiction in a territory outside the TCI. The request cannot be made by an overseas authority on behalf of the requesting court.

The evidence that is being requested must relate to criminal proceedings instituted before the requesting court. Evidence cannot be requested in criminal proceedings at the investigatory stage under this law.

The following orders can be sought in a request under criminal proceedings:

- the examination of witnesses, either orally or in writing;

➤ the production of documents

A person cannot be compelled to give any evidence under an order that they would not have been compelled to give in criminal proceedings in the TCI or in the country where the requesting court exercises its jurisdiction.

International Proceedings

The Governor may by order direct that the EPOJO also apply to international proceedings.

An order under this section may direct that the Perjury Acts of 1562 and 1728 shall have effect in relation to international proceedings to which the order applies as it has effect in relation to a judicial proceeding in the Supreme Court of the TCI.

International proceedings means proceeding before the International Court of Justice or any other court, tribunal, commission, body or authority (consisting of one or more persons) which in pursuance of any international agreement or any resolution of the General Assembly of the United Nations, exercises any jurisdiction or performs any functions of a judicial nature or by way of arbitration, conciliation or inquiry or is appointed (whether permanent or temporary) for the purpose of exercising any jurisdiction or performing any such functions.

Processing of Request

Upon receipt of the request by the Governor the request is transmitted to the Attorney General who will then instruct counsel in the Chambers to make the application under Order 70 of the Rules of the Supreme Court.

The application is made by way of an Originating Summons with supporting affidavit (prepared by Crown Counsel) and usually accompanied by a Draft Order setting out the nature of the relief sought and the manner in which the evidence sought is to be obtained (e.g. receipt of documents or taking of deposition).

If the application is granted by the Supreme Court judge, the procedure identified in the Order of the court will be followed and, in due course, the evidence will be transmitted by the Registrar of the Supreme Court to the Governor for transmission to the requesting Court.

II. REQUESTS FOR ASSISTANCE FROM THE TCI UNDER THE CRIMINAL JUSTICE (INTERNATIONAL COOPERATION) ORDINANCE

Designated countries may request the assistance of the TCI in criminal investigations and proceedings under the CJICO. (Please see Appendix A for list of countries) CJICO is limited to the prosecution of a drug trafficking offence and investigations into such an offence. It was enacted in order to enable the TCI to join with other countries in implementing the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and to provide for the seizure, detention and forfeiture of drug trafficking money imported or exported in cash. The provision relating to seizure, detention and forfeiture was repealed pursuant to section 151 of the Proceeds of Crime Ordinance. In practice, much of the applications under CJICO will now be made under the Proceeds of Crime Ordinance.

Mutual legal assistance may be given for any of the following purposes:

- a) effecting service of judicial documents under section 3 of CJICO;
- b) providing information and items of evidence under section 6 of CJICO;
- c) transferring a prisoner within the TCI to give evidence overseas under section 7 of CJICO;
- d) executing searches and seizures for material relevant to an overseas proceedings or investigation under section 9 of CJICO ;
- e) assisting in the enforcement of external forfeiture orders section 10 of CJICO; and
- f) taking evidence or statements from witnesses under Schedule 2 of CJICO.

A request should be made in writing in English to the Attorney General who is the Competent Authority of the TCI under this law.

A request should contain:

- (a) the identity of the party making the request;
- (b) the subject matter and nature of the investigation, prosecution or proceeding to which the request relates;
- (c) the name and functions of the persons conducting such investigation, prosecution or proceeding;
- (d) a summary of all relevant facts respecting the request, except in respect of requests for the purpose of service of judicial documents;
- (e) a description of the assistance sought and details of any particular procedure the requesting Party requires to be followed;
- (f) where possible, the identity, location and nationality of any person concerned; and
- (g) the purpose for which the evidence, information or action is sought.

To the extent necessary and possible, a request shall also include:

- (a) the identity and location of a person to be served, that person's relationship to the proceedings and the manner in which service is to be made;
- (b) a precise description of the place or person to be searched and of the articles to be seized;

- (c) a description of the manner in which any testimony or statement is to be taken and recorded;
- (d) a list of questions to be posed to a witness;
- (e) a description of any particular verifying document to be executed and submitted; and
- (f) any other information which may be brought to the attention of the Authority to facilitate its execution of the request.

The Authority may refuse to comply with a request:

- (a) if the request is not made in conformity with the requirements for the contents of a request;
- (b) if the request does not establish that there are reasonable grounds for believing-
 - i. that the criminal offence specified in the request has been committed; and
 - ii. that the information sought relates to the offence and is located in the Islands;
- (c) if the authorities in the TCI would be prohibited by any law of the Islands from carrying out the action requested with regard to any similar offence in the Islands; or
- (d) if it is contrary to the laws of the TCI to grant mutual legal assistance in the circumstances to which the request relates.

Search & Seizure

If deemed necessary in pursuance of a request for mutual legal assistance, the Governor may give a direction that an application for the issue of a search warrant be made to the Magistrate's Court.

The Magistrate's Court may make an order that documentation be produced pursuant to the request of an overseas country if it is satisfied that the following conditions have been met:

- (a) Criminal proceedings for an offence corresponding to a drug trafficking offence have been instituted against a person in a overseas country or that a person has been arrested in the course of a criminal investigation carried on there into such an offence; and
- (b) There are reasonable grounds for suspecting that the material to which the application relates-
 - i. is on premises in the Islands occupied or controlled by that person; and
 - ii. does not consist of or include items subject to legal privilege.

If the court is satisfied that the above conditions are fulfilled, it may issue a warrant authorising a constable to enter and search those premises and seize any such evidence found there.

Any documents or other evidence seized under a search warrant shall be brought immediately to the Governor to be transmitted to the requesting overseas court, tribunal or authority.

Please refer to Annex A for the list of designated countries to whom the TCI may provide assistance under CJICO.

External Forfeiture Orders under CJICO

A request for enforcement of an external forfeiture order may be made under section 10 of CJICO to the Governor. The Governor may require that an external forfeiture order be registered in the Magistrate's Court of the TCI as a condition to it being enforced in the TCI.

Pursuant to section 10 of CJICO, the Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order was made. Under the Order designated countries may apply to register an external forfeiture order in the TCI.

What is needed for the application

Any request to register an external confiscation order should be accompanied by a statement of the facts, whether alleged or proved, in respect of which proceedings have been or are about to be instituted, which have resulted or may result in an external confiscation order being made.

The Magistrate's Court may register an external confiscation order made in a designated country if:

- It is satisfied that, at the time of registration, the order is in force and not subject to appeal. (Appeal includes any proceedings by way of discharging or setting aside a judgement and an application for a new trial or stay of execution.)
- It is satisfied, that where the person against whom the order was made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- It is of the opinion that enforcing the order in the Islands would not be contrary to the interests of justice.

The Magistrate's Court shall cancel the registration of an external forfeiture order where it appears to the court that the order has been satisfied by the forfeiture of the property liable to be recovered under the external forfeiture order or by any other means.

Any order made or judgement given by a court of a designated country will be deemed without further proof to be duly authorised if it purports to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court.

A document duly authenticated which purports to be a copy of any order made or judgement given by a court of a designated country shall be deemed without further proof to be a true copy.

A certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating the following, will be admissible as evidence of the facts so stated in the Supreme Court or a Magistrate's Court:

- (a) That proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, in that designated country;
- (b) That an external confiscation order is in force and is not subject to appeal;

- (c) That property recoverable in the designated country under an external confiscation order remains unrecovered there;
- (d) That any person has been notified of any proceedings in accordance with the law of the designated country; or
- (e) That an order (however described) made by a court of the designated country for the forfeiture and destruction or forfeiture and other disposal of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence.

Any statement contained in an authenticated document received into evidence shall be admissible as evidence of any fact stated therein.

A document is authenticated if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court of the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence whether as a copy of the original document or the original document itself.

Restraint Orders under CJICO

Under the Criminal Justice (International Cooperation) (Enforcement of Overseas Forfeiture Orders) Order designated countries may request the assistance of the TCI to restrain property that is the proceeds of drug trafficking or as result of a prosecution for a drug trafficking offence.

Restraint orders may be issued for this purpose under the Order by the Supreme Court.

Any request for a restraint order must be transmitted through the Governor to the Attorney General who is empowered by law to make an application to the Supreme Court on behalf of the government of a designated country.

What is needed for the application

An application for a restraint order must be accompanied by an affidavit.

Form of affidavit

The supporting affidavit should:

- a) state where proceedings have been instituted, the conduct in which the defendant is alleged to have engaged (exhibiting a copy of the indictment, information or charge), and the grounds for believing that the defendant engaged in that conduct;
- b) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;
- c) to the best of the deponent's ability, give particulars of the realisable property in respect of which the order is sought and specify the person or person's holding the property;
- d) indicate when it is intended that proceedings should be instituted in the designated country concerned (if proceedings have not yet been issued and it appears to the Supreme Court that proceedings are to be instituted against a defendant in a

designated country and that there are reasonable grounds for believing that an external confiscation order may be made in them.)

The affidavit may also contain statements of information or belief with the sources and legal grounds thereof, unless otherwise directed by the court.

Legal principles

The Supreme Court may exercise its powers to grant a restraint order where:

- proceedings have been instituted against the defendant in a designated country;
- the proceedings have not been concluded; and
- either an external confiscation order has been made in the proceedings or it appears to the Supreme Court that there are reasonable grounds for thinking that such an order may be made in them.

These powers are also exercisable where it appears to the Supreme Court that proceedings are to be instituted against a defendant in a designated country within a reasonable period and that there are reasonable grounds for believing that an external confiscation order may be made in them.

If the proposed proceedings are not instituted within a reasonable period, the court will discharge the restraint order.

The Supreme Court may make an order prohibiting any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

A restraint order may be discharged or varied in relation to any property; and will be discharged when the relevant proceedings are concluded.

Where the Supreme Court has made a restraint order, it may at any time appoint a receiver:

- To take possession of any realisable property; and
- To manage and deal with the property in respect of which he is appointed in accordance with the courts directions;

Appointment of a Receiver by the Supreme Court shall be subject to any exceptions and conditions specified by the court; and may require any person having possession of property of which a receiver is appointed to give possession of it to the receiver.

Where the Supreme Court has made a restraint order, a police officer may seize any realisable property for the purpose of preventing it from being removed from the Islands. Property seized in this manner will be dealt with as directed by the court.

III. REQUESTS FOR ASSISTANCE UNDER THE PROCEEDS OF CRIME ORDINANCE

An overseas authority may request the assistance of the TCI to restrain property that is the proceeds of crime or as result of a prosecution for a money laundering offence under the POCO.

“Money Laundering” includes doing or being concerned in any of the following whether in the TCI or elsewhere:

- a) concealing, disguising, converting or transferring criminal property; or
- b) removing criminal property from the Islands; or
- c) making an arrangement which he knows or suspects facilitates, by whatever means, the acquisition, retention, use or control of criminal property by or on behalf of another person; or
- d) acquiring, using or possesses criminal property; or
- e) attempting, conspiring or inciting to commit any of the acts in a) to d) above; or
- f) aiding, abetting, counselling or procuring the commission of any of the acts in a) to d) above.

Section 5 of POCO defines Criminal Conduct as ‘*conduct which constitutes an offence in the TCI or would constitute an offence in the TCI if it had occurred in the Islands*’.

Sections 150 and 151 of POCO authorizes the TCI to cooperate with overseas courts and authorities in relation to the enforcement of external orders and external requests.

The procedure and legal principles are much like that under the CJICO. However, under the POCO the requests may be made in relation to overseas money laundering offence which would be a money laundering offence if it were carried out in the TCI.

A request should be made in writing in English to the Attorney General who is the Competent Authority of the TCI under this law. This exclude requests coming from the USA, where the request will be made under the Mutual Legal Assistance (USA) Ordinance to the Chief Magistrate who is the Competent Authority (see para. III below)

Restraint Orders under POCO

Restraint orders may be issued for this purpose under Schedule 4 of POCO by the Supreme Court.

Any request for a restraint order must be transmitted to the Attorney General of the TCI who is the Competent Authority empowered by law to make an application to the Supreme Court on behalf of overseas authority.

What is needed for the application

An application for a restraint order is made ex parte to a judge in chambers and must be accompanied by an affidavit.

Form of affidavit

An application for a restraint order must be accompanied by an affidavit.

The supporting affidavit should:

- a) state the criminal conduct in which the defendant is alleged to have engaged (exhibiting a copy of the indictment, information or charge), and the grounds for believing that the defendant engaged in that criminal conduct;
- b) state that proceedings have been instituted in the overseas country concerned;
- c) to the best of the deponent's ability, give particulars of the relevant property in respect of which the order is sought and the grounds for believing the property is relevant;
- d) specify the person or person's holding or in possession of the property;
- e) indicate what are the reasonable grounds for believing that the Defendant named in the request has benefited from his criminal conduct;
- f) the names and addresses of any parties who may have an interest in that property, and the nature of their interest.

Legal principles

The Supreme Court may exercise its powers to grant a restraint order where:

- relevant property in the TCI is identified in the external request;
- proceedings have been instituted against the defendant in an overseas country from which the external request was made;
- the proceedings have not been concluded; and
- it appears to the Supreme Court that there are reasonable grounds for thinking that such an order may be made by them.

The Supreme Court may make an order prohibiting any person from dealing with any relevant property, subject to such conditions and exceptions as may be specified in the order. The restraint order may also provide for service on, or the provision of notice to, persons affected by the order in such manner as the Supreme Court may direct. It may also make provision for the living and legal expenses of the defendant.

A restraint order may be discharged or varied at the request of the Attorney General or any person affected by the order.

The court will discharge the restraint order if at the conclusion of the proceedings for an offence with respect to which the order was made, no external order has been made; or within a reasonable time an external order has not been registered.

While a restraint order is in force, a police officer or a customs officer may seize any property which is specified in the order to prevent its removal from the TCI. Property seized in this manner will be dealt with as directed by the court.

Where the Supreme Court has made a restraint order, it may at any time on application by the Attorney General appoint a receiver:

- To take possession of any realisable property; and
- To manage and deal with the property in respect of which he is appointed in accordance with the courts directions;

Appointment of a Receiver by the Supreme Court shall be subject to any exceptions and conditions specified by the court; and the Court may order any person having possession of property of which a receiver is appointed to give possession of it to the receiver.

Where a restraint order is made in respect of land:

- It must be registered with the Registrar of Lands who shall make an entry on the land register of the relevant property noting the Court's order (referred to as an inhibition);
- No dealings with any land, lease or charge which is inconsistent with it shall be registered;
- No distress may be levied against it; or right of forfeiture by peaceable re-entry, may be made except with leave of the court and subject to any terms the court may impose.

External Forfeiture Orders under POCO

A request for enforcement of an external forfeiture order may be made under section 10 of Schedule 4 of POCO to the Attorney General who may apply to the Supreme Court on behalf of an overseas authority, to give effect to an external order.

What is needed for the application

An application to give effect to an external order is made ex parte to a judge in chambers and must be accompanied by an affidavit.

The Supreme Court may give effect to an external order made in an overseas country if:

- The external order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction;
- It is satisfied that the external order is in force and not subject to appeal. (Appeal includes any proceedings by way of discharging or setting aside a judgement and an application for a new trial or stay of execution); and
- In respect of external orders for confiscation of property other than money that is specified in the order, the specified property shall not be subject to a charge.

Where the Supreme Court decides to give effect to an external order it shall –

- Register the order in the court;
- Provide notice of the registration to be given to any person affected by it; and
- Appoint the Attorney General as the enforcement authority for the Order.

The Supreme Court shall cancel the registration of an external or vary the property to which it applies, on an application by the Attorney General or any person affected by it if, or to the extent that the court is of the opinion that any condition for giving effect to the external order is not satisfied.

Any order made or judgement given by a court of a designated country will be deemed without further proof to be duly authorised if it purports to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court.

A document duly authenticated which purports to be a copy of any order made or judgement given by a court of a designated country shall be deemed without further proof to be a true copy.

A certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating the following, will be admissible as evidence of the facts so stated in the Supreme Court or a Magistrate's Court:

- (f) That proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, in that designated country;
- (g) That an external confiscation order is in force and is not subject to appeal;
- (h) That property recoverable in the designated country under an external confiscation order remains unrecovered there;
- (i) That any person has been notified of any proceedings in accordance with the law of the designated country; or
- (j) That an order (however described) made by a court of the designated country for the forfeiture and destruction or forfeiture and other disposal of anything in respect of which a drug trafficking offence has been committed or which was used in connection with the commission of such an offence.

Any statement contained in an authenticated document received into evidence shall be admissible as evidence of any fact stated therein.

A document is authenticated if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court of the designated country, or by or on behalf of the appropriate authority of the designated country, to have been received in evidence whether as a copy of the original document or the original document itself.

Production Orders under POCO

If deemed necessary in pursuance of a request for mutual legal assistance, the Authority may instruct that an application for the issue of a production order or search warrant be made to the Supreme Court.

The Supreme Court may make an order that documentation be produced pursuant to the request of a foreign country if it is satisfied that the following conditions have been met. These are that there are reasonable grounds for-

- (a) suspecting that -

- (i) in the case of a criminal recovery investigation², the person specified in the application as being subject to the investigation has benefited from his criminal conduct³;
 - (ii) in the case of a civil recovery investigation, the property specified in the application as being subject to the investigation is recoverable property⁴ or associated property;
 - (iii) in the case of a money laundering investigation, the person specified in the application as being subject to the investigation has committed a money laundering⁵ offence;
 - (iv) in the case of an investigation into any criminal conduct, the person specified in the application as being subject to the investigation has benefited by obtaining property or pecuniary advantage as result of or in connection with that criminal conduct;
- (b) believing that—
- (i) the person specified in the application as appearing to be in possession or control of the specified material is in possession or control of it; and
 - (ii) there are reasonable grounds for believing that the material is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the order is sought; and
- (c) believing that it is in the public interest that the material should be produced or that access to it should be given, having regard to -
- (i) the benefit likely to accrue to the request if the material is obtained;
 - (ii) the circumstances under which the person is in possession of the material holds it.

The material must not consist of or include items subject to legal privilege.

If the court is satisfied that the above conditions are fulfilled, it may make an order that the person who appears to be in possession of the material to which the application relates, produce it to a senior police officer to take away, or give a senior police officer access to it within 7 days or such time as the court may specify. There may also be an order to grant entry.

Where the material to which the application relates consists of information contained in a computer, an order shall have the same effect as an order to produce the material in a form

² Section 2 of POCO defines criminal recovery investigation as an investigation into whether a person has benefited from his criminal conduct or the extent or whereabouts of his benefit from his criminal conduct.

³ The definition of criminal conduct in section 5 of POCO includes an offence in the TCI or would constitute an offence in the TCI if it had occurred in the Islands'

⁴ Section 62 of POCO defines recoverable property as property obtained through unlawful conduct. Section 60 (1) provides that unlawful conduct includes conduct which if it occurs in a country outside the TCI is unlawful under the criminal law of that country and would be unlawful under the criminal law of the TCI if it occurred in the Islands,

⁵ Money laundering under section 2 of POCO includes an act which would constitute a money laundering offence if done in the TCI

that is visible and legible or an order to give access to the material in a form in which it is visible and legible.

IV. REQUESTS FOR ASSISTANCE UNDER THE MUTUAL LEGAL ASSISTANCE (USA) ORDINANCE

This Ordinance was originally enacted in the TCI on the 16th day of November 1990. It gives effect to a Treaty between the United States of America and the United Kingdom as extended to the TCI for the provision of mutual legal assistance in criminal matters between the countries.

The MLAO provides that it shall apply for the purpose of giving effect to the terms of the Treaty between the United States of American and the United Kingdom of Great Britain and Northern Ireland, in the form extended to the TCI, which has legal effect in the Islands, for the provision of mutual assistance between the authorities in the United States and the Islands, for the suppression of criminal offences of the nature and in the circumstances provided in the Treaty, including any such ancillary civil or administrative proceedings identified in the Treaty.

The TCI Mutual Legal Assistance Authority under this law is the Chief Magistrate. Requests are transmitted through the Competent Authority for the United States.

V. REQUESTS FOR ASSISTANCE UNDER THE TAX INFORMATION (EXCHANGE AND MUTUAL ADMINISTRATIVE ASSISTANCE) ORDINANCE (and other Ordinances relating to Tax Information Exchange) - (TIEO)

This Ordinance was originally enacted in the TCI on the 16th day of May 2009. It is the enabling mechanism which gives effect to any agreement which the TCI has with another country for the provision of information and cooperation on taxation matters.

The Tax Information (Exchange and Mutual Administrative Assistance) (Convention on Mutual Administrative Assistance in Tax Matters) Order 2014, gives effect to Convention on Mutual Administrative Assistance in Tax Matters between the United Kingdom and other countries as extended to the TCI for the provision of mutual administrative assistance and information in tax matters between the countries. The Convention which entered into force in the TCI on 1st December 2013, was extended by the Government of the United Kingdom of Great Britain and Northern Ireland to the Turks and Caicos Islands in August 2013. The Convention aims to facilitate international co-operation for a better operation of national tax laws, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between countries in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion. This co-operation ranges from exchange of information, including automatic exchanges, to the recovery of foreign tax claims.

The TIEO provides that the Permanent Secretary, Finance may act alone or through a person designated by him to act on his behalf. In 2013, the Director of Exchange of Information (“EOI Director”) was designated to act on behalf of the Permanent Secretary, Finance as the Competent Authority under this Ordinance.

Countries which the TCI can assist

The TCI can only assist countries with whom it has entered into bilateral or international agreements. The bilateral agreements will usually take the form of a Tax Information Exchange Agreement (TIEA) or some other tax agreement.

Where a bilateral or international agreement imposes specific conditions or procedures on the provision or requesting of MLA, such conditions or procedures will be adhered to.

Making the request

A request should be made in writing in English to the Director of Exchange of Information.

The EOI Director may request or receive information in relation to criminal tax matters that may have occurred prior to the coming into force of that any Agreement with it has with another country.

Types of Assistance that may be given

The TEIO gives the Competent Authority, EOI Director by designation, a range of powers that he may exercise in cooperating with other countries on tax issues. The EOI Director may:

- Require any person to provide information;
- Automatically and spontaneously exchange information;
- Apply for a search warrant; or
- Allow the conduct of interviews and examination of records by representatives of other countries with which the TCI has an Agreement.

Providing Information

The EOI Director may require any person to provide information which is specified in a written notice. However this does not apply to information that is protected from disclosure on the grounds of legal privilege.

In order to get the information the EOI Director must reasonably believe that the person named in the notice has the information to which the notice relates; and the information requested is information held by a bank or other financial institution, or any person acting in an agency or fiduciary capacity, including a nominee or trustee; or information regarding the beneficial ownership of a company, partnership or other person.

The EOI Director may require information provided to be verified and authenticated. He may set a time period in which the information is to be provided and the form the information must be in. He may also take copies or extracts of information that is produced.

Automatic and Spontaneous Exchange of Information

The EOI Director may automatically exchange information with another country which it has an Agreement with. Where he has knowledge of any information or any information has come to his attention, which he finds to be relevant for tax purposes and compliance he may spontaneously exchange that information with another country which it has an Agreement with.

Automatic or spontaneous exchange of information is done in accordance the procedure contained in an Agreement.

Search & Seizure

If deemed necessary in pursuance of a request, the EOI Director, as the Competent Authority may apply to the Magistrate's Court for the issue of a search warrant.

Where a person who is issued a notice fails to comply or only partly complies with the notice; or the EOI Director is of the opinion that if a notice is issued, it would not be complied with or the documents or information to which the notice relates may be removed, tampered with or destroyed he may apply to the Magistrate's Court for a search warrant.

A certificate given by the EOI Director that the issue of a search warrant is required for the purposes of complying with a request shall be sufficient authority for the issue of the search warrant without further inquiry.

On receipt of an application and the certificate the Magistrate may authorise a named representative of the EOI Director, together with a police officer of the rank of Inspector or above and any other person named in the warrant-

- (a) to enter the premises specified in the warrant at any time within one month from the date of the warrant;
- (b) to search the premises and take possession of any information appearing to be information of a type in respect of which the warrant was issued or to take, in relation to such information, any other steps which appear to be necessary for preserving or preventing interference with them;
- (c) to take copies of, or extracts from, any information appearing to be information of a type in respect of which the warrant was issued;
- (d) to require any person on the premises to provide an explanation of any information appearing to be information of a type of which the warrant was issued or to state where such information may be found; and
- (e) to use such force as may be reasonably necessary to execute the warrant.

Interviews by Representatives of another Country

With consent of the persons concerned in the TCI, representatives of requesting competent authority may interview a person and examine records in the TCI.

Where the competent authority of a requesting party requests that its' Representative interview, and examine the records, the person concerned has to notify the EOI Director, in writing, that he consents to the interview and examination. The Representative may then interview, and examine the records of, the person in the Islands at such time and place as are agreed upon, in writing, by the EOI Director and the person concerned.

Legal Principles

A person shall, at any time when a Representative is interviewing him, have the right to be advised, at his own expense, by a legal practitioner of his choice.

Any statement made to a Representative in the course of such interview shall not, in any proceedings, be used in evidence against the person making the statement.

Confidentiality

In the TEIO there are protective measures for those persons who provide information which may be confidential. A person who divulges any confidential information or makes any statement for the purposes of a request shall be deemed not to commit any offence under any law by reason only of such disclosure or the making of such statement, and such disclosure or statement shall be deemed not to be a breach of any confidential relationship between that person and any other person.

No civil claim or action whatsoever shall lie against a person who makes such a disclosure or statement or against such person's principal or employer by reason of such disclosure or statement.

Additionally, the particulars of and all matters relating to a request or exchange of information on an automatic or spontaneous basis shall be treated as confidential, and any person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request or exchange of information on an automatic or spontaneous basis relates, must not disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with an TIEA.

Referrals to the Attorney General

The EOI Director may, in his discretion or shall where in his opinion there are issues of public policy, notify the Attorney General of any request received by the Exchange of Information Unit ("EOI Unit"), with particulars thereof; and the Attorney General shall be entitled, in a manner analogous to *amicus curiae*, to appear or to take part in any proceedings in the Islands, whether judicial or administrative, arising directly or indirectly from a request received by the EOI Director.

A request may be denied where the Attorney General has issued a certificate to the effect that the execution of the request is contrary to the public policy of the Islands.

OTHER REQUESTS FOR MUTAL LEGAL ASSISTANCE

Service of Process Documents

Direct Transmission of Procedural Documents may be sent directly by the requesting authority to the persons in the TCI to whom they are addressed. The TCI strongly encourages direct transmission of procedural documents to persons by registered post or courier, unless this is not legally possible under the domestic law of the requesting authority.

Requests for Service of Process / Procedural Documents

In line with section 3 of CJICO, a request may be made to the Attorney General for the service of procedural documents (e.g. a summons or judgment) issued by a court or authority in that state in relation to criminal proceedings relating to drug trafficking offences.

All procedural documents which are to be served must be received by the TCI Attorney General's Chambers at least six weeks prior to any deadlines which are in place in the requesting state.

Additional information to include in an MLA service of process request

There are particular requirements which must be included in a request for service of process:

- Specific instructions as to whether the documents must be served by hand. If no such instruction is provided the documents will be served by registered post. Where personal service is specifically requested, the TCI authority may arrange for the document to be served by the police.
- The documents should be received by the TCI authority at least six weeks prior to court hearings or other deadlines involved; otherwise there is a possibility that responses will not be received in time to be of use to the requesting authority. If the documents are not received in a timely manner the request may be returned. All dates of hearings or other deadlines should be stated clearly within the request.
- The address of the court where the proceedings are to take place.
- The name and telephone number of an official of the court from whom the person asked to appear can seek further information if necessary.
- Specific instructions as to whether an execution of service must be returned to the requesting authority

The summons or judgment shall be served upon the person by a police officer. The person on whom a summons or judgment to be served shall be asked to sign a receipt, but is under no obligation to do so. The police officer shall complete an Affidavit of Service and return it to the Attorney General to send to the requesting authority. The Attorney General will advise the requesting authority whether the document has been delivered or whether it was not possible to serve the document.

SECTION 4: OFFICERS PRESENT FROM THE REQUESTING STATE AND TRANSMISSION OF EVIDENCE

Officers from the Requesting State present at the execution of a MLA request

If officers from the requesting State wish to be present during the execution of a MLA request, for example to participate in a search or to be present during the interview of a witness, this must also be requested. The authority executing the request in the TCI, will determine whether this is appropriate.

The requesting authority must give reasons as to why someone from the requesting State should be present. For example, if it is a very complex case it may be beneficial to have the investigating officer present. However, if it is not justified for an officer of the requesting State to be present this request will be refused.

Notifying the TCI of law enforcement officers travelling to the TCI

The police force in the TCI must be made aware in advance if officers for the requesting State are due to travel to the TCI. However, if the requesting State is unable to contact / identify the TCI police force, the Attorney General can pass on notification.

The police force in the TCI must also be notified in advance if foreign law enforcement officers are due to travel to the TCI to conduct official business even if this is not pursuant to MLA.

Transmission of evidence

Evidence will not automatically be given to foreign officers who may have been present during the execution. However, it may on occasion be practical to transfer the evidence through accompanying officers. In this case, TCI police must seek authorisation from a competent authority.

SECTION 5: MLA REQUESTS FROM THE TCI

Who can send an MLA request from the TCI? Authorities that have been designated as a prosecuting authority can make MLA requests to other countries. As well as the competent authorities described in section 2. This includes:

- Magistrates' Courts and the Supreme Court;
- the Attorney General;
- the Director of Exchange of Information Unit
- The Financial Services Commission
- The Financial Intelligence Agency

SECTION 6: REQUESTS FOR INTELLIGENCE

Financial Intelligence information may be requested from the Financial Intelligence Agency (FIA). The FIA is a member of the EGMONT Group of Financial Intelligence Units and other EGMONT FIUs may contact the FAI using EGMONT channels of communication.

The FIA plays a central role in the Turks and Caicos Islands anti-money laundering regime and serves as the unit to receive Suspicious Activity Reports made by Financial Businesses and Designated Non-Financial Business Persons (DNFBPs).

Previously operating as the Financial Intelligence Unit within the Royal Turks and Caicos Islands Police Force, operational independence was provided by the Financial Intelligence Agency Ordinance Cap 3.20 (the FIAO).

Under s.29 (1) of the FAIO “information obtained by the FIA in connection with the exercise of its functions may be disclosed by the FIA, if the disclosure is for the purpose of enabling or assisting—

(a) the Agency to discharge its functions under section 5 (2) (b) in respect of requests for information from a foreign financial intelligence authority concerning the proceeds of crime, money laundering, terrorism or the financing of terrorism or the suspected proceeds of crime, suspected money laundering, suspected terrorism or the suspected financing of terrorism; or

(b) the Attorney General.

(2) Information disclosed by the Agency to any person or body under subsection (1) shall not be further disclosed except—

(a) for a purpose connected with any function of that person or body for the purposes of which the information was disclosed by the Agency; or

(b) with the consent of the Agency.”

Pursuant to s.31, the FIA has the ability to enter into an arrangement for cooperation with a foreign financial intelligence authority or foreign law enforcement authority. On this basis, the FIA has entered into a number of MOUs with foreign financial intelligence authorities.

It is also possible for assistance to be given on a law enforcement agency to law enforcement agency basis. It entails police and other law enforcement officers in a requesting State asking for the assistance of law enforcement agencies in the TCI to gather intelligence for an investigation. Intelligence can be an easier and quicker way to obtain information, as it does not require an LOR. Countries which do not require evidence to be sworn by witnesses in a court under their domestic law can consider using intelligence routes to request information to be used as evidence.

TCI law enforcement agencies which can assist in relation to intelligence requests. The following agencies can receive intelligence enquiries directly from law enforcement officers in foreign jurisdictions:

- Department of Immigration and Border Control⁶
- Customs Department⁷
- The Turks & Caicos Islands Police Force
- The Integrity Commission

How to make requests for intelligence from a TCI law enforcement agency

If direct contact between a foreign FIU, police force or law enforcement agency and the TCI FIA, police force or law enforcement agency has not already been established, the Attorney General or the Director of Public Prosecutions should be contacted in order to forward requests to the FIA, police force or other law enforcement agency who will then execute the request.

Assistance which can be requested from the TCI via Police to Police or FIU to FIU enquiries

Examples of requests that may be submitted directly to the RTCIPF or FIA without involving the competent authorities include:

- interviewing witnesses in criminal investigations where the person to be interviewed is willing to co-operate without appearing or needing to appear before a judicial authority in the TCI;
- sharing of information and intelligence concerning investigations into offences which have been committed in the TCI (provided that the information or intelligence is not being requested for use in proceedings);
- asset tracing enquiries;
- obtaining information from publicly available sources, such as for example the Land Register in relation to ownership of properties.

Such requests do not need to be made via a formal LOR and sent to the competent authorities unless it is a requirement of the domestic law of the judicial authority making the request.

Assistance which cannot be requested from the TCI via Police to Police enquiries

Most requests for coercive measures (for example, production of bank records, restraint of assets or search and seizure) require authorisation by the relevant competent authority and a court order, so a formal LOR must be sent.

⁶ Assisting foreign authorities on an intelligence basis will be dependent on whether the Department has a memorandum of understanding with that country.

⁷ Assisting foreign authorities on an intelligence basis will be dependent on whether the Department has a memorandum of understanding with that country.

Assistance from the Integrity Commission

The Integrity Commission is established under the Integrity Commission Ordinance (the ICO) to secure the integrity of persons in public life. It is one of the institutions of good governance provided for in Part VII of the Turks and Caicos Islands Constitution. Section 15 (1) of the ICO makes provision for the Commission to enter into written agreements, arrangements or memoranda of understanding with a law enforcement agency, including a foreign law enforcement agency, as the Commission considers necessary or desirable for the discharge or performance of its functions. Further, the Commission is to be treated as a law enforcement agency for the purposes of receiving disclosures of information which are relevant to its functions from any law enforcement agency, including a foreign law enforcement agency and may disclose to a law enforcement agency, including a foreign law enforcement agency, any information disclosed to the Commission.

Contacting witnesses in the TCI

Subject to the provisions of relevant bilateral or other international instruments, contact may be made with witnesses directly by letter, fax or telephone without informing the competent authorities. If the witness is willing to assist the enquiry voluntarily, an approach may be made to a competent authority to arrange for the recording of his or her statement or testimony on oath, if required.

SECTION 7: REQUESTS FOR CRIMINAL RECORDS

Although requests for criminal records may form part of a wider formal MLA request, requesting authorities should not obtain criminal record information from a competent authority. Any such requests will be transmitted to the Commissioner of Police on behalf of the Criminal Records Department of the RTCIPF. Each request will be dealt with on a case by case basis.

However the Criminal Records Department will only provide the information requested if there is no requirement from the requesting authority that a witness statement be provided in support of the records provided.

In all circumstances it is preferred that requesting authorities make all requests for criminal records through their own criminal record competent authorities. Failure to do so may delay a response to your request.

Where to send requests

Requests to the Criminal Records Department should be sent by courier or email:

Criminal Records Department
c/o Commissioner of Police
Royal Turks & Caicos Islands Police Force
Old Airport Road
Providenciales
Turks & Caicos Islands

Tel: + 649-338-5901

Fax: + 649 946 2099

Email: ncib@tcipolice.tc

If requests for criminal records are sent to a competent authority in error, the request will be forwarded to the Criminal Records Department, but this may delay a substantive response.

Requests for Certificate of Conviction / Memorandum of Conviction

Where the name and date of the court of conviction/sentence is known, requests for a Memorandum of Conviction (Magistrates' Court) must be made to the court of conviction/sentence directly. If a requesting authority does not know the name or date of the court of conviction/sentence, a request for criminal records should be made first (see above).

Requests for the following information should also be redirected to the relevant court, who may be able to provide:

- Information on the use of an interpreter in the course of criminal proceeding and, if not used, the reasons why
- The identity of defence counsel in the proceedings

If requests are sent to a competent authority the request will be redirected to the relevant court (if the name of the court has been provided by the requesting state), but this may delay a substantive response.

Requests for a Memorandum of Conviction which are sent to a competent authority which do not provide the name of the court and date of the conviction/sentence court will be rejected. The requesting authority should request the criminal record from the Criminal Records Department and the requesting authority must then send the request directly to the relevant court.

Requests for Transcripts / Sentencing Remarks

It is not usual practice in the TCI for a transcript of the proceedings or the Judge's sentencing remarks to be used as evidence in a subsequent criminal matter. Moreover, transcription services are generally provided by private contractors making the cost of a transcript of proceedings expensive. As such the cost of obtaining this evidence is of a substantial or extraordinary nature.

Requests for transcripts or sentencing remarks must be sent to a competent authority and must include:

- written confirmation (in English) that such evidence is required; and
- confirmation that the requesting authority is willing to pay for the costs of acquiring such evidence.

If these confirmations are not received at the time of the request a substantive response is likely to be delayed.

SECTION 8: INFORMATION ABOUT COMPANIES

Information about a company that is not required as evidence can be obtained by applying for a company search at the Financial Services Commission and payment of the required fee. Only information that is publically available will be provided.

If **evidence** is required, requesting countries must make an MLA request to the TCI. For information on how to go about this, please see earlier sections of the guidance. In particular, please note Section 3 regarding witness evidence and whether it is necessary to be given on oath.

SECTION 9: CIVIL MATTERS

Obtaining evidence from other jurisdictions in respect to civil litigation (which encompasses commercial litigation) is included within the Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order and such requests are dealt with by the Attorney General's Chambers.

Requests for assistance with international civil matters should be sent to:

The Attorney General
Attorney General's Chambers
Grand Turk
Turks and Caicos Islands

Fax: +649 946 1329
Telephone: +649 338-3281
Email: AG_Chambers@gov.tc

The letter of request must originate from a Court or Tribunal exercising jurisdiction in a territory outside the TCI.

The evidence that is being requested must relate to civil proceedings instituted before the requesting court or whose institution before that court is being contemplated.

The following orders can be sought in a request under civil proceedings:

- the examination of witnesses, either orally or in writing;
- the production of documents;
- the inspection, photographing, preservation, custody or detention of any property;
- the taking of samples of any property and the carrying out of any experiments on or with any property;
- the medical examination of any person;
- the taking and testing of samples of blood from any person.

A person cannot be compelled to give any evidence under an order that they would not have been compelled to give in civil proceedings in the TCI or in the country where the requesting court exercises its jurisdiction.

For information on the restraint of property, please refer to Requests under CJICO and POCO in Section 3.

Requests for Service of Process / Procedural Documents

By virtue of Order 69 of the Rules of the Supreme Court, application may be made to serve a person in the TCI with any process in connection with civil or commercial proceedings in a foreign court or tribunal.

The application is by written request to the Registrar of the Supreme Court. The written request for service may be received by the Governor, with a recommendation by him that

service should be effected or if the request is from a court or tribunal in a country with whom the TCI is a party to any civil procedure conventions, then the written request may be made by a consular or other authority of that country.

The request must include two copies; the process to be served which must include two copies of English translations, if it is not in English.

Once the process is served Registrar shall send a copy of the process along with a certificate to the consular or other authority or the Governor. The Certificate will contain when and how service was effected or the reason why service could not be effected. It may also contain, where appropriate, the amount certified by the Registrar to be the costs of effecting or attempting to effect service. The Certificate will be sealed with the seal of the Supreme Court.

ANNEX A

Designated Countries pursuant to Section 10 of the CJICO

<i>Designated country</i>	<i>Appropriate authority</i>
Afghanistan	
Algeria	
Anguilla	the Attorney General of Anguilla
Antigua and Barbuda	
Argentina	
Armenia	
Australia	
Azerbaijan	
The Bahamas	
Bahrain	
Bangladesh	
Barbados	
Belarus	
Belgium	
Belize	
Bermuda	the Attorney General of Bermuda
Bhutan	
Bolivia	
Bosnia and Herzegovina	
Brazil	
British Virgin Islands	the Attorney General of the British Virgin Islands
Brunei Darussalam	
Bulgaria	
Burkina Faso	
Burundi	
Cameroon	
Canada	
Cape Verde	
The Cayman Islands	the Attorney General of the Cayman Islands
Chad	
Chile	
China	
Colombia	
Costa Rica	
Croatia	
Cuba	
Cyprus	
The Czech Republic	
Denmark	
Dominica	
Dominican Republic	
Ecuador	
Egypt	
El Salvador	
Ethiopia	
Fiji	
Finland	
France	
Gambia	
Germany	

Ghana	
Gibraltar	the Attorney General of Gibraltar
Greece	
Grenada	
Guatemala	
Guinea-Bissau	
Guernsey	Her Majesty's Attorney General for the Bailiwick of Guernsey
Guyana	
Haiti	
Honduras	
Hong Kong	the Attorney General of Hong Kong
India	
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Italy	
Ivory Coast	
Jamaica	
Japan	
Jordan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Luxembourg	
Macedonia	
Madagascar	
Malawi	
Malaysia	
Mali	
Malta	
Mauritania	
Moldova	
Monaco	
Montserrat	the Attorney General of Montserrat
Myanmar	
Morocco	
Nepal	
Netherlands	
Nicaragua	
Niger	
Nigeria	
Norway	
Oman	
Pakistan	
Panama	
Paraguay	
Peru	
Poland	
Portugal	
Qatar	
Romania	
The Russian Federation	
St Kitts and Nevis	
St Lucia	
St Vincent and the Grenadines	
Sao Tome and Principe	

Saudi Arabia
Senegal
Seychelles
Sierra Leone
Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syria
Tajikistan
Togo
Tunisia
Uganda
Ukraine
United Arab Emirates
United Kingdom of Great Britain and Northern
Ireland
United Mexican States
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
Yemen
The Federal Republic of Yugoslavia, Serbia and
Montenegro
Zambia
Zimbabwe