

sealed with the seal of that court provided that all stamp fees, testamentary and estate duties have been paid or secured in respect of the property situated in that State.

Article V

Where probate or letters of administration are sealed by the competent court in the manner hereinbefore provided, it shall be of like force and effect and have the same operation in the State of that court as if granted by that court.

Article VI

The sealing of probate or letters of administration under Article IV shall not affect the liability of an executor or administrator in conformity with the law of that State—

- (a) to file an inventory of the deceased person's property and effects situated in that State;
- (b) to file as regards the deceased's property and effects situated in that State a true account of his executorship or administration;
- (c) to be compelled to make judicial settlement of his accounts as executor or administrator with respect to the deceased's property situated in that State;
- (d) to pay all debts whether domestic or foreign according to the law of that State.

DRAFT AGREEMENT FOR SERVICE OF JUDICIAL PROCESS IN CIVIL AND CRIMINAL CASES

Article I

In this Agreement, *judicial process* means every type of document whether judicial or extra-judicial and includes a summons, citation, warrant, notice, order, decree, interrogatories, petition, affidavit, mandate or other document which is required to be served by the rules of civil or criminal procedure on a party or witness in civil or criminal proceedings when the appropriate court directs such service.

Requesting State means the State which in pursuance of this Agreement requests the service of judicial process in the territory of another State.

Signatory State means a State which is a party to this Agreement.

Competent authority in any State means the authority which is authorised by the law of that State to serve process in pursuance of this Agreement.

Recipient means the person on whom the process is to be served.

Article II

This Agreement shall apply to all judicial process issued in civil or criminal proceedings including maintenance and affiliation proceedings.

Article III

When any judicial process is required to be served on any person or body of persons, corporate or unincorporate, in the territory of another State, such process may, without prejudice to the provisions of Article VI be served on the recipient, whatever his nationality, in any of the ways provided in Articles IV and V.

Article IV

(a) A request for service of judicial process shall be addressed by a Diplomatic or Consular Officer of the requesting State to the competent authority of the State where such process is to be served, requesting such authority to cause the documents to be served. If there be no Diplomatic or Consular Officer, it shall be made by such other person as may be agreed upon by the States concerned.

(b) The request for service shall state the full names, address and description of the recipient and the nature of the process to be served and shall enclose the documents (originals or copies) to be served together with a list of such documents.

(c) The document to be served shall either be drawn up in the language of the State in which it is to be served or be accompanied by a translation in such language in duplicate. Such translation shall be certified as correct by a Diplomatic or Consular Officer or such other person as aforesaid of the Requesting State.

(d) Service shall be effected by the competent authority of the State where the process is to be served by serving the process in the manner prescribed by the municipal law of such State for the service of similar process, except that if a request for some special manner of service be made, such manner of service shall be followed in so far as it is not incompatible with the law of that State.

(e) The execution of the request for service duly made in accordance with the preceding provisions of this Article shall not be refused unless (1) the authenticity of the request for service is not established or (2) the State to which the request is made considers that to be prejudicial to its safety or otherwise contrary to the public interest.

(f) The competent authority by whom the request for service is executed shall furnish a certificate proving the service or explaining the reason which has prevented such service. Such certificate shall be countersigned by the Diplomatic or Consular Officer or such other person as aforesaid of the requesting State and shall be *prima facie* proof of its contents.

Article V

(a) Service of judicial process may be effected without any request to or intervention of the authorities of the State where it is to be effected

- (1) By a Diplomatic or Consular Officer of the requesting State
- (2) By an agent appointed for the purpose either by the judicial authority by whom service of the process is required or by the party on whose application the process was issued.

But in neither of these cases can measures of compulsion such as would deprive a person of his liberty be employed.

(b) All documents served in the manner provided in the preceding paragraph shall, unless the recipient is a subject of the requesting State, either be drawn up in the language of the State in which service is to be effected or be accompanied by a translation into such language certified as correct as prescribed in Article IV (c).

Article VI

Nothing in this Agreement shall render illegal or inadmissible the service in the territory of a signatory State of process issuing from the courts of another signatory State by any one of the following methods of service in any case where such method is recognised as valid by the law of the State from which the process emanates:

- (a) By the competent officials or officers of the State where they are to be served acting directly at the request of the parties concerned in cases where such officers or officials are empowered so to act by the law of that State.
- (b) Through postal channels.
- (c) By any other mode of service which is not illegal under the law existing at the time of service in the State where it is to be effected.

Article VII

In any case where process has been served in accordance with the provisions of Article IV, the requesting State shall pay to the State to whom the request is made any charges and expenses which are payable under the law or regulations in force in that State.

DRAFT AGREEMENT IN REGARD TO TAKING OF EVIDENCE*Article I**

In this Agreement

Signatory State means a State which is a party to this Agreement.

Requesting State means the State from which a request to take evidence emanates.

Competent Authority means the authority empowered to act under this agreement by the law of such Signatory State.

Article II

This Agreement shall apply to the taking of evidence in both civil and criminal proceedings before the courts of the signatory States.

Article III

When a court of one of the signatory States requires that evidence should be taken in the territory of another signatory State, such evidence may be taken in any one of the ways prescribed in Articles IV, V and VI.

Article IV

(a) A court which requires such evidence, as is referred to in Article III, may address itself by means of "letters of request" to the competent authority of the State where the evidence is to be taken requesting such authority to take the evidence.

(b) The "letters of request" shall be drawn up in the language of the State where the evidence is to be taken or be accompanied by a translation in such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer of the requesting State. The "letters of request" shall state the nature of the proceedings for which the evidence is required, the full names and

*In the absence of more information in regard to taking of evidence among Member States, the above is offered as a tentative draft.

descriptions of the parties thereto, and the full names, addresses and descriptions of the witnesses.

(c) The "letters of request" shall either be accompanied by a list of interrogatories to be put to the witness or witnesses or if this procedure is recognised by the law of the requesting State, request the competent authority to allow such questions to be asked *viva voce* as the parties or their representatives shall desire to ask.

(d) The competent authority to whom the "letters of request" are transmitted or forwarded shall give effect thereto and obtain the evidence required by the use of such compulsory measures and such procedures as may be provided by the law of the State. If a request is made that some special procedure be made in the "letters of request", such special procedure shall be followed in so far as it is not incompatible with the law of the State where the evidence is to be taken.

(e) The execution of the "letters of request" may be refused only (1) if the authenticity of the "letters of request" is not established or (2) if the State where the evidence is to be taken considers such request to be prejudicial to its safety or otherwise contrary to the public interest.

Article V

(a) If the law of the State where the evidence is to be taken authorises such procedure, the court by whom the evidence is required may in the "letters of request" addressed to the competent authority request such authority to appoint a person specially designated in the "letters of request" to take the evidence. A Diplomatic or Consular Officer of the requesting State or other suitable person approved by the signatory State concerned may be so designated.

(b) Where the procedure in paragraph (a) of this Article is adopted, the provisions of paragraphs (b), (c) and (e) of Article IV shall apply.

(c) The competent authority to whom the "letters of request" are transmitted shall give effect thereto and shall appoint the person designated to take the evidence unless such person be unwilling so

to act. The competent authority shall, if necessary, make use of such compulsory powers as it possesses under its own law to secure the attendance of and the giving of evidence by the witnesses and the production of documents before the person so appointed.

(d) The person thus appointed shall have power to administer an oath, and any person giving false evidence before him shall be liable in the courts of the State where the evidence is taken to the penalties provided by the law of that State for perjury.

(e) The evidence shall be taken in accordance with the law of the requesting State provided such method is not contrary to the law of the State where evidence is to be taken and the parties shall have the right to be present in person or to be represented by lawyers or other persons who are competent to appear before the courts of the State concerned.

Article VI

(a) The evidence may also be taken, without any request to or the intervention of the competent authority of the State in which it is to be taken by a person directly appointed for the purpose by the court of the requesting State. A Diplomatic or Consular Officer of the requesting State or other suitable person approved by the signatory State concerned may be so appointed.

(b) A person so appointed to take evidence may request the persons named by the court appointing him to appear before him and give evidence or produce any document. He may take such evidence as is not contrary to the law of the State where the evidence is being taken and shall have power to administer an oath, but shall have no compulsory powers.

(c) The evidence may be taken in accordance with the procedure recognised by the law of the requesting State and the parties will have the right to be represented by lawyers or by any persons competent to appear before the court of the requesting State.

Article VII

The fact, that an attempt to take evidence by the method laid down in Article VI has failed owing to the refusal of any witness