

Mutual Legal Assistance in Criminal Matters and Asset Recovery in the Isle of Man

The Isle of Man (IOM) can give a comprehensive range of assistance to other jurisdictions dealing with asset recovery matters involving the IOM. These measures are available to judicial and prosecuting authorities with responsibility for criminal investigations and prosecutions. In some cases, assistance can be given in civil recovery (non-conviction based confiscation) proceedings.

1 THE ISLE OF MAN

The Isle of Man is not part of the UK (although our proceeds of crime legislation is very similar to that in the UK) or the EU. European Investigation Orders and European Arrest Warrants do not extend to the IOM. Requests for Mutual Legal Assistance in criminal matters should be sent directly to the Central Authority in the Isle of Man:

Attorney General's Chambers
Belgravia House
Circular Road
Douglas
Isle of Man
Great Britain
IM1 1AE

Email: icart@gov.im

A wide range of assistance is available at each stage of the asset recovery process:

- i) Identifying and tracing assets;
- ii) Freezing (restraint) of assets in the IOM so that they may be available to pay a recovery order made in the future; and
- iii) Registration and enforcement of a requesting jurisdiction's recovery (confiscation / forfeiture / restitution) order.

Although a number of relevant international treaties and conventions extend to the IOM, international assistance in asset recovery in the IOM is not limited by them, and the IOM does not require reciprocity.

2 PRELIMINARY ENQUIRIES

In most cases, the starting point for asset recovery in the IOM should be police-to-police or intelligence enquiries (FIU-to-FIU. The IOM FIU is a member of the Egmont Group of Financial Intelligence Units). This will ensure that the information required for a comprehensive and viable letter of request (LOR) can be included from the outset.

Law Enforcement and Financial Intelligence contact details:

- A) Economic Crime Unit
Isle of Man Constabulary
Department of Home Affairs
Tromode Road
Douglas
Isle of Man
Great Britain
IM2 5PA

Telephone: +44 (0) 1624 631212
Email: FCU.DHA@gov.im

- B) Financial Intelligence Unit
PO Box 51
Douglas
Isle of Man
Great Britain
IM99 2TD

Telephone: +44 (0) 1624 686000
Email: fiu@gov.im
Egmont Secure Web: fiu.iom@egmont.org


3 MUTUAL LEGAL ASSISTANCE

In all Mutual Legal Assistance matters, an LOR will be required. The LOR will be the basis of the court application, and will be the evidence filed in support of the application for restraint, confiscation or obtaining evidence from financial institutions.

In some cases, where an order is made by the IOM court and is subsequently challenged by a person affected by the order, the IOM court may order that the application and evidence filed in support (i.e. the LOR) be disclosed to the person affected by the order in the interests of justice. The LOR should therefore state whether information contained in it is of a sensitive nature and may compromise the criminal investigation, proceedings or any source of intelligence or evidence if disclosed.

The International Cooperation and Asset Recovery Team (ICART) of the Attorney General’s Chambers will both receive and execute letters of request, with the assistance (where necessary) of the IOM Financial Intelligence Unit and Isle of Man Constabulary Economic Crime Unit. Lawyers from the ICART will make the application to the High Court of Justice of the Isle of Man for evidence, restraint or confiscation as requested in the LOR.

The LOR must be issued by a court or an authority which has responsibility for making a request for restraint of assets, for investigating whether assets have been obtained in connection with criminal conduct or for carrying out money laundering investigations. The LOR must be signed, although in urgent cases the IOM court may permit an application to be filed with a scanned copy received by email, with assurance that the signed original will be filed as soon as it is received by the ICART.

LOR Checklist		
1	Letter-headed paper of the requesting authority	
2	Details of the requesting authority, and name, email address and telephone number of a contact person	
3	One signed original letter and one translation of the request into English	
4	The purpose for which assistance is sought, and whether a criminal investigation and/or prosecution is ongoing at the time of writing	
5	Details of the suspects and/or defendants who are the subject of the request, including (where possible) addresses and dates of birth	
6	Details of the criminal offences under investigation, or which are the subject of the prosecution, including sentence	
7	A copy of extracts of the relevant criminal legislation relating to offences and sentences	
8	Details of whether the suspects and /or defendants have been arrested, interviewed, charged with an offence, imprisoned and/or convicted of offences	

9	A summary of the facts giving rise to the request including the connection to the Isle of Man	
10	Details of the connection between the evidence or assets requested and the offences under investigation (or prosecution)	
11	Details of the assistance, evidence, documents, etc., sought, and details of the financial institution in possession or control of the evidence or assets sought	
12	Urgency and/or relevant dates (such as court hearings)	
13	Details of whether each person named in the request is a witness, suspect, defendant or victim	
14	If applicable, details of any media attention, sensitivities or reasons for high profile interest in the matter	
15	As per intelligence handling conditions, NO references to IOM FIU or specific intelligence received (consider following wording instead: " <i>The investigation has revealed that...</i> ")	

4 RESTRAINT

Under the law of the IOM, property which may be restrained is property which is needed to satisfy an external order (for confiscation/forfeiture/restitution) which may be, or has been, made. An external order is an order made in relation to property found or believed to have been obtained as a result of criminal conduct. It is an order for the recovery of specified property, or a specified sum of money. Criminal conduct is conduct which would constitute an offence in the IOM if it occurred there, i.e. dual criminality is required for restraint.

Applications to the IOM court *may* be made ex parte (without notice to the affected parties), but the LOR must set out why it is necessary for the suspect (or others likely to be affected by the restraint) to be excluded from the hearing. As they are not given the opportunity to put their case to the IOM court, it is necessary to demonstrate that **all** relevant information (including any defence put forward by the suspect, and other information which may be detrimental to the restraint application) has been brought to the attention of the IOM court.


The IOM court may make a restraint order if the following conditions are satisfied:

- a) a criminal investigation or criminal proceedings have been started (and not concluded) in the requesting jurisdiction;
- b) relevant property in the IOM has been identified in the request; and
- c) there is reasonable cause to believe that the suspect or defendant named in the request has benefitted from their criminal conduct.

It is also necessary for the LOR to show that there is a **risk of dissipation** if the assets are not restrained. The LOR should state to what extent the suspect or defendant has (or is believed to have) benefitted from their criminal conduct so that the IOM court can be satisfied that the value of the asset to be restrained does not exceed that amount. If necessary, an order can be made restraining only the appropriate amount, rather than the whole asset.

If granted, the restraint order must be served upon the suspect or defendant (or the person in whose name the asset is held) and upon the financial institution which holds the asset. Any person affected by the order may give notice to the Attorney General and file an application for the order to be varied or discharged.

The restraint order must be discharged if no external order is made, if no external order is registered within a reasonable time, or if proceedings for an offence are not commenced within a reasonable time.

Restraint Checklist (In addition to the LOR Checklist above)		
1	Suspects' / defendants' addresses where the restraint order can be served upon them	
2	Certified copy of any restraint order granted in the requesting jurisdiction, or an explanation why there is no restraint order in the requesting jurisdiction	
3	Identify relevant property in the IOM	
4	A description of the criminal conduct, and copies of the relevant legislation relating to the offences and possible sentences	
5	Confirmation that there is reasonable cause to believe that the suspects / defendants have benefitted from their criminal conduct	
6	Reasons why the IOM court should allow the matter to be decided without notice to the suspects / defendants (or others likely to be affected by the restraint)	
7	Details of any defence put forward by the suspects / defendants in respect of the criminal conduct	
8	Whether or not it will be necessary for the IOM court to make provision for the suspects / defendants living expenses and legal expenses from the restrained asset	
9	Confirmation that restraint is requested so that the IOM assets may be available in respect of a confiscation order which is likely to be made upon conviction	
10	Why it is believed that unless the assets are restrained, there is a significant risk that the suspects / defendants will attempt to dissipate them	

11	Details of the extent to which the suspects / defendants are believed to have benefitted from their criminal conduct	
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5 CONFISCATION

In the IOM, the process for giving effect to an external order in the IOM court has two stages:

- 1 Upon receipt of the LOR, the ICART will apply to the IOM court to register the external order; and
- 2 After notice of the registration has been given to the suspect or defendant (or the person in whose name the assets are held), a further application for enforcement of the external order is made.

The IOM court must give effect to an external order where all of the following conditions are satisfied:

- a) The external order was made on the conviction of the person named in the order and no appeal is outstanding in respect of the conviction.
- b) The external order is in force and no appeal is outstanding in respect of it.
- c) Giving effect to the external order would not be incompatible with any of the Convention (Human Rights) rights of any person affected by it.

A detailed LOR, and certified copies of court orders from the requesting jurisdiction in relation to conviction and confiscation are required.

6 CIVIL RECOVERY (NON-CONVICTION BASED CONFISCATION)

Where criminal proceedings have not been instituted in the requesting jurisdiction (for example, where the suspect / defendant is a fugitive or has died) the IOM court may also enforce an external order by means of civil recovery (non-conviction based confiscation).

A civil recovery order is only available in respect of external orders where the IOM court finds that the property specified in the external order is recoverable property. Recoverable property is property obtained as a result of, or in connection with,

criminal conduct. In matters of civil recovery the LOR must show a link between the asset in the IOM and the criminal conduct.

7 Contact

We understand that it can take some time for LORs to be prepared by the relevant authority and then issued by the Central Authority. If you intend to send a LOR involving restraint, confiscation or civil recovery to the IOM, please consider contacting the ICART before finalising the LOR. Although the checklists shown above are a good starting point, each case is different and we will be very happy to review draft LORs and give specific advice in relation to the information which must be included. This will ensure that the application and evidence we put before the IOM court have the best chance of success.

Please contact the ICART at:

International Cooperation and Asset Recovery Team
Attorney General's Chambers
Belgravia House
Circular Road
Douglas
Isle of Man
Great Britain
IM1 1AE

Telephone: +44 (0) 1624 685452

Email: icart@gov.im

Advice in relation to restraint requests can be dealt with as a matter of urgency, and in most cases will mean that the LOR can be dealt with more quickly and effectively.

**International Cooperation and Asset Recovery Team
Chambers of H.M. Attorney General for the Isle of Man**

(Updated 12 November 2020)