

**Attorney-General's Chambers**

# **REQUEST FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

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**Guidelines for Authorities outside of the Anguilla**



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## **What is Mutual Legal Assistance?**

Mutual Legal Assistance (MLA) is a formal process by which cooperation between two jurisdictions in acquiring assistance with respect of the gathering of evidence to be used in the investigation or prosecution of criminal offences. Anguilla is committed to ensuring that the jurisdiction assists to investigate and prosecute international crimes and in doing so offers effective and efficient MLA when needed.

The guidelines herein are intended to ensure that requests for MLA received by the competent authority in Anguilla contain sufficient relevant information to satisfy the requirements under the respective legislative framework. This will ensure that requests are executed speedily, efficiently and effectively. The guidelines include sections on:

- Guidance to authorities who wish to make a formal request for MLA to Anguilla ('requesting authorities'); and
- Guidance to authorities on what information or assistance can be obtained in Anguilla;
- Guidance on the authorities in Anguilla able to send MLA overseas.

## **Types of MLA available in Anguilla**

The types of assistance available are:

- Anguillian evidence for use overseas;
- Service of overseas process in Anguilla;
- Transfer of Anguillian prisoner to give evidence or assist investigation overseas; and
- The enforcement of external requests and orders.

## **Role of central authorities in Anguilla**

All formal requests for assistance must be sent to a competent authority in Anguilla for processing. The competent authorities within Anguilla for the receipt of MLA request are:

1. The Governor for MLA requests under the Criminal Justice (International Cooperation) (Anguilla) Act (CJICA), RSA c. C145; and
2. The Attorney-General under the Mutual Legal Assistance (United States of America) Act, RSA c. M110 and the Mutual Legal Assistance (United States of America) (Tax Matters) Act, RSA c. M109;
3. The Attorney-General under Schedule 3 of the Proceeds of Crime Act (POCA), RSA c. P98, (Enforcement of External Request and Orders) and
4. The Permanent Secretary in the Ministry of Finance under the Tax Information Exchange (International Co-operation) Act, 2016 (TIEA).

In addition to the above mentioned agencies, the following competent authorities also play a role in treating with or executing MLA matters:

- The Magistracy in Anguilla;
- The Financial Intelligence Unit (FIU); and
- The Royal Anguilla Police Force (RAPF).

## **Types of Assistance**

The laws of Anguilla allow for a wide range of MLA to be executed once conditions under the respective legislations are met. The most common types of MLA assistance that can be rendered by Anguilla are expounded further in these guidelines.

## **Reciprocity**

Anguilla does not generally require reciprocity but would expect assistance from countries that are parties to relevant bilateral or international agreements with Anguilla. Anguilla would also expect reciprocity from countries where assistance is rendered without a treaty or an international agreement. Reciprocity is required in all requests for assistance in tax matters.

## **Confidentiality**

It is normal procedure that the existence of an MLA request will not be confirmed nor denied by the central or executing authorities. Neither will any of its content be disclosed to a government department, government agencies, the courts or enforcement agencies in or outside of Anguilla without the consent of the requesting authority.

Where public statements are made by an overseas authority about the assistance it is requesting from Anguilla, the central authority should be notified so that they may respond appropriately to any media or public enquiries.

It should be noted that at no time will a request be shown or copied to any witness or other person, nor will any witness be informed of the identity of any other witness in a matter. While some disclosure may be necessary for the execution of an MLA request the content therein will always be held to the highest level of confidentiality.

If the confidentiality requirements of an MLA request make the execution of a request difficult or impossible, the central authority will consult the requesting authority. In cases where disclosure of a request, or part of a request, is required by Anguilla law in order to execute the request, it will normally be the case that the requesting authority will be given the opportunity to withdraw the request before any disclosure to a third party is made.

## **Prior To Making A Request**

Overseas authorities may use FIU to FIU or police to police or other sharing networks enquiries for intelligence purposes before making an MLA request. This will assist in ensuring sufficient relevant information is provided in the request and will assist the requesting authority in executing the MLA effectively and efficiently.

## **How To Make a Request For MLA**

### **Format of a request**

These must always be made in writing and should be sent via secured courier or in urgent cases, via email.

### **Language of requests**

All Letters of Request (“LOR”) 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**

The following conditions should be observed when sending a request to Anguilla:

- Headed letterhead or notepaper of the issuing authority must be used;
- The request must be signed by the issuing authority;
- The request must be made in the English language; and
- For requests not made in the English language, the request must be translated into English.

The LOR must include the following where 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;
- A description of the offence(s) 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 Anguilla;
- 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;
- Relevant dates e.g. date of court hearing;
- The reason for special urgency or attention should be included in the cover letter of request;

- 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;
- Confidentiality - the extent to which confidentiality applies; and
- Details of any media attention, sensitivities or reasons for high-profile interest in the case in the Requesting State.

Failure to provide a comprehensive written request as soon as possible may result in delays or the request not being executed in whole or at all.

### **Where to send LOR requests**

The Letter of Request pursuant to the Criminal Justice (International Cooperation) (Anguilla) Act should be directed to:

His/Her Excellency The Governor  
 The Governor's Office  
 PO Box 60  
 Old Ta  
 The Valley  
 AI-2640  
 Anguilla  
 Telephone: +(1) (264) 497 2621  
 Fax: +(1) (264) 497 3314  
 Email:

Requests pursuant to the Mutual Legal Assistance (United States of America) Act or the Proceeds of Crime Act should be directed to:

The Attorney-General  
 Attorney-General's Chambers  
 P.O. Box 60  
 Commercial Complex  
 The Valley, Anguilla  
 Telephone: 264 497 3044  
 Fax: 264 497 3126  
 Email:

Requests pursuant to the Tax Information Exchange Act should be directed to:

Permanent Secretary  
 Ministry of Finance  
 Government of Anguilla

P.O. Box 60  
Secretariat Second Floor West  
The Valley, Anguilla  
Telephone: 264 497 2547  
Fax: 264 497 3761  
Email:

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

In Anguilla, it is often easier to prepare the court papers when the request for restraint or confiscation is separate from the other forms of LOR requested. If the request is made as a separate request this should be sent at the same time as the initial request (if possible).

### **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;
- Provide details as to why the request is urgent; and
- Clearly state any dates which need to be met.

### **Timescales in executing a request**

The request will be actioned in a timely manner. The competent authorities will take into account timelines of the requesting country. Updates should be provided by the requesting country on changes to these timelines and how, if any, these changes will impact the request.

Once the LOR is received, Anguilla will acknowledge receipt of the request, the name of the executing authority, the contact person in that authority and their contact details.

### **Costs for MLA requests**

Generally, the Government of Anguilla will meet the costs of executing a LOR, except in the following circumstances:

- fees and reasonable expenses of expert witnesses;
- the costs of establishing and operating video-conferencing or live 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 upon before costs are incurred).

### **Notifying the Governor of Law Enforcement Officers Travelling to Anguilla**

The relevant local authority in Anguilla must be made aware in advance if law enforcement officers for the requesting jurisdictions are due to travel to Anguilla to conduct official business even if this is not pursuant to an MLA. However, if the requesting jurisdiction is unable to contact/identify the local authority, the Attorney-General of the requesting State can assist and pass on the notification to the Attorney-General in Anguilla.

## **Requests for Assistance under the Proceeds of Crime Act, RSA c. P98**

“Money laundering” under the POCA means “an act which constitutes a money laundering offence; or would constitute a money laundering offence if done in Anguilla.” Sections 125 to 127 of the POCA criminalizes the relevant money laundering offences in Anguilla.

Under POCA, although the legal principles and procedures are similar to the CJICA, the distinction is that these requests may be made in relation to money laundering offences that occurred overseas and would be considered money laundering offences in Anguilla.

A request should be made in writing to the Attorney-General, the competent authority. Requests from the United States should be made pursuant to the Mutual Legal Assistance (United States of America) Act, M110. Under that Act, the Attorney-General is also the competent authority.

Pursuant to section 153, Schedule 3 of the POCA applies to all external requests and orders.

### ***Restraint Orders under POCA***

Restraint Orders may be issued by the POCA. Requests for restraint orders from an overseas authority should be sent to the Attorney-General, who is the competent authority under the law to make an application to the High Court of Anguilla on behalf of overseas authorities.

### **What is needed?**

An application for a restraint order may be made ex parte to a judge in chambers and must be accompanied by an affidavit. The supporting affidavit should:

- State the criminal conduct which the defendant is alleged to have been engaged in, exhibiting the information, charge or indictment;
- State the grounds for believing that the defendant engaged in the conduct;
- State whether proceedings have been instituted in the requesting country;
- Give particulars of the relevant property in which the order is sought and the grounds for believing that the property is relevant;
- State what reasonable grounds there are for believing the named defendant has benefitted from the criminal conduct;
- State names and addresses of parties who may have an interest in the property, and the interest of their interest.

### **What are the legal principles?**

The High Court may exercise its power to grant a restraint order where:

- Relevant property in Anguilla is identified in the external request;

- Proceedings have been instituted against the defendant in an overseas country from which the external request was made and the proceedings have not been concluded; and
- There is reasonable cause to believe that the defendant has benefitted from his/her criminal conduct.

The High Court may make an order prohibiting any person from dealing with any relevant property, subject to conditions in the order. The restraining order may also provide for service on, or the provision of notice to, persons affected by the order in such manner as the High Court may direct. It may also make provisions 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 (pursuant to section 12 of POCA).

The Attorney-General may appeal to the Court of Appeal if the High Court decides not to make an order for a restraint order. Furthermore, the Attorney-General or anyone affected may appeal to the Court of Appeal relative to the High Court's order for restraint.

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 Anguilla. Property seized in this manner will be dealt with as directed by the High Court.

Where the High Court has made a restraint order, a receiver may be appointed at any time on application by the Attorney-General to:

- take possession of the property;
- manage or otherwise deal with the property;
- start, carry on or defend any legal proceedings in respect of the property;
- realise so much of the property as is necessary to pay the receiver's remuneration and expenses.

### ***External Orders under POCA***

A request for enforcement of an external order may be made under section 10 of Schedule 3 of POCA to the Attorney-General who will apply to the High Court on behalf of an overseas authority, to give effect to an external order.

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

**What is needed for the application?**

The High Court may give effect to external orders 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;

An appeal includes any proceedings by way of discharging or setting aside the order and an application for a new trial or stay of execution;

- The external order is in force and no appeal is outstanding in respect of it;
- In relation to an external order that authorizes the confiscation of property other than money, the specified property should not be subject to a charge.

When the High Court decides to give effect to an external order, it shall:

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

The High Court can cancel the registration of the external order either on the application of the Attorney-General or someone affected by it. The Attorney-General may appeal to the Court of Appeal against a decision not to register an external order. The Attorney-General or any person affected by the registration of an external order may appeal to the Court of Appeal.

A receiver can be appointed by the High Court on application by the Attorney-General.

**Requests for Assistance under the Mutual Legal Assistance (United States of America) Act, RSA c. M110.**

This Act was enacted to give effect to the terms of the Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America dated 3<sup>rd</sup> July 1986 which has legal effect in Anguilla. The Treaty provides for mutual assistance of criminal matters between the two countries. The Act also provides for ancillary civil or administrative proceedings identified in the Treaty.

The competent authority under the legislation is the Attorney-General. Requests are to be transmitted through the competent authority for the United States.

**Requests for Assistance under the Criminal Justice (International Co-operation) (Anguilla) Act, RSA c. C145**

Mutual legal assistance may be given for the following purposes:

- Effecting service of judicial documents;
- Providing information and items of evidence;
- Transferring a prisoner from Anguilla to a country or territory outside Anguilla to give evidence or assist with investigation;
- Executing searches and seizures for material relevant to an overseas proceeding or investigation;
- Assisting with the enforcement of external forfeiture orders in drug cases;
- Taking evidence or statements from witnesses.

A request must be made in English to the Attorney-General, Competent Authority under the Anguillian legislation.

The request should contain the following:

- The identity of the person/institution making the request;
- The subject matter and nature of the investigation, prosecution or proceeding to which the request relates;
- The name and functions of the persons conducting such investigation, prosecution or proceeding;
- Summary of relevant facts in respect to the request (except for requests in relation to service of judicial documents);
- A description of the assistance sought and details of any particular procedure the requesting country requires to be followed;
- The identity, location and nationality of any person concerned; and
- The purpose for which the evidence, information or action is sought.

A request should include:

- The identity and location of the person to be served, the person's relationship to the proceedings and the manner in which service is to be made;
- A precise description of the place or person to be searched and of the articles to be seized;
- A description of the manner in which any testimony or statement is to be taken;
- A list of questions to be posed to the witness;
- A description of any particular document to be executed and submitted;
- Any other information which may be brought to the attention of the competent authority to facilitate its execution of the request.

The competent authority may refuse to comply with a request:

- If the request is not made in conformity with the requirements of the contents of a request;
- If the request does not establish there are reasonable grounds for believing:

- The criminal offence specified in the request has been committed; and
  - The information sought relates to the offence and is located in Anguilla;
- If the authorities in Anguilla would be prohibited by any law from carrying out the action requested with regard to any similar offence in the island; or
- If it is contrary to the laws of Anguilla to grant MLA in the circumstances to which the request relates.

## **Requests for assistance under the Tax Information Exchange (International Co-operation) Act, 2016**

The Tax Information Exchange (International Co-operation) Act was enacted in Anguilla on 5<sup>th</sup> April 2016. It is the mechanism that gives effect to any agreement which Anguilla has with another country for the provision of information and cooperation on tax matters.

The TIEA is for the purpose of giving effect to the terms of an agreement for the provision of information in taxation matters, the provision of information to a requesting party on request in taxation matters and any proceedings taken by a requesting party connected with, arising from, related to, or resulting from taxation matters.

The competent authority is either the Comptroller of Inland Revenue or the Permanent Secretary of Finance as stipulated in the agreement signed with Anguilla and the requesting country.

### ***Who can we assist?***

Anguilla can only assist countries with whom it has entered into a bilateral or an international agreement.

Where the bilateral or international agreement imposes specific conditions or procedures on providing or requesting MLA, those conditions or procedures will be adhered to.

### ***Making the request***

A request should be made in writing in English to the competent authority as stipulated in the agreement with Anguilla and the requesting country.

### ***Types of assistance that may be given***

The competent authority has a range of powers and may:

- Execute searches and seizures;
- Obtain information held by any person in Anguilla;
- Provide information and articles of evidence;
- Taking the evidence or statement of any person in Anguilla;
- Serving documents.

## **Other requests for mutual legal assistance**

A request may be made to the Attorney-General for the service of procedural documents issued by a court or authority in the requesting country in relation to criminal proceedings.

A request for service of process should include:

- Specific instructions as to whether the documents must be served by hand or can be sent via email or registered mail;
- 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 the execution of service must be returned to the requesting authority.

The document shall be served on the person either by a police officer of the Court Bailiff. The person on whom the summons will be served will be asked to sign a receipt, but is under no obligation to do so. The police officer or Bailiff will complete an Affidavit of Service and return it to the Attorney-General for onward transmission to the requesting authority. If the document was unable to be served, the Attorney-General will provide the requesting authority with an affidavit of the reason for non-service.

## **Information about companies**

Information about a company not required as evidence can be obtained by applying for a company search at the Companies Registry and payment of the required fee. Publically available information will be provided.

If the information about a company is required as evidence, the country requesting the information must make an MLA request to Anguilla.

## **Police Officers being present from the Requesting State and Transmission of Evidence**

### ***Law enforcement officers from Requesting State present at the execution of a MLA request***

If law enforcement officers from the requesting State wish to be present during the execution of the MLA request, this must be requested. Once requested, the authorities in Anguilla will determine if it is appropriate.

Reasons should be provided by the requesting authority indicating why someone from the requesting country should be present.

### ***Notification of law enforcement officers travelling to Anguilla***

The Commissioner of Police in Anguilla must be made aware in advance if law enforcement officers for the requesting country are to travel to Anguilla. If the requesting State is unable to contact the Commissioner of Police, the Attorney-General can be notified, who will pass on the notification to the Commissioner of Police to contact the relevant authorities in the requesting State.

### ***Transmission of evidence***

Evidence will not be automatically given to foreign law enforcement officers who are present during the execution of the request. If the requesting country wishes the evidence to be provided to the officer, there must be an authorisation sent to Anguilla from the competent authority in the requesting jurisdiction stating such.

## **Requests for Intelligence**

Financial intelligence information can be requested from the Financial Intelligence Unit, a member of the EGMONT Group.

Under the Financial Intelligence Unit Act, the FIU has the ability to enter into an agreement or arrangement with a foreign financial intelligence authority or law enforcement authority with permission from the Attorney-General. The FIU has entered into a number of MOUs with foreign financial intelligence authorities.

If there is direct contact between a foreign FIU, or law enforcement agency and Anguilla's FIU, then we would recommend that you contact the FIU for intelligence. If the information is needed for judicial proceedings, then a formal letter of request should be sent.