

**A REVIEW OF CO-OPERATION BETWEEN
THE COMMONWEALTH SECRETARIAT AND THE ASIAN-AFRICAN
LEGAL CONSULTATIVE COMMITTEE**

Memorandum by the Commonwealth Secretariat
and a Paper by DR. B. SEN, Secretary-General
of the Asian-African Legal Consultative Committee

Over the past ten years the Commonwealth Secretariat and the Asian-African Legal Consultative Committee (AALCC) have co-operated in a number of areas. In order to appraise Ministers who are not familiar with the work of the AALCC the Secretariat invited the Committee's Secretary-General to prepare the accompanying paper.

2. The AALCC has been engaged in work of its own in the field of judicial assistance. In recent times there has been an upsurge in commercial transaction and in the number of Commonwealth citizens who have moved to work in the "oil States" of West Asia. In view of the membership of AALCC embracing many of those States and in view of the extensive work in the area of the recognition and enforcement of judgments and orders and the service of process within the Commonwealth undertaken for the Commonwealth Secretariat by Professors David McClean and Keith Patchett, the paper suggests that Ministers may consider it timely to extend the Secretariat's work to act in liaison with the AALCC and, where appropriate to promote, Commonwealth arrangements with West Asia.

3. The paper also suggests that liaison in the field of extradition is potentially fruitful and that enhanced Secretariat involvement in the AALCC's training programmes may prove mutually beneficial.

Annex to LMM(83)4

**A REVIEW OF CO-OPERATION BETWEEN
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LEGAL CONSULTATIVE COMMITTEE**

Prepared by Dr. B. SEN, Secretary-General
of the Asian-African Legal Consultative Committee

Introduction

Official contacts between the Commonwealth Secretariat and the Asian-African Legal Consultative Committee (AALCC) were first established in 1972 when the then-Director of the Legal Division (Mr. T.O. Kelleck, QC) attended the Committee's Thirteenth Sessions held in Lagos in January of that year. Since then contacts have been maintained regular basis between the AALCC Secretariat and the Legal Division of the Commonwealth Secretariat through periodic consultations with the AALCC Secretary-General and exchanges of publications. The Commonwealth Law Bulletin also covers the activities of the AALCC. The Commonwealth Secretariat has continued to be invited at the AALCC's regular sessions each year, as also to some of its working group meetings.

2. There are fifteen¹ Commonwealth Governments among the members of the AALCC out of a total membership of 40 States; four other governments maintain close working relations with the AALCC, and a large number of other Commonwealth governments (including Britain and Canada) attend the AALCC's Sessions on a regular basis as observers. Furthermore, the interests of the Commonwealth countries in areas of the Asian-African region which are within the AALCC membership has increased a great deal during the past few years. The time may now be opportune to consider closer co-operation between the two bodies and their possible collaboration in certain specific fields of work. The Commonwealth Law Ministers' Meeting in Colombo in February 1983 provides an opportunity for this to be considered. Sri Lanka is a founder member and the current Chairman of the AALCC.

Brief background of AALCC

3. The Asian-African Legal Consultative Committee, an intergovernmental organisation, was established in November 1956 as an outcome of the Asian-African Conference held in Bandung in April 1955. Originally conceived as an advisory body in the field of international law to its member governments, then comprised of seven Asian States, the Committee has gradually established itself as a major international organisation with a membership of 40 governments and has expanded its activities to cover areas both in the field of law and economic relations. It acts as forum for consultation and exchanges of views on a number of matters before the United Nations or Conferences of Plenipotentiaries. The Committee has played an important role in the negotiations on the Law of the Sea and, consistent with the global impact of its activities, the Committee's annual sessions have been attended by 40 to 50 observer delegations from different parts of the world.

4. The AALCC was accorded Permanent Observer Status with the United Nations by a decision of the General Assembly taken at its Thirty-fifth Session in 1980. It has been a participating inter-governmental organisation with the United Nations Conference on Trade and Development (UNCTAD) since 1968, and it maintains official relations with a number of United Nations agencies including the International Law Commission (ILC), the United Nations Commission on International Trade Law (UNCITRAL), the Food and Agriculture Organisation (FAO), the International Maritime Organization (IMO), the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Environment Programme (UNEP). In addition it has entered into co-operation agreements with the International Institute for the Unification of Private Law (UNIDROIT), The Hague Conference on Private International Law, and the Council of Europe. It also maintains contacts with other international organisations including the Organization of American States and the League of Arab States. Most of these organisations attend the Committee's Sessions on a regular basis and actively co-operate in its work.

5. The Committee holds its Session once annually by rotation in its member States, and in between Sessions a number of Expert Group Meetings and Working Groups are organised.

6. The Committee's Secretariat is at present located in New Delhi and is headed by an elected Secretary-General. He is assisted by a Deputy Secretary-General and three Assistant Secretaries-General who are senior officials of the Government seconded to the Committee's Secretariat. In addition, there is a highly qualified technical staff of six legal officers apart from its administrative personnel and languages pool.

¹ The members of the Commonwealth who are also members of the AALCC are the following: Bangladesh, Botswana, Cyprus, The Gambia, Ghana, India, Kenya, Malaysia, Mauritius, Nigeria, Sierra Leone, Singapore, Sri Lanka, Tanzania and Uganda. In addition, Australia and New Zealand were accorded Permanent Observer Status by a decision of the AALCC taken in 1981. Zambia and Zimbabwe are invited to Committee's Sessions and all Working Group Meetings and receive documentation intended for AALCC members.

Work of the AALCC in the field of international law

7. The Committee in the past has concluded its work by way of recommendations in regard to a large number of matters which include Diplomatic Relations, State Immunity, Extradition, Status and Treatment of Aliens, Rights of Refugees, Dual Nationality, Enforcement of Foreign Judgments, Legality of Nuclear Tests and Law of Treaties. Some of these subjects are likely to be taken up again for review in the light of recent developments.

8. Its current programme of work embraces the following:

- (i) Consideration of the subjects and topics before the International Law Commission;
- (ii) Preparation of notes and comments on matters before the Sixth Committee of the General Assembly and such other items on the agenda of the General Assembly which are relatable to the work of the Committee;
- (iii) Law of the Sea;
- (iv) Optimum utilisation of the resources of the exclusive economic zones through preparation of appropriate framework legislations, model agreements, etc.;
- (v) Protection of the environment with special reference to marine environment and promotion of IMO Conventions;
- (vi) Law of International Rivers;
- (vii) Legal aspects of peaceful uses of Outer Spaces;
- (viii) Reciprocal Assistance in the matter of service of process, issue of letters rogatory and recording of evidence both in civil and criminal matters; and
- (ix) Economic, Scientific and Technical co-operation in the use of the Indian Ocean.

AALCC's work in the field of Economic Relations and Trade Law

9. Although the role originally assigned to the Committee lay primarily in the field of international law, its activities have from time to time been widened consistent with the Committee's broader objectives as a forum for Asian-African co-operation. This trend has been particularly evident in the field of economic relations and trade law due to the close inter-relationship between principles of law and economics. It has been felt that in the field of trade and economic relations legal and economic considerations are so inextricably interwoven that any reasonable and effective solution can only be achieved through a judicious blending of both the elements. Thus, as early as in 1960 with the adoption of the first development decade, the Committee at its Third Session, decided to take up for examination various questions and issues concerning International Sale of Goods and commodities in view of the expected changes in the trading pattern of the countries of the region. The Committee's work in the field spread over several years and culminated in the adoption of two standard forms for sale transactions in commodities which are normally exported from the countries of the region. The Standard Contracts drawn up by the Committee were published by the United Nations as ECOSOC documents in 1977.

10. The Committee's continuing involvement in the economic field led to the establishment of its official relations with the United Nations Commission on Trade and Development (UNCTAD) in 1969. Even at the initial stages one of the important initiatives which the Committee was able to take within the framework of UNCTAD's programme in the field of shipping was to help in the consolidation of the position of developing nations in regard to the adoption of Convention on a Code of Conduct for Liner Conferences.

11. At its Accra Session in 1970, the Committee decided upon the establishment of a Standing Sub-Committee to deal with economic and trade law matters as a regular feature of its activities and official relations were established with the United Nations Commission on International Trade Law (UNCITRAL) in the following year. The subjects considered include International Payments, Carriage of Goods by Sea and International Sale of Goods.

12. One of the major achievements of the Committee in the economic field is the adoption of its integrated scheme for settlement of disputes with a view to creating stability and confidence in economic transactions with the countries of the region. The scheme envisages development of national arbitration institutions, establishment of regional centres under the auspices of the Committee and making available the services of specialised arbitration institutions to the countries of the region within the framework of the integrated scheme. Two Regional Centres, one in Kuala Lumpur and the second in Cairo have already been established, and a third Centre to be located in Lagos is in the process of formation. The World Bank's International Centre for Settlement of Disputes (ICSID) has concluded formal agreements with the Committee in relation to its Regional Centres for mutual co-operation and assistance. The Japan Maritime Arbitration Commission which is one of the major specialised institutions in the field of shipping has agreed to make its services available to the countries of the region within the framework of the AALCC's scheme.

13. Another development of far-reaching importance where the Committee has been able to take an initiative during the past two years is in regard to regional co-operation towards industrial growth of developing countries in Asia and Africa. A Ministerial meeting held in Kuala Lumpur in December 1980 under the Chairmanship of the present Prime Minister of Malaysia had identified the areas and modalities for bringing about closer co-operation between the Asian-African States in the context of slow progress of negotiations in global forums. The following Ministerial meeting, in Istanbul in September 1981, established a system of exchange of information in the field of industry through the media of the Committee's Secretariat.

14. The current work programme of the AALCC in the field of trade and economic law include the following:

- (i) Preparation of model bilateral agreements for investment protection with particular reference to investments by one developing country in another;
- (ii) Model framework for joint or tripartite venture agreements in relation to industrial projects;
- (iii) Technical support including examination of matters and issues in the proposed global negotiations on international economic relations;
- (iv) Continuation of Ministerial meetings for regional co-operation in industries and co-operation with the UNCITRAL and the UNCTAD; and
- (v) Implementation of the programme for settlement of disputes in economic and commercial matters.

Reciprocal assistance in Judicial Matters

15. It will be seen from the current work programme of the AALCC that one of the matters in which the Committee is actively engaged is Reciprocal Assistance in regard to Service of Process and Recording of Evidence both in civil and criminal matters. The AALCC at its Twenty-second Session, in Colombo in May 1981, had decided to accord priority to this topic in view of the increasing importance of international co-operation in judicial matters during the past decade in the light of wider involvement of the countries of the Asian-African region in trade, commerce, investments and movement of labour force from one country to another. In accordance with the mandate given at that Session, the AALCC convened a meeting of an Expert Group in August 1982 which finalised the drafts of two model bilateral agreements, one relating to civil and commercial matters and the other on letters rogatory for criminal cases. The Hague Conference on Private International Law has

been actively associated with this project. A copy of the Report of the Expert Group is annexed. This Report will be taken up at the next regular session of the AALCC.

Training Programme and Publications

16. The Committee arranges training programmes for officials of its member governments and undertakes various publications which have included studies on Asian and African constitutions. It brings out a quarterly Bulletin to assist member governments to keep trace of recent developments in international conferences and treaty practice.

Possible collaboration between the AALCC and the Commonwealth Secretariat

17. Although there is considerable scope for greater collaboration between the two bodies in a number of areas, it is suggested that to begin with some thought may be given in regard to the three specific matters discussed below.

18. The AALCC's work on judicial assistance might be of particular interest to Commonwealth governments since the Commonwealth Secretariat has also continued its work in the area of mutual assistance in the administration of justice and has in perspective the enlargement of scope of existing arrangements. As well as for Commonwealth Governments, which are members of the AALCC, the work of the Committee in this field might be of interest to other Governments who may wish to facilitate wider arrangements with countries in West Asia² in the matter of mutual judicial assistance, since most of these countries are within the AALCC membership. A close working arrangement between the AALCC and the Commonwealth Secretariat on this subject may therefore prove to be fruitful.

19. Another area in which co-operation between the Commonwealth Secretariat and the AALCC might be useful is in the field of extradition. The AALCC's own recommendations on this subject were adopted at its Tokyo Session, in 1961. Since then changes and new developments have occurred in the shape of State practice, multilateral treaties and other forms of arrangements. The Commonwealth Secretariat's work in this field has been of particular significance. In the light of these developments the AALCC might consider taking up the subject again for further consideration.

20. Apart from these, it may be possible for the Commonwealth Secretariat and the AALCC to collaborate in organising training programmes for personnel from developing countries in Asia and Africa in specific fields. The Commonwealth Secretariat has been providing training programmes for legal draftsmen from developing countries of the Commonwealth, whilst the AALCC's training programmes have been primarily directed to matters of international law. The Commonwealth Secretariat has been able to arrange, from time to time, for the CFTC to make available funds to enable officials from developing Commonwealth countries to take advantage of the AALCC's training programmes, and the possibility of further co-operation could perhaps be investigated.

² AALCC membership in West Asia and Northern Africa include Egypt, Libya, Syria, Jordan, Iraq, Iran Saudi Arabia, Kuwait, Qatar, Oman, North Yemen and U.A.E.

**ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE
EXPERT GROUP MEETING ON MUTUAL ASSISTANCE
IN JUDICIAL MATTERS
NEW DELHI, 5TH TO 7TH AUGUST 1982
REPORT OF THE SECRETARY-GENERAL**

An inter-sessional meeting to consider certain aspects of mutual assistance and co-operation in judicial matters was held at the Committee's Secretariat in New Delhi from the 5th to 7th August 1982 in pursuance of the Committee's decision taken at its Colombo Session held in May 1981.

The meeting was attended by the representatives of Arab Republic of Egypt, Australia, Bangladesh, Cyprus, Ghana, India, Indonesia, Iraq, Kenya, Democratic People's Republic of Korea, Republic of Korea, Malaysia, Mongolia, Pakistan, Philippines, Singapore, Somali Democratic Republic, Sri Lanka, Thailand and Zimbabwe. The meeting was also attended by the Representative of the Hague Conference on Private International Law.

Mr. K.M.M.B. Kulatunga (Sri Lanka) was elected Chairman of the Meeting.

The meeting had before it for its consideration a Secretariat study containing the draft of a Convention on Mutual Assistance for the Service of Process and the Taking of Evidence Abroad relating to Civil or Commercial Matters as also the Draft of a Convention on Mutual Assistance on Letter Rogatory in Criminal Cases.

The Secretary-General stated that international co-operation in judicial matters has assumed increasing importance in the Asian-African region during the past decade in view of wider involvement of the countries in the region in trade, commerce and industrial development. Extensive investments have been made in developing countries of the region in the projects of national importance by countries both within and outside the region which have led to employment of technicians and other personnel from the investing countries. Furthermore, shortage of manpower in some of the countries of the region had given rise to vast movement of labour from the over-populated areas in search of employment. The Secretary-General stated that these increasing contacts made it incumbent that proper judicial process should be available to facilitate protection of rights and enforcement of obligations of the parties involved which could not be achieved without adequate co-operation between the countries concerned.

It was mentioned that framework to effectuate and enforce judicial process that could cover the entire area of co-operation would necessarily include:-

- (i) Enforcement of judgments and decrees relating to civil or commercial matters rendered by the competent courts of a country in the territories of another;
- (ii) Extradition of fugitive offenders;
- (iii) Enforcement of foreign arbitral awards;
- (iv) Assistance in the service of process and taking of evidence in respect of civil or commercial cases instituted or proposed to be instituted before the courts or tribunals in another country;
- (v) Assistance by means of execution of letters rogatory in criminal cases pending before the courts of another country.

It was however felt that the matter needed to be taken in progressive stages and in this context it was considered that the Committee's present programme to deal with matters to assist in the service of process and taking of evidence could well constitute the first step in this process since these were areas it might be relatively easy to achieve concrete results within a reasonable time frame.

The Secretary-General stated that a study on the question of mutual assistance in the matter of service of process and taking of evidence both in civil and criminal matters had been initiated in pursuance of the Committee's decision taken on its Kuala Lumpur Session held in June 1976. The Draft of a comprehensive Convention dealing with the subject was presented at the Committee's Seoul Session held in February 1979 which was considered in some detail at the Colombo Session held in May 1981. At that Session views had been expressed that the model provisions relating to civil and commercial matters should be separated from those relating to criminal matters and it had been accordingly decided that the Secretariat should prepare two drafts for model conventions, one relating to Civil and Commercial matters and the other for issue of Letters Rogatory in criminal Cases. The Secretary-General stated that although the Secretariat drafts had been drawn up in the form of model conventions, they could easily adapted to form the basis of bilateral arrangements.

The meeting expressed the view that it would be preferable at the present stage to contemplate bilateral arrangements for Mutual Assistance in Judicial Matters in order to promote contacts between the states of the region initially on bilateral basis which could eventually provide a solid basis for multi-lateral Conventions on the pattern which has found acceptance in other regions. A view was expressed that if it would be fruitful for the Expert Group to draw up principles for bilateral co-operation in regard to service of process and taking of evidence which could be incorporated in suitable bilateral arrangements by the States concerned. It was however felt that the principle should be set out in the model drafts of two bilateral arrangements one relating to civil and commercial matters and the other relating to criminal cases in view of the fact that the model drafts were likely to be of greater assistance to governments whilst initiating negotiations on bilateral arrangements for mutual assistance in judicial matters.

The meeting examined in detail the provisions of the Secretariat drafts which were revised to conform to the pattern of bilateral arrangements. The principles which were likely to be acceptable to the countries in the Asian-African region were incorporated in the drafts finalised by the Expert Group. These are annexed to this Report.

It was agreed that the Committee's final report on this subject for submission to governments should include the following:

- (i) The drafts of two model bilateral arrangements for mutual co-operation relating to service to process and taking of evidence.
- (ii) A statement of principles contained in the two model drafts.
- (iii) The model drafts together with explanatory notes on each of the provisions to be prepared by the Committee's Secretariat.

It was also agreed that the modalities for appropriate follow up action be discussed at the next Session of the AALCC and the Secretariat should undertake a study on the question of formulation of suitable legislation which may be needed to implement bilateral arrangements.

New Delhi
9 August, 1982

B. SEN
Secretary-General

**DRAFT OF MODEL BILATERAL ARRANGEMENTS ON MUTUAL
ASSISTANCE FOR THE SERVICE OF PROCESS AND THE TAKING
OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS**

Preamble

The States Parties to the Present Arrangements, Desirous of bringing about closer co-operation in the matter of mutual assistance for service of process, taking

of evidence and other related functions in aid of judicial proceedings relating to Civil or Commercial matters.

Have agreed as follows:

CHAPTER I

General Provisions

Article 1

Use of Terms

For the purpose of these arrangements:

- (a) **Process:** means any notice, writ, summons or any other type of document, which is required to be served on a party or witness in judicial proceedings relating to civil or commercial matters;
- (b) **Requesting State:** means the State which requests the service of process in the territory of another State or the State from which a request to take evidence, obtain information or perform some other judicial act emanates;
- (c) **Requested State:** means the State in which the service to be effected or the State in which the request is to be executed for taking of evidence, obtaining information or performing some other judicial act;
- (d) **Central Agency:** means the authority which is empowered:
 - (i) to transmit to a Central Agency of the other Contracting State requests or letters of request for the purpose of service of process or for taking of evidence, obtaining of information or performing some other judicial act, emanating from a competent authority in its own State, and
 - (ii) to receive and to take action on requests or letters of request transmitted by a Central Agency of the other Contracting State.

Article 2

Scope of the Arrangements

1. The Contracting States undertake to afford each other, in accordance with the provisions of these arrangements, mutual assistance with regard to service of process or taking of evidence, obtaining of information or performing some other judicial act, by means of requests or letters of request issued for the purpose, addressed by a competent authority of the other State in civil or commercial proceedings.

2. Letters of request shall not be used for taking of evidence which is not intended for use in judicial proceedings.

3. The expression 'other judicial act' does not cover the issuance of any process by which judgments or orders are executed or enforced, or orders for provisional or protective measures.

Article 3

Execution of request or letter of request Non-commitment to recognition of the judgment

Execution of the request shall not imply ultimate recognition of the jurisdiction of the authority issuing it or a commitment to recognise the validity of the judgment it may render or to enforce it.

Article 4

Central Agency

1. Each contracting state shall designate or establish a Central Agency through which requests or letters of request to the other Contracting State shall be transmitted. Requests or letters of request from the other Contracting State shall be received by the Central Agency which shall forward them to the component authorities in its own State for taking action.

Note Federal States shall be free to designate or establish more than one Central Agency and this paragraph would need to be adapted accordingly.

2. Each contracting State shall inform the other Contracting State the name and address of the Central Agency (or Agencies) designated or established in accordance with the provisions of this Article.

Article 5

Legislation

Unless required otherwise the request or the letter of request shall be presumed to be duly legalised in the requesting State when the same is signed and bears the seal of a Central Agency.

Article 6

Conformity with the Arrangements

If the Central Agency of the requested State considers that the request or the letter of request does not conform with the provisions of the present arrangements it shall promptly inform the requesting Central Agency, to that effect.

Article 7

Languages

1. The request or the letter of request and the appended documentation shall be drawn up in _____ language or be accompanied by a translation into that language.

2. The reply shall be prepared and transmitted in the language specified in paragraph 1 or be accompanied by a translation.

3. Any translation accompanying a request or a letter of request shall be certified as correct, by a sworn translator or by any other person so authorised in either State.

Article 8

Time-limits

The competent authority issuing the request may indicate a time-limit for the service of process or taking of evidence, obtaining of information or performing some other judicial act in the requested state. The competent authority shall briefly state the reasons for establishing such time-limit. The Central Agency of the requested State shall communicate with the Central Agency of the requesting state if any difficulty is experienced in adhering to the time limit. The competent authority of the requesting State shall have the option to indicate a further period of time taking action on the request.

Article 9

Grounds for non-compliance with the request or the letter of request

1. The execution of a request or a letter of request may be refused if:
 - (a) in the requested State the execution of the request does not fall within the functions of the judiciary or any other competent organ of the State;
 - (b) the requested State considers that its sovereignty, security, public policy or other essential interests ("ordre public") would be prejudiced thereby;
 - (c) its compliance might prejudice the fundamental rights of the person affected, or that the request concerns information held in confidence, which may be disclosed;
 - (d) the letter of request relates to taking of evidence prior to judicial proceedings or in "pre-trial discovery of documents" as known in the common law system.
2. Execution may not be refused solely on the ground that under its internal law the requested State claims exclusive jurisdiction over the subject matter of the action or that its internal law would not permit the action upon which the application is based.
3. In the case of refusal, the Central Agency of the requested State shall promptly inform the requesting Central Agency and state the grounds for such refusal.

CHAPTER II

Service of Process

Article 10

Form of Request

1. The authority competent under the law of the requesting State shall forward a request for the service of process to its own Central Agency for transmission to the requested State.
2. The request for the service of process shall be drawn up in accordance with form "A" appended to the present Arrangements and the document to be served or a copy thereof shall be annexed to it.

Article 11

Execution of Request for Service

1. The authorities of the requested State shall effect service of the process by simple transmission of the document to the person to be served or by any other method prescribed by its internal law.
2. Where the competent authority of the requesting State has indicated any particular method of service, an endeavour should be made to comply with such request provided that the same is not inconsistent with the laws of the requested State.
3. That part of the request, in form "C" attached to the present Arrangements, which contains a summary of the document to be served, shall be served with the document.

Article 12

Certificate of the Executing Authority for Service of Process

The Central Agency of the requested State or any authority which it may have designated for that purpose, shall complete a certificate in form "B" appended to the present Arrangements.

Article 13

Costs

The requested State shall be entitled to be reimbursed:

- (a) the fees of charges paid for effecting service as authorised under the law of the requested State; and
- (b) the costs occasioned by the use of a special procedure requested by the competent authority of the requesting State.

*Article 14

Service of Process by Diplomatic or Consular Officers

A diplomatic or consular office of a Contracting State may, in the territory of the other Contracting State and within the area where he exercises his functions, effect service of judicial documents upon his own nationals provided no compulsive measures are applied.

*The representatives of Thailand and Singapore reserved their position on the provisions of this Article.

Article 15

Service of Process by Post and Other Modes

Subject to any objection on the part of a Contracting State:

- (a) each Contracting State may send judicial documents by postal channels, directly to persons in the other Contracting State;
- (b) the judicial personnel, officials or other competent persons in a Contracting State may effect service of judicial documents directly through the judicial personnel, officials or other competent persons in the other Contracting State; and
- (c) any person interested in a judicial proceeding may effect service of judicial documents directly through the judicial personnel, officials (legal practitioners) or other competent persons in the other Contracting State.

CHAPTER III

Taking of Evidence

Article 16

Form of Request

The authority or judicial officer competent under the law of the requesting State shall forward to its own Central Agency a letter of request for taking of evidence or performing some other judicial act with the request to transmit it to the Central Agency of the requested State. The letter of request shall be drawn up in form "D" appended to the present Arrangements.

Article 17

Execution of Letters of Request

1. The authority responsible for the execution of letters of request shall apply its internal law as to the methods and procedures to be followed.
2. However, it shall follow any special method or procedure specified in the letter of request unless that procedure conflicts with the internal law of the requested State or is impossible of performance by reason of its internal practice and procedure or by reason of practical difficulties.
- [3. If the requesting State desires witnesses or experts to give evidence on oath, it shall expressly so state, and the requested State shall comply with the request if its internal law does not prohibit the same.]
4. In the execution of the letter of request, the authorities of the requested State shall not require any person to give evidence in respect of any matter where he has a privilege or duty to refuse to give such evidence under the law of the requested State or of the requesting State.
5. The requested State may transmit original or certified copies of records or documents requested.

Article 18

Notice to the Requesting Authority Regarding Time and Place of the Execution of the Request

1. On the express request of the requesting authority the requested State shall inform that authority of the time when, and the place where, the proceedings will take place. The requested State shall endeavour to send such information directly to the parties when the authority of the requesting State so desires.
2. The officials designated by the requesting State and parties concerned may be present or be represented at the proceedings, if the same is not inconsistent with the internal law and the requested State gives its consent.

Article 19

Application of the Measures of Compulsion by the Authority

[In the execution of the letter of request, the requested authority shall apply appropriate measures of compulsion in the instances and to the same extent as are provided for by its internal law].

Article 20

Costs

1. The requested State shall be entitled to be reimbursed:
 - (a) the fees or charges paid to experts, witnesses, interpreters or any other person as authorised under the law of the requested State; and
 - (b) the costs occasioned by the use of a special procedure requested by the competent authority of the requesting State.
2. The requested authority whose law obliges the parties themselves to secure evidence, and which is not able itself to execute the letter of request, may, after having obtained the consent of the requesting authority, appoint a suitable person to do so. When seeking such consent the requested authority shall indicate the approximate costs which would result from following of this procedure. If the requesting authority gives its consent it shall reimburse the costs incurred; without such consent the requesting authority shall not be liable for the costs.

*Article 21

Taking of Evidence by Diplomatic or Consular Officers

1. A diplomatic or consular officer of a Contracting State may, in the territory of the other Contracting State and within the area where he exercises his functions, take the evidence of nationals of his home State in aid of proceedings commenced in the courts of that State, without application of any compulsion.
2. If an attempt to obtain evidence in the manner provided for in paragraph 1 of this Article fails, it shall not prevent a letter of request being subsequently sent to the Central Agency of the requested State in accordance with Article 16 of these Arrangements.

Article 22

Taking of Evidence by Commissioner

The Commissioner appointed by a judicial authority in a Contracting State to record the evidence of a witness or expert, for the purposes of proceedings pending before it, may take such evidence in the other Contracting State, provided a competent authority of that State has given its endorsement or authorisation on the warrant of commission and subject to such terms and conditions as may be specified in the endorsement or authorisation.

CHAPTER IV

Requests for Information and Documents

Article 23

Request for Information on Laws and Regulations

The Contracting States agree to furnish each other with information on their laws and regulations relating to civil or commercial matters, both substantive and procedural, whenever a request is made by a Contracting State for such purpose.

*The representative of Singapore reserved his position on this Article.

Article 24

Requests for Judicial Records

1. Upon the request made by a judicial authority of the requesting State transmitted through the Central Agency, extracts from and information relating to judicial records, shall be made available to the same extent and in like manner as these are made available to the judicial authorities of the requested State.
2. The requesting authority may not use any information or document furnished for purposes other than those specified in its request for assistance.

CHAPTER V

Final Provisions

Article 25

Entry into Force of the Arrangements

1. The present Arrangements shall be subject to ratification.
2. The Arrangements shall enter into effect days after the date of exchange of instruments of ratification and shall remain in force for a period of years.

Article 26

Other International Agreements or Arrangements

Nothing in these Arrangements shall affect existing or future bilateral or multilateral agreements and practices or other arrangements between Contracting States which relate to matters provided for in the present Arrangements.

Article 27

Difficulties Arising in Operation of the Arrangements to be Settled Through Negotiations

Any difficulties which may arise between Contracting States in regard to the interpretation or application of these Arrangements shall be settled through negotiation.

Article 28

Revision of the Arrangements

At the request of any Contracting State, the State Parties shall enter into negotiations with a view to examine the provisions of these Arrangements and to consider the advisability of a revision or of an enlargement of the scope of these Arrangements.

Article 29

Denunciation of the Arrangements

Any Contracting State may denounce these Arrangements by means of a notification communicated to the other State Party. Denunciation shall take effect six months after the date of receipt of such instrument of denunciation.

NOTE : The Expert Group decided that the provisions in regard to which some doubts had been expressed about their suitability should be placed within brackets []. This pattern has been followed in the present text of the Draft.

ANNEX TO THE DRAFT OF MODEL BILATERAL ARRANGEMENTS ON
MUTUAL ASSISTANCE FOR THE SERVICE OF PROCESS AND THE
TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS

FORMS

- (i) Request for Service - FORM "A"
- (ii) Certificate - FORM "B"
- (iii) Summary of the Document to be served - FORM "C"
- (iv) Request for Taking of Evidence - FORM "D"

(i)

ANNEX TO THE ARRANGEMENTS

REQUEST FOR SERVICE**

FORM "A"**

1. REQUESTING CENTRAL AGENCY:

2. RECEIVING CENTRAL
AGENCY:

ADDRESS _____

ADDRESS _____

3. REFERENCE: of the requesting authority

4. SUBJECT OF THE REQUEST:

Service abroad of documents
(documents listed below enclosed
in duplicate)

5. ADDRESSEE OF THE DOCUMENT:

- (a) NAME (in capitals)
- (b) Where applicable further details for
identification of the addressee;
- (c) ADDRESS:
- (d) COUNTRY:

6. METHOD OF SERVICE REQUESTED:

- (a) by simple transmission to the addressee:-
- (b) in accordance with the methods prescribed by internal law of the requested State:-
- (c) in accordance with the following method:-

* As referred to in Article 10 of the Draft of Model Bilateral Arrangements on Mutual Assistance for the Service of Process and the Taking of Evidence Abroad in Civil or Commercial Matters

** This form must be drawn up in duplicate, one being the original, the other the copy

7. IDENTITY AND ADDRESS OF THE ADDRESSEE:

If the requested authority requires additional information for effecting service, this form should be returned to the requesting authority specifying in the space below the additional information to be furnished: _____

_____ . The document sent with this request should however be retained with the requested authority pending supply of the additional information by the requesting authority.

8. TIME-LIMITS:

The document should be served before _____ (Date). The reasons for fixation of the time-limit are the following: _____

If it is not possible to effect service by the dates specified, the document should be returned unserved/it should be served whenever possible.*

The authority is requested to return or arrange to have returned to the requesting authority a copy of the documents - and of the annexes - with a CERTIFICATE as provided in Form "B".

List of Documents

_____ Done at _____
the _____
Signature and/seal

* Delete whichever is inapplicable.

(ii)

CERTIFICATE

FORM "B"

The undersigned authority has the honour to certify, in conformity with the provision of the Arrangements*.

1. THAT THE REQUEST HAS BEEN COMPLIED WITH:

ON (DATE) _____

AT (place, street, number) _____

In one of the following methods:

- (a) by simple transmission to the addressee:-
- (b) in accordance with the methods prescribed by internal law of the requested State:-
- (c) in accordance with the following method:-

The documents referred to in the request have been delivered to:-
(identity and description of person) _____

relationship to the addressee (family business or other) _____

* Article 12 of the Draft of Model Bilateral Arrangements on Mutual Assistance for the Service of Process and the Taking of Evidence Abroad in Civil or Commercial Matters.

2. THAT THE REQUEST HAS NOT BEEN COMPLIED WITH FOR THE FOLLOWING REASONS:

3. ANNEXES

- (a) Statement of costs
- (b) Documents establishing the service
- (c) Documents returned

Done at _____ the _____

Signature and/Seal

(iii)

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE "SUMMARY OF THE DOCUMENT TO BE SERVED" WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

SUMMARY OF THE DOCUMENT TO BE SERVED*

FORM "C"

- 1. NAME AND ADDRESS of the Requesting Authority: _____
- 2. Particulars of the parties:** _____

- 3. Nature and purpose of the document: _____

- 4. Nature and purpose of the proceedings and, where appropriate, the amount in dispute: _____

- 5. Date and place for entering appearance: _____
- 6. Court which has given judgment : _____
- 7. Date of Judgment : _____
- 8. Time limits stated in the document: _____

* Article 11 of the Draft of Model Bilateral Arrangements on Mutual Assistance for the Service of Process and the Taking of Evidence Abroad in Civil or Commercial Matters.

** If appropriate, identity and address of the person interested in the transmission of the document.

(iv)

ANNEX TO THE ARRANGEMENTS

REQUEST FOR TAKING OF EVIDENCE*

FORM "D"

- | | |
|---|--|
| 1. REQUESTING CENTRAL AGENCY: | 2. RECEIVING CENTRAL AGENCY: |
| _____ | _____ |
| ADDRESS _____ | ADDRESS _____ |
| _____ | _____ |
| 3. Authority to whom the intimation about the execution of the request is to be sent | (address)
_____ |
| | _____ |
| 4. (a) Requesting judicial authority
(address) | _____ |
| | _____ |
| | _____ |
| (b) The competent authority of requested State | _____ |
| | _____ |
| 5. Names and addresses of the parties and/or their representatives in the proceedings | _____ |
| | _____ |
| 6. Nature and purpose of the proceedings and summary of the facts | _____ |
| | _____ |
| 7. Evidence to be obtained/other judicial act to be performed

(Items to be completed where applicable) | _____ |
| 8. Identity and address of any person to be examined | _____ |
| | _____ |
| 9. Questions to be put to the persons to be examined or statement of the subject - matter about which they are to be examined | (as set out in the attached sheet
_____ |
| | _____ |
| 10. Documents or other property to be inspected or [searched and seized] | (Specify whether it is to be produced, copied, valued, etc)
_____ |
| | _____ |
| 11. [Any requirement that the evidence be given on oath or affirmation and any special form to be used] | (In the event that the evidence cannot be taken in the manner requested, specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence)
_____ |
| | _____ |
| 12. Special methods of procedure to be followed | _____ |
| | _____ |

* As referred to in Article 16 of the Draft of Model Bilateral Arrangements on Mutual Assistance for the Service of Process and the Taking of Evidence Abroad in Civil or Commercial Matters

13. Request for notification of the time and place for the execution of the Request and identity and address of any person to be notified _____
14. Request for attendance or participation of personnel from the requesting State at the execution of a request _____
15. Specification of privilege or duty to refuse to give evidence under the law of the requesting State _____
16. The fees and costs incurred which are reimbursable under the Arrangements will be borne by _____ (Address) _____
17. If the requested authority requires additional information for executing the request, this form should be returned to the requesting authority specifying in the space below the additional information to be furnished _____ (the documents sent with this request should however, be retained with the requested authority pending supply of the additional information by the requesting authority) _____
18. Time-limits: The request should be executed before _____ (date) _____
- The reasons for fixation of the time-limit are the following: _____
- If it is not possible to execute the request by the dates specified, the request should be returned unexecuted/it should be executed whenever possible* _____

Done at _____, the _____
Signature and seal of the requesting authority

* Delete whichever is inapplicable

**DRAFT OF MODEL BILATERAL ARRANGEMENTS ON MUTUAL
ASSISTANCE OF LETTERS ROGATORY IN CRIMINAL MATTERS**

PREAMBLE

The States Parties to the present Arrangements, desirous of bringing about closer co-operation in the matter of mutual assistance in aid of judicial proceedings of a criminal nature,

have agreed as follows:

CHAPTER I

General Provisions

Article 1

Use of Terms

For the purposes of these Arrangements:

- a) Requesting State: means the State which requests for assistance from the other State in aid of judicial proceedings in its territory.
- b) Requested State: means the State in which a request emanating from the other State for assistance in judicial proceedings is to be executed.
- c) Central Agency: means the authority which is empowered:
 - (i) to transmit to a Central Agency of the other Contracting State requests for assistance in judicial proceedings, issued by a judicial authority in its own State; and
 - (ii) to receive and to take action on requests for assistance in judicial proceedings, emanating from a Central Agency of the other Contracting State.

Article 2

Scope of the Arrangements

- 1. The Contracting States undertake to afford each other, in accordance with the provisions of these Arrangements, mutual assistance in criminal proceedings in respect of offences which are punishable under the laws of both the States and the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the requesting State.
- 2. The requested State shall render such assistance when a request is received from the other Contracting State, by means of a letter rogatory issued by a judicial authority of that State, for:
 - (a) the performance of acts of a procedural nature, such a Service of writs, process, summons, subpoenas or judicial records;
 - (b) taking of evidence, [transmitting articles to be produced in evidence,] obtaining information, records or documents.
- 3. These Arrangements shall not apply:
 - (a) to arrests or the enforcement of verdicts;
 - (b) in relation to offences under military law which are not offences under ordinary criminal law.

4. Letters rogatory shall not be used to obtain evidence or information which is not intended for use in judicial proceedings.

Article 3

Execution of the letter rogatory non-commitment to recognition of the judgment

Execution of letters rogatory shall not imply ultimate recognition of the jurisdiction of the authority issuing the letter rogatory or a commitment to recognize the validity of the judgment it may render or to enforce it.

Article 4

Central Agency

1. Each Contracting State shall designate or establish a Central Agency through which the letters rogatory to the other Contracting State shall be transmitted. Letters rogatory from the other Contracting State shall be received by the Central Agency which shall forward them to the competent authorities in its own State for taking action.

Note: Federal States shall be free to designate or establish more than one Central Agency and this paragraph would need to be adapted accordingly.

2. Each Contracting State shall inform the other Contracting State the name and address of the Central Agency (or Agencies) designated or established in accordance with the provisions of this Article.

Article 5

Legalisation

[Unless required otherwise] the letter rogatory shall be presumed to be duly legalized in the requesting State when authenticated by a Central Agency.

Article 6

Conformity with the Arrangements

If the Central Agency of the requested State considers that the request does not conform with the provisions of the present Arrangements, it shall promptly inform the requesting Central Agency, to that effect.

CHAPTER II

Letters Rogatory

Article 7

Form of Request

1. The competent judicial authority in the requesting State may issue a letter rogatory for any of the purposes set forth in paragraph 2 of Article 2 of these Arrangements and shall forward the same to the Central Agency in its own State for transmission to the Central Agency of the requested State. The letter rogatory shall be drawn up in the appropriate form relevant to the subject matter as appended to the present Arrangements.
2. In the case of service of process, the document to be served or a copy thereof shall be annexed to the letter.

Article 8

Language

1. The letter rogatory and the appended documentation shall be drawn up in _____ language or be accompanied by a translation into that language.
2. The reply shall be prepared and transmitted in the language specified in paragraph 1, or be accompanied by a translation.
3. Any translation accompanying a letter rogatory shall be certified as correct, by a sworn translator or by any other person so authorised in either State.

Article 9

Service of Process

1. The requested State shall effect service of writs, process, summons, subpoenas or judicial records, which are transmitted to it for the purpose by the requesting State by simple transmission of the document to the person to be served or by any other method prescribed by its internal law.
2. Where the competent authority of the requesting State has indicated any particular method of service, an endeavour should be made to comply with such request provided that the same is not inconsistent with the laws of the requested State.
3. That part of the request, in form "C" to the present Arrangements, which contains a summary of the document to be served, shall be served with the document.

Article 10

Certificate of the executing authority for service of process

The Central Agency of the requested State or any authority which it may have designated for that purpose, shall complete a certificate in form "B" appended to the present Arrangements.

Article 11

Taking of Evidence

1. The judicial authority responsible for the execution of letters rogatory shall apply its internal law as to the methods and procedures to be followed for the purpose of taking evidence or [transmitting articles to be produced in evidence,] obtaining information, records or documents.
2. [However, it may follow any special method or procedure specified in the Letter unless that procedure conflicts with the internal law of the requested State or is impossible of performance by reason of its internal practice and procedure, public policy or by reason of practical difficulties.]
3. [If the requesting State desires witnesses or experts to give evidence on oath, it shall expressly so state, and the requested State shall comply with the request if its internal law does not prohibit the same.]
4. In the execution of the letter rogatory, the authorities of the requested State shall not require any person to give evidence in respect of any matter where he has a privilege or duty to refuse to give such evidence under the law of the requested State or of the requesting State.
5. The requested State may transmit original or certified copies of records or documents requested.

Article 12

Notice to the requesting authority regarding time and place of the execution of the request

1. On the express request of the requesting authority the requested State shall inform that authority of the time when, and the place where, the proceedings will take place.
2. The officials designated by the requesting State may be present or be represented during the proceedings, if the same is not inconsistent with the internal law and the requested State gives its consent.

Article 13

Application of the measures of compulsion by the authority

[In the execution of the letter rogatory, the requested authority shall apply appropriate measures of compulsion in the instances and to the same extent as are provided for by its internal law.]

Article 14

Conditions governing execution of letters rogatory for search and seizure

[The execution of letters rogatory for search and seizure of property shall be subject to the condition:

- (a) that the offence is an extraditable offence in the requested State; and
- (b) that execution of the letters rogatory is consistent with the law of the requested State.]

Article 15

Handing over of property to the requesting State in execution of letters rogatory

1. The requested State may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending judicial proceedings.
2. Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting State to the requested State as soon as possible unless the latter State waives the return thereof.]

Article 16

Time-limits

The judicial authority issuing the request may indicate a time-limit for the execution of the letter rogatory in the requested State. The judicial authority shall briefly state the reasons for establishing such time limit in the letter rogatory. The Central Agency of the requesting State shall communicate with the Central Agency of the requested State if any difficulty is experienced in adhering to the time-limit. The judicial authority of the requesting State shall have the option to indicate a further period of time for taking action on the request.

Article 17

Grounds for non-compliance with the letter rogatory

1. The execution of a letter rogatory may be refused if:

- (a) the request concerns an offence which the requested State considers a political offence, an offence connected with a political offence, or a fiscal offence;
 - (b) the requested State considers that its sovereignty, security, public policy or other essential interests ("ordre public") would be prejudiced thereby;
 - (c) its compliance might prejudice the fundamental rights of the person affected or that the request concerns information held in confidence, which may not be disclosed.
2. The expression "fiscal offence" in this Article means any offence under the laws of a Contracting State relating to revenues and taxation.
 3. In case of refusal, the Central Agency of the requested State shall promptly inform the requesting Central Agency and state the grounds for such refusal.

Article 18

Costs

The requested State shall be entitled to be reimbursed:

- (a) the fees or charges paid for effecting service as authorised under the law of the requested State;
- (b) the fees or charges paid to experts, witnesses, interpreters or any other person as authorised under the law of the requested State; and
- [(c) the costs occasioned by the use of a special procedure requested by the judicial authority of the requesting State.]

CHAPTER III

Requests for Information and Documents

Article 19

Request for information on laws and regulations

The Contracting States agree to furnish each other with information on their laws and regulations both substantive and procedural in criminal matters whenever a request is made by a Contracting State for such purpose.

Article 20

Requests for judicial records

1. Upon the request made by a judicial authority of the requesting State transmitted through the Central Agency extracts from and information relating to judicial records needed in criminal proceedings, shall be made available to the same extent and in like manner as those are made available to the judicial authorities of the requested State.
2. The requesting State may not use any information or documents furnished pursuant to these Arrangements for purposes other than those specified in its request for assistance.

Article 21

Laying of information

- [1. Information laid by one Contracting State in aid of proceedings in the courts of the other Contracting State shall be transmitted to the Central Agency of that State.

2. The State to which such information has been furnished shall notify the other State of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
3. The provisions of Article 8 shall apply to information laid under paragraph 1 of this Article.]

CHAPTER IV

Final Provisions

Article 22

Entry into force of the Arrangements

1. The present Arrangements shall be subject to ratification.
2. The Arrangements shall enter into effect _____ days after the date of exchange of instruments of ratification and shall remain in force for a period of _____ years.

Article 23

Other international agreements or arrangements

Nothing in these Arrangements shall affect existing or future bilateral or multilateral agreements and practices or other arrangements between Contracting States which relate to matters provided for in the present Arrangements.

Article 24

Difficulties arising in operation of the Arrangements to be settled through negotiation

Any difficulties which may arise between Contracting States in regard to the interpretation or application of these Arrangements shall be settled through negotiation.

Article 25

Revision of the Arrangements

At the request of any Contracting State, the State Parties shall enter into negotiations with a view to examine the provisions of these Arrangements and to consider the advisability of a revision or of an enlargement of the scope of these Arrangements.

Article 26

Denunciation of the Arrangements

Any Contracting State may denounce these Arrangements by means of a notification, communicated to the other State Party. Denunciation shall take effect six months after the date of receipt of such instrument of denunciation.

Note: The Expert Group decided that the provisions in regard to which some doubts had been expressed about their suitability should be placed within Square brackets []. The pattern has been followed in the present text of the Draft.

ANNEX TO THE DRAFT OF MODEL BILATERAL ARRANGEMENTS ON
MUTUAL ASSISTANCE ON LETTERS ROGATORY IN CRIMINAL MATTERS

FORMS

- (i) Request for Service - FORM "A"
- (ii) Certificate - FORM "B"
- (iii) Summary of the Document to be served - FORM "C"
- (iv) Request for Taking of Evidence - FORM "D"

(i)

ANNEX TO THE ARRANGEMENTS

REQUEST FOR SERVICE**

FORM
"A"**

1. REQUESTING CENTRAL AGENCY:

2. RECEIVING CENTRAL
AGENCY:

ADDRESS _____

ADDRESS _____

3. REFERENCE: of the requesting judicial authority

4. SUBJECT OF THE REQUEST:

Service abroad of documents
(documents listed below enclosed
in duplicate)

5. ADDRESSEE OF THE DOCUMENT:

- (a) NAME (in capitals)
- (b) Where applicable further details for
identification of the addressee;
- (c) ADDRESS:
- (d) COUNTRY:

6. METHOD OF SERVICE REQUESTED:

- (a) by simple transmission to the addressee;
- (b) in accordance with the methods prescribed by internal law of the requested State;
- (c) in accordance with the following method:-

* As referred to in Article 7 of the Draft of Model Bilateral Arrangements on Mutual Assistance on Letters Rogatory in Criminal Matters.

** This form must be drawn up in duplicate, one being the original, the other the copy

7. IDENTITY AND ADDRESS OF THE ADDRESSEE:

If the requested authority requires additional information for effecting service, this form should be returned to the requesting authority specifying in the space below the additional information to be furnished: _____

_____ The document sent with this request should however be retained with the requested authority pending supply of the additional information by the requesting authority.

8. TIME-LIMITS:

The document should be served before _____ (Date). The reasons for fixation of the time-limit are the following: _____

_____ If it is not possible to effect service by the dates specified, the document should be returned unserved/it should be served whenever possible.**

The authority is requested to return or arrange to have returned to the requesting authority a copy of the documents - and of the annexes - with a CERTIFICATE as provided in Form B".

List of Documents

_____ Done at _____
_____ the _____
_____ Signature and/seal

** Delete whichever is inapplicable. _____

(ii)

CERTIFICATE

FORM "B"

The undersigned authority has the honour to certify, in conformity with the provision of the Arrangements*.

- 1. THAT THE REQUEST HAS BEEN COMPLIED WITH:
ON (DATE) _____
AT (place, street, number) _____

In one of the following methods:

- (a) by simple transmission to the addressee:
- (b) in accordance with the methods prescribed by internal law of the requested State:
- (c) in accordance with the following method:

The documents referred to in the request have been delivered to:
(identity and description of person) _____

relationship to the addressee (family business or other) _____

* Article 10 of the Draft of Model Bilateral Arrangements on Mutual Assistance on Letters Rogatory in Criminal Matters.

2. THAT THE REQUEST HAS NOT BEEN COMPLIED WITH FOR THE FOLLOWING REASONS:

3. ANNEXES

(a) Statement of costs

(b) Documents establishing the service

(c) Documents returned Done at _____ the _____

Signature and/Seal

(iii)

IMPORTANT

FORM "C"

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE "SUMMARY OF THE DOCUMENT TO BE SERVED" WILL GIVE YOU SOME INFORMATION ABOUT ITS NATURE AND PURPOSE. YOU SHOULD HOWEVER READ THE DOCUMENT ITSELF CAREFULLY. IT MAY BE NECESSARY TO SEEK LEGAL ADVICE.

SUMMARY OF THE DOCUMENT TO BE SERVED*

1. NAME AND ADDRESS of the Requesting Judicial Authority: _____

2. Particulars of the parties:** _____

3. Nature and purpose of the document: _____

4. Nature and purpose of the proceedings: _____

5. Date and place for entering appearance: _____

6. Court which has given judgment: _____

7. Date of judgment: _____

8. Time limits stated in the document: _____

* Article 9 of the Draft of Model Bilateral Arrangements on Mutual Assistance on Letters Rogatory in Criminal Matters.

** If appropriate, identity and address of the person interested in the transmission of the document.

(iv)

ANNEX TO THE ARRANGEMENTS

REQUEST FOR TAKING OF EVIDENCE*

FORM "D"

- | | |
|---|--|
| 1. REQUESTING CENTRAL AGENCY: | 2. RECEIVING CENTRAL AGENCY: |
| _____ | _____ |
| ADDRESS _____ | ADDRESS _____ |
| _____ | _____ |
| 3. Authority to whom the intimation about the execution of the request is to be sent | (address) _____ |
| _____ | _____ |
| 4. (a) Requesting judicial authority
(address) | _____ |
| _____ | _____ |
| (b) The competent authority of requested State | _____ |
| _____ | _____ |
| 5. Names and addresses of the parties and/or their representatives in the proceedings | _____ |
| _____ | _____ |
| 6. Nature and purpose of the proceedings and summary of the facts | _____ |
| _____ | _____ |
| 7. Evidence to be obtained/other judicial act to be performed

(Items to be completed where applicable) | _____ |
| 8. Identity and address of any person to be examined | _____ |
| _____ | _____ |
| 9. Questions to be put to the persons to be examined or statement of the subject - matter about which they are to be examined | (as set out in the attached sheet) _____ |
| _____ | _____ |
| 10. Documents or other property to be inspected or [searched and seized] | (Specify whether it is to be produced, copied, valued, etc) _____ |
| _____ | _____ |
| 11. [Any requirement that the evidence be given on oath or affirmation and any special form to be used] | (In the event that the evidence cannot be taken in the manner requested specify whether it is to be taken in such manner as provided by local law for the formal taking of evidence) _____ |
| _____ | _____ |
| 12. [Special methods of procedure to be followed] | _____ |
| _____ | _____ |

* As referred to in Article 7 of the Draft of Model Bilateral Arrangements on Mutual Assistance on Letters Rogatory in Criminal Matters.

13. Request for notification of the time and place for the execution of the Request and address of the authority to be notified

14. Request for attendance or participation of personnel from the requesting State at the execution of a request

15. Specification of privilege or duty to refuse to give evidence under the law of the requesting State

16. The fees and costs incurred which are reimbursable under the Arrangements will be borne by

(Address)

17. If the requested authority requires additional information for executing the request, this form should be returned to the requesting authority specifying in the space below the additional information to be furnished

(the documents sent with this request should however, be retained with the requested authority pending supply of the additional information by the requesting authority)

18. Time-limits: The request should be executed before

(date)

The reasons for fixation of the time-limit are the following:

If it is not possible to execute the request by the dates specified, the request should be returned unexecuted/it should be executed whenever possible*

Done at _____, the _____
Signature and seal of the requesting authority

* Delete whichever is inapplicable