

MODEL FOR 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 purposes 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, or performing some other judicial act or obtaining information;
- (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, or performing some other judicial act, or obtaining of information, emanating from a competent authority of 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 and subject to the provisions of these Arrangements, mutual assistance with regard to service of process, taking of evidence or performing some other judicial act, or obtaining of information, by means of requests or letters of request issued for the purpose, addressed by a competent authority in one State Party to 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 or the letter of request shall not imply ultimate recognition of the jurisdiction of the authority issuing it 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 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 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

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 or stamp of a Central Agency.

Article 6

Language

1. The request or the letter of request and the appended documentation shall ' be drawn up in the _____ language(s) or be accompanied by a translation into that language/those languages.
2. The reply shall be prepared and transmitted in the language(s) 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 person qualified for this purpose under the law of either State.

Article 7

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 for taking action on the request.

Article 8

Compliance with the Arrangements

If the Central Agency of the requested State considers that the request or the letter of request does not comply with the provisions of the present Arrangements it shall promptly inform the requesting Central Agency and specify its objections.

Article 9

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

1. The execution of a request or of a letter of request may be refused if the requested State considers that its sovereignty, security, public policy or other essential interests (ordre public) would be prejudiced thereby.
2. The execution of a letter of request may also be refused if:
 - (a) the execution of the letter of request does not fall within the functions of the judiciary or any other competent organ of the requested State; or
 - b) the requested State considers that the execution of the letter of request might prejudice the fundamental rights of any person; or that the letter of request concerns information held in confidence the disclosure of which is prohibited by law;
 - (c) [the letter of request seeks to obtain
 - (i) a statement from any person of the documents relevant to the proceedings to which the request relates which are or have been in his possession, custody or power; or
 - (ii) the production of any documents other than particular documents specified in the request as being documents appearing to the competent authority in the requesting State initiating the request to be, or to be likely to be, in his possession, custody or power.] * or
 - (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.] *

In negotiating these Arrangements Governments may choose to include either sub-paragraph (c) or (d) These sub-paragraphs cover the same ground i.e. they allow the refusal of letters of request, issued in the context of pre-trial discovery of documents, which seek to obtain testimony on, or production of, unspecified documents ('fishing expeditions!').

3. [Execution of a request or of a letter of request 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 proceedings or that its internal law would not permit the bringing of the proceedings to which the request or letter of request relates.]
4. In any case in which the execution of a request or a letter of request is refused, the Central Agency of the requested State shall promptly inform the requesting Central Agency and state the grounds for such refusal.

CHAPTER 11

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. The request and the document shall both be provided in duplicate.

Article 11

Execution of request for service

1. The authorities of the requested State shall effect service of the process on the person to be served by any method prescribed or permitted by its internal law.
2. Where the competent authority of the requesting State has indicated any particular method of service, an endeavour shall be made to comply with such request provided that the same is not inconsistent with the laws of the requested State.
3. A summary of the document to be served, drawn up in accordance with form 'C' appended to the present Arrangements, shall be served together 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 by the requesting State:

- (a) the fees or 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 officer 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 measures of compulsion be applied.

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

* The Contracting Parties whilst negotiating may consider which of these modes, if any, are to be included in the bilateral Arrangements.

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

1. 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 of an analogous nature 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.
2. The relevant authorities in the requesting State shall ensure that its formalities and procedures prescribed by its laws for the admissibility of validity of the requests made in the letter of request are fully complied with before taking any action under this article.

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.

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 by the requesting State:
 - (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 State whose law obliges the parties themselves to secure evidence may, after having obtained the consent of the requesting Central Agency, appoint a suitable person to execute the letter of request. When seeking such consent the requested Central Agency shall indicate the approximate costs which would result from following of this procedure. If the requesting Central Agency gives its consent the requesting State shall reimburse the costs incurred; without such consent the requesting State 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

Request 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.

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 available as between the judicial authorities in the requested State.
2. The requesting authority shall specify the purpose for which the extract or information referred to in paragraph 1 is required and may not use such extract or information for any other purpose.
3. If compliance with any request made under this Article involves expense for the requested State, it may obtain reimbursement of such expense from the requesting State.

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, practices or arrangements

Except as may be specified herein, nothing in these Arrangements shall affect existing or future bilateral or multilateral agreements, practices or other arrangements between the Contracting States which relate to matters dealt with in these Arrangements.

Note: If certain existing bilateral or multilateral agreements, practices or arrangements are to be replaced or superseded, in whole or in part, and those agreements or arrangements so permit, this should be specified in a second paragraph to this Article.

Article 27

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 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

Either 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 Committee decided that the provisions in regard to which some differences of view had been expressed should be placed within square brackets [] so that the governments may give special consideration to those articles whilst negotiating agreements.

APPENDIX

The delegate of Pakistan suggested that the following articles -be included in the draft:

Provisions relating to equality of treatment in judicial matters

Article X

The nationals of a Contracting Party shall, in the territory of the other Party, be entitled to legal protection for their persons and property and to bring actions or defend themselves under the same conditions, including charges and costs, and shall enjoy the same rights as the nationals of the other Contracting Party.

Article Y

The nationals of a Contracting Party resident in the territory of the other Party shall not be constrained to effect any payment as security for court costs which the nationals of the other Party are not obliged to deposit or pay.

Article Z

The nationals of a Contracting Party shall, in the territory of the other Party, enjoy free legal aid on the same basis as the nationals of the latter.

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'

FORM 'A'

ANNEX TO THE ARRANGEMENTS*

REQUEST FOR SERVICE"

1. REQUESTING CENTRAL AGENCY: ADDRESS
2. RECEIVING CENTRAL AGENCY: 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 address:
 - (C) ADDRESS:

(D) COUNTRY:

- * 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.
- ***In the event of service of summons on an action instituted, a copy of the complaint or statement of claim shall be provided.

6. METHOD OF SERVICE REQUESTED:

- (a) in accordance with the method prescribed by internal law of the requested State: -
- (b) in accordance with the following method: -

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.

**FORM TO BE RETURNED
'FORM 'B'**

CERTIFICATE

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) in accordance with the methods prescribed by internal law of the requested States:-
- (b) in accordance with the following method:-

The documents referred to in the request have been delivered to:

(identify and description of person) _____

relationship to the addressee _____

(family business or other) _____

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

3. ANNEXES

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

Done at _____, the _____

*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.

IMPORTANT

THE ENCLOSED DOCUMENT IS OF A LEGAL NATURE AND MAY AFFECT YOUR RIGHTS AND OBLIGATIONS. THE 'SUMMAR 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.

FORM 'C'

SUMMARY OF THE DOCUMENT TO BE SERVED*

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. Court or legal authority; 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.

*** Where applicable.

FORM 'D'

ANNEX TO THE ARRANGEMENTS REQUEST FOR TAKING OF EVIDENCE*

1. Requesting Central Agency:
Address
2. Receiving Central Agency:
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.

* 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.

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.
(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 where 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.
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:
The reasons for fixation of the time-limits are the following:
19. Certificate by Competent Authority of the requesting State that the required formalities under their municipal laws for the issue of the letter of request has been complied with.

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.

EXPLANATORY NOTES ON THE PROVISIONS OF THE MODEL BILATERAL ARRANGEMENTS FOR MUTUAL ASSISTANCE IN CIVIL OR COMMERCIAL MATTERS

CHAPTER I

General Provisions

Article 1

This Article is intended to state the meanings given to the various terms used in the text of these Arrangements. The definitions attributed to the terms in Clauses (a), (b), (c) and (d) are self-explanatory and are 'for the purposes of these Arrangements' only. The expression 'person' used in the Model has not been defined but it is to be understood as required in the context and may include individuals and corporate entities also.

Article 2

This Article determines the scope of these Arrangements. It contains the formal undertaking on the part of the Contracting States to afford each other mutual assistance with regard to: requests issued for the service of process for the purpose of performance of -procedural acts of a formal nature such as service of documents, summons or subpoenas abroad; or letters of request issued for the purpose of taking of evidence; performing some other judicial act abroad; or obtaining information in civil or commercial proceedings.

These Arrangements stipulate that requests or letters of request must emanate from a competent authority of one of the States Parties to these Arrangements to the competent authority of the other Contracting State. Since the structure of competent judicial authorities varies considerably from one State to another, it has not been found practicable to set out the types of authorities who would be deemed competent for the purpose of the Arrangements. A person interested in the service of process etc. has therefore to approach the competent authority in his own State.

Paragraph 2 refers to "judicial proceedings". It may be clarified that there need not necessarily be an action actually in progress in the requesting State when the letter of request is issued; for instance, a letter of request could be entertained for the purpose of "perpetuation of testimony" of an aged or dying witness.

Paragraph 3 of this Article specifically excludes the issuance of any process for the enforcement of judgments or orders or for provisional or protective measures from the scope of the expression "other judicial act" as such matters are normally covered in agreements for reciprocal enforcement of judgements.

The term 'other judicial acts' is not defined in the Arrangements. It refers to acts analogous to the taking of evidence which under the domestic law and practice of the State of execution fall within the function of the judiciary. Paragraph 2 of this article specifically excludes 'the issuance of any process for the enforcement of judgements or order for provisional or protective measures from the scope of the expression other judicial act' as such matters are normally covered in agreements for reciprocal enforcement of judgements.

Article 3

This Article has been specifically incorporated with a view to avoid any confusion that might arise by reason of the assistance rendered by the requested State in the execution of the request for service of process or the letter or request for taking of evidence. This is in consonance with the objectives and purposes of these Arrangements which are confined to service of process and taking of evidence only. This provision is of a clarificatory nature.

Article 4

This Article deals with the transmission of the requests or the letters of request from the requesting State to the requested State by designation or establishment of a Central Agency which is generally becoming the normal practice. The concept of Central Agency has become extremely useful as it relieves the requesting State from finding out which authority in the requested State is competent to give effect to the request for assistance. Moreover, it enables the requested State to scrutinise the requests or the letters of request coming from abroad, by permitting an examination by that authority of the regularity of the request or letter of request and to ensure their compliance.

Paragraph 1 contemplates that each Contracting State will designate or establish a Central Agency, in accordance with its own law which will perform a twofold function: firstly, to receive requests or letters of request emanating from its own competent authorities for transmission to a Central Agency abroad; secondly, to receive requests or letters of request coming from the other Contracting State and to give effect to them. The Central Agency is thus intended to be a "receiving" authority and also a "transmitting" authority.

These Arrangements envisage that the requesting State should regulate the issuance of requests or letters of request, under its internal law, by its competent authorities and their transmission abroad. In other words, the Contracting State is obliged to direct that every request or letter of request emanating from its courts or tribunals must be sent to its own Central Agency for transmission to a Central Agency abroad.

The internal Organisation of the Central Agency is left to the Contracting State designating it to be determined in accordance with its own laws. The Central Agency, whether newly created or already in existence, should either be a Government department or other high level body; for example, the Ministry of Justice or the Foreign Ministry which may take the place of the Ministry of Justice in some States for the transmission of requests or letters of request. The reason for designating high authority as the Central Agency is that the task of Central Agency is not limited to receiving or forwarding requests but also includes checking their consistency with public policy as also in the matter of compliance with the provisions of these Arrangements.

The note to paragraph 1 of Article 4 takes care of those Contracting States having a federal system of Government. Such States may designate or establish more than one Central Agency with identical functions for each constituent unit of the federation.

Paragraph 2 provides that each Contracting State shall communicate to the other Contracting State the name and address of the Central Agency (or Agencies) designated or established, including any subsequent changes made, so as to facilitate speedy and effective working of these Arrangements.

Article 5

Under this Article when requests or letters of request are signed and bear the seal or stamp of a Central Agency they are presumed to be duly legalised in the requesting State. The main purpose of legalisation is the formality of authenticating the request or the letter of request and the accompanying documents. Some views were however expressed that the requested State should have the option to ask for some other method of legalisation but the same did not find favour with the Working Group.

Article 6

The Article concerns the language or languages in which the requests or the letters of request and the documentation annexed, if any, as also the reply are to be drawn up or translated. Paragraphs 1 and 2 of this Article leave it to the Contracting States to mutually decide about the language or languages.

Paragraph 3 provides that any translation accompanying a request or a letter of request must be certified as correct by a person qualified for the purpose under the law of either the requesting or the requested State. A sworn translator would be the typical example of such qualified person. Other examples include diplomatic or consular officers

Article 7

This Article provides that the competent authority issuing the request or the letter of request may indicate a time limit for the service of process or taking of evidence, obtaining of information or performing some other judicial act. The purpose for such a provision is to draw attention to the urgency of the request for the requested State to act accordingly. It also ensures that the person concerned is not adversely affected through the document being served on him too late. Although one of the main objects of these Arrangements is to ensure speedy procedures, the fact cannot be lost sight of that the time taken for the execution of request or letter of request by the requested State would always be more than the time taken for such matters within the territory of the requesting State by application of its internal law. It is further ensured that any prescription of a time limit is justified by the circumstances by making it obligatory on the competent authority of the requesting State to briefly state the reasons for establishing such time limit. Furthermore, the competent authority has the option to indicate a further period of time if the Central Agency of the requested State expresses any difficulty in adhering to the time limit.

Article 8

Article 8 contemplates that the Central Agency of the requested State after examining the request or the letter of request may enter objections" if the same does not comply with the provisions of these Arrangements. It is one of the functions of the Central Agency to ensure regularity of the request or letter of request required to be executed in the requested State. The Central Agency which receives the request or the letter of request should promptly inform the Central Agency of the requesting State of the errors or defects to permit correction and amendment if possible.

For instance, the errors or defects would include cases where the request does not fall completely within the scope of the arrangements or technical irregularities like the failure to comply with the rules concerning language or the omission of any information which is necessary for the execution of requests or letters of request, or the absence of the complete address of the addressee of the documents or other information prescribed in the request form, as well as omission to enclose the documents desired to be served.

The Central Agency must specify its objections to the request or the letter of request with reasons, as it will permit the requesting authority to remedy the error more easily. This is also intended to prevent any arbitrary refusal by the requested State of the request or the letter of request for mutual assistance.

Article 9

This Article enumerates the grounds for non-compliance with the request or the letter of request by the requested State. These are in fact, exceptions to the general obligation placed on the requested State to take action on the request for assistance. The Central Agency of the requested State can hold up the transmission of the request or the letter of request to the appropriate tribunal for execution if there are any objections on the grounds specified in this Article.

Paragraph 1 provides that a request or letter of request may be refused to be executed if it has the effect of interfering with the sovereignty or security of the requested State. This may happen, for example, when information is being sought to be obtained directly or indirectly through the recording of evidence of a person concerning matters which fall within the sovereign functions of the requested State or relating to its security such as movement of its armed forces or installations of strategic importance. The requested State may also refuse it the public policy or other essential interests, including economic interests, are likely to be prejudiced through obtaining of information byway of evidence.

Paragraph 2 adds three further grounds for refusal, the third of which appears in two alternative versions, i.e. sub-paragraphs (c) and (d). These grounds for refusal do not apply, however, to Chapter 11 (Requests for service), and IV (Requests for information) but only to Chapter III (Letters of request for the taking of evidence or the performance of some analogous judicial act abroad).

Sub-paragraph (a) of paragraph 2 is self-explanatory and provides that a letter of request for taking of evidence may be refused if it does not fall within the functions of the judiciary or any other competent organ of the requested State.

Sub-paragraph (b) concerns the protection of the rights of individual. This not only allows the requested State to refuse execution when it might be harmful to the rights of the individual, but also if very fact of collecting information might be prejudicial to him such information which may be of a self-incriminating nature. The expression "information held in confidence" allows the requested State to refuse execution when the information sought is such that the person concerned is obliged to refuse its disclosure under the internal law accepted notions of morality.

Sub-paragraphs (c) and (d) cover the same ground, i.e. they all the refusal of letters of request for the taking of evidence issued in context of pre-trial discovery of documents. This is a method collecting evidence which is known in common law countries and which has become of great importance particularly in the United States. In the United States, a party may obtain discovery from the other party even from third persons, regarding any matter, not privileged, which relevant to the subject-matter involved in the pending action, including the existence, description, nature and location of documents. In the 1970 Hague Evidence Convention, at the request of the United Kingdom delegation, a reservation was included according to which a Contracting State may "declare that it will not execute letters of request issued for the purpose of obtaining pre-trial discovery of documents known in Common Law countries". Sub-paragraph (d) reflects this formula.

However, when the practical operation of the Hague Evidence Convention was studied by a group of experts, in 1978 and again in 1985, there was a large agreement among those experts that the formula of Article 23 of the Hague Evidence Convention was too broad. In fact, the United Kingdom, when making the Article 23 reservation of the Hague Evidence Convention, qualified it by a declaration which excludes only requests for certain categories of unspecified documents. Sub-paragraph (c) is inspired by this declaration made by the United Kingdom.

Paragraph 3 is self-explanatory and has been added with a view to facilitate assistance to the requesting State and not to refuse it merely because the subject-matter of the request either falls within the jurisdiction of the requested State or that its internal law would not permit any action on it. As there were differences of view on this matter the provision has been placed in square brackets.

Paragraph 4 acts as a check on the powers of the requested State to refuse to execute the request in an arbitrary manner, because it imposes the obligation on it to notify the requesting State, as soon as possible, with reasons for not complying with the request or the letter of request.

CHAPTER 11

Service of Process

Articles 10 to 15 in Chapter 11 of these Arrangements make provision to ensure speedy and efficient service of process abroad.

Article 10

Article 10, paragraph 1, stipulates that the request is to be sent by the authority competent under the law of the requesting State, i.e. the court or the judicial officer, as the case may be, to its own Central Agency as provided under Article 4 paragraph 1, with the request to transmit it to the Central Agency of the requested State, for the service of process. Paragraph 2 provides that the request for the service of process shall be drawn up in accordance with Form 'A' as appended to these Arrangements. It further provides that the documents required to be served, whether original or copy, must accompany the request. The request and the document must be provided in duplicate so that the receiving Central Agency can keep one set and transmit the other set to the executing authority.

The requested State has at times to face the problem of inadequate information. Besides, the difficulties of interpretation over legal terminology used in various systems may also arise. It is with a view to obviate such problems and difficulties that the model form is suggested, the use of which is in the interest of both the requesting and the requested States. Their use is essential for the successful

execution of the request and are designed to operate as a check list of all information necessary for such execution.

Article 11

This Article regulates the modes of service to be used, and the possibility of using a particular method or procedure requested by the Central Agency of the requesting State.

Paragraph 1 provides for service by the Central Agency of the requested State according to the methods prescribed or permitted by its internal law. Normally the Central Agency will effect service according to its own procedures, i.e. following the same methods which will be used for internal service in the requested State.

Paragraph 2 contemplates that if the requesting State desires the service to be effected in any particular way the requested State should endeavour to effect service in that manner. This, however, is subject to the condition that the method suggested does not conflict with the internal laws of the requested State. For example, the internal laws of a State may not permit the service of certain categories of documents through any process of compulsion and if -a request were to be received for service through a procedure much conflicts with that position the requested State may well refuse to comply.

And paragraph 3 simply provides that the summary of the document to be served shall also be served with the document, in accordance with the model form 'C' annex6d to these Arrangements.

Article 12

Article 12 provides for the certificate of service to be completed by the Central Agency or any other competent authority designated for the purpose. It further provides that the certificate is to be drawn up in accordance with the model Form 'B' annexed to these Arrangements.

Article 13

Article.13 entitles the requested State to claim reimbursement of the costs, such as, the fees or charges paid for the service of court, officials or other government agencies which may be involved in the execution of the request for service of process. The charges shall be such as are authorised under the law of the requested State. Paragraph 1 (b) further provides for reimbursement of the costs occasioned by adoption of a special procedure at the request of the requesting State under Article 11 (2) of these Arrangements. The model provides that the requested State may claim reimbursement of the costs from the requesting State. This does not exclude, of course, that the requesting State charges the applicant for those costs.

Article 14

Article 14 recognises the competence of the diplomatic representative or consular officer to effect service of judicial documents upon nationals of the State or States which he represents in the State of his accreditation. It may be stated that it is the law of the State which he represents that will determine whether he has the power to effect service as part of his functions.

The Diplomatic or Consular channel had previously been one of the most commonly used in practice. Although these Arrangements contemplate the Central Agency as being the principal channel for effecting service of documents, the Diplomatic or Consular channels have also been retained since it has its own advantage. For example, Consular channel might be particularly useful when the precise details are lacking about the person on whom the document is to be served and the Consul might be in a better position to trace the addressee on the basis of information in his possession. The Consul may act only in the area in which he exercises his consular functions. He may effect service without using any form of compulsion. There was however some difference of opinion whether this provision should be retained.

Article 15

Paragraph (a) of this Article makes provision for the use of postal channels for the purpose of sending documents directly to the addressee abroad, provided there is no objection on the part of either State. This subsidiary method of transmission constitutes an important advance, for the sake of simplicity, which is the underlying policy of these Arrangements. The expression "postal channels" includes service by ordinary or registered letter, with or without receipt, as well as by telegram.

As regards objection to the use of postal channel, it may either be general or even partial. A partial objection may limit the use of the post either to certain categories of addressees on the basis of their nationality, or to certain categories of documents having regard to their contents.

Paragraph (b) provides that service may be effected by direct communication between the "judicial personnel officials or other competent persons" in the two countries, again subject to any objection by any of the Contracting States. Although capable of wider application, this mode is essentially for use in those countries which have professional process servers (huissier). The applicant in one such State can approach the professional server in his State who will forward the documents to a professional colleague in the other State for service.

And paragraph (c) provides, subject to any objection by any of the Contracting States, that a party to, or any other person "interested in" a judicial proceeding may directly serve documents through "the judicial personnel, officials (legal practitioners) or other competent persons". This in fact is a variant of the last mode, provided under paragraph (b). Here the party or his legal adviser makes a direct approach to the professional process-server (huissier) or the legal practitioner in the other State where service is to be effected. There was a difference of view on the question whether service may be effected through a legal practitioner. As some States may have difficulties in allowing one or more of the methods of service listed in article 15, in each case the Contracting States, while negotiating the draft Arrangements, may consider which of these modes, if any, are to be included in the bilateral Arrangement in question.

CHAPTER III

Taking of Evidence

Articles 16 to 22 in Chapter III of these Arrangements contain provisions concerning the taking of evidence abroad. The primary mode contemplated is by means of transmission of letters of request through the Central Agency but other channels such as taking of evidence by diplomatic and consular personnel or by a Commissioner are also provided for in Articles 21 and 22.

Article 16

Article 16 stipulates that the letter of request is to be sent by the authority, competent under the law of the requesting State, i.e. a Court or judicial officer to its own Central Agency as provided under Article 4 paragraph 1, with the request to transmit it to the Central Agency of the requested State.

The letter of request has to be drawn up in a manner provided for in Form 'D' appended to the Arrangements. This is with a view to evolve some kind of uniformity and to ensure that all necessary particulars and information requested for the purpose of recording of evidence are duly communicated to the requested State.

A suggestion made by the delegate of Singapore which was generally acceptable in principle required a provision to be made in the text that the relevant authorities in the requesting State shall ensure that all formalities and procedures prescribed by its law for issue of the letter of request had been complied with. There was however a difference of view whether the provision should be made in Article 16 itself or in Form D.

Article 17

This Article regulates the modes and procedures to be followed by the competent authority responsible for the execution of letters of request.

Paragraph 1 contains the general rule that the evidence shall be recorded according to the internal laws and procedures applicable in the requested State.

Paragraph 2 provides for situation where the requesting State makes a request to the requested State to follow a special method or procedure for taking of evidence. The requested State may, however, decline such request if, (i) the procedure is in conflict with its internal laws; (ii) it is impossible of performance by reason of its internal practice and procedures; or (iii) there are, practical difficulties. The reason for incorporation of the provision in paragraph 2 is that the requested State should assist to the extent possible in making available the recorded evidence in the manner commonly used in the proceedings before the courts and tribunals of the requesting State.

There can be numerous instances where the requested State might find it difficult or impossible to have the evidence taken in the particular manner required. This primarily arises on account of wide divergence in the procedures applied in various systems. For example, in some countries it is the normal practice to follow the adversary procedure where the witness is examined by counsel and cross-examined on his evidence before a Judge, but in some other countries it is the Judge alone who records the evidence and himself puts questions to the witness. Then again, in the practice of some States evidence is recorded verbatim in the question-answer form whilst in others the evidence would be recorded in the narrative or summary form as dictated by the Judge. Besides, some systems permit the Court to appoint A Commissioner to record the evidence in order to save the time of the Court but in other systems this would clearly not be permissible.

Paragraph 3 provides that if the evidence of witness or experts are to be taken on oath, it should be expressly so stated by the requesting State. The requested State has to honour such request unless the same conflicts with its internal laws. As there were some differences of views on this paragraph, it has been put within square brackets.

Paragraph 4 recognises the right of the individual to refuse to testify in respect of a matter which he cannot be compelled to disclose by reason of the privilege enjoined under the law of the requesting State or of the requested State. Such matters would often include disclosure of any fact or information which might be of a self-incriminating nature or matters which have been disclosed to him in confidence, such as, in the case of doctors, lawyers, journalists etc. The provision of this paragraph further contemplates that no evidence should be requested in regard to any matter where the witness has a duty to refuse to give evidence, such as the information in his possession on official matters covered by the Official Secrets Act. It is presumed that when the witness has a privilege or duty to refuse to give evidence, he will claim such privilege or invoke the provisions of law under which he has a duty to refuse to give evidence at the time when the evidence is recorded.

Paragraph 5 gives an option to the requested State to transmit either the original or certified copies of records or documents taken as evidence.

Article 18

Paragraph 1 deals with the matters of notice to be given regarding the time and place of recording of evidence to the requesting State and also to the parties to the proceedings in aid of which the evidence is required. It is recognised that no such notice would be necessary unless the requesting State so desires. The procedure for communication of the notice would naturally vary from country to country. Whilst some countries may prefer to channelise such communications through the Central Agency, others could well agree to such notice being sent by the concerned judicial authority directly to a designated official of the requesting State and or the parties to the proceedings.

Paragraph 2 contemplates that any official or officials designated by the requesting State as also the parties to the proceedings should be enabled to be present at the time when the evidence is recorded. This, however, is subject to any prohibition contained in the internal law of the requested State.

Article 19

Article 19 deals with the question of application of the measures of compulsion by the authority recording the evidence in execution of the letter of request. Since there were certain differences of views, the provisions of this article have been retained within square brackets. The objective behind this Article is that judicial assistance in the matter of recording of evidence should not be frustrated by the refusal of the witness to appear to give evidence or his refusal to answer questions and also to produce documents or other tangible-objects. It is therefore contemplated that the requested State should assist in the matter by employing the same degree of compulsion as it would under its internal laws in regard to domestic proceedings of the same nature.

Article 20

The provisions of this Article deal with the question of reimbursement of costs incurred by the requested State in the execution of the letter of request in the various circumstances and subject to conditions specified in this Article. It was stated in the course of discussions at the Working Group that the reimbursement of the costs should be done by the requesting State but it would be open to that State to recoup the costs from the party for whose benefit the evidence was obtained.

Article 21

This Article recognises the competence of the diplomatic or consular officer to take evidence of the nationals of his home State in aid of proceedings commenced in the courts of that State. It may however be clarified that the power of the diplomatic or consular officer to take such evidence would be governed by the laws of the State which he represents. What this article contemplates is that if the diplomatic or consular officer is authorised under the laws of his home State to take the evidence, the other State will permit him to exercise such functions. This is subject to the condition that the diplomatic or consular officer shall not apply any method of compulsion whilst recording evidence.

Although these Arrangements contemplate recording of evidence through issue of letters of request transmitted through the Central Agency as being the principal mode, the use of diplomatic or consular channels is also permitted. In some cases it may be simpler to apply that procedure, such as in cases where evidence by means of a sworn affidavit would be sufficient or the witness is ready and willing to give evidence without the need of any compulsion. There was some difference of view as to whether this provision wets suitable.

The provisions of paragraph 1 clarify the powers and functions of a diplomatic or consular officer in the matter, namely (i) he may act only in the area in which he exercises his functions; (ii) he may take evidence subject to the willingness of the witness, that is, without compulsion; (iii) he may take evidence only with respect to the proceedings which are pending in the courts of a State which he represents; (iv) he may take the evidence only of nationals of his home State.

Paragraph 2 of this Article is intended to clarify that if an attempt to obtain evidence through the diplomatic or consular ' channels fails, it would not prejudice any subsequent effort to obtain evidence through employing the mode of the issue of a letter of request through the Central Agency. Such cases may happen where the witness may refuse to respond to a notice sent by the diplomatic or consular officer or where it may appear that the evidence could not be obtained without some measure of compulsion.

Article 22

Article 22 recognises an alternative method for recording of evidence which has often been used among neighbouring countries or countries having the same system of law and procedures. Although the Arrangements contemplate the principal mode for recording of evidence as being the one through the issue of letters of request channelised through the Central Agency, it was felt that the system of taking of evidence by a Commissioner should also be retained since this could be speedy and more attuned to the proceedings in aid of, which the evidence is required. Nevertheless, it is to be appreciated that many

countries of the Asian-African region may not be familiar with this type of procedure which had been in vogue in common law system principally among the countries of the British Empire. The provisions of this Article specify the circumstances and the conditions subject to which the Commissioner may take evidence, namely (a) the Commissioner shall be appointed by a judicial authority to record the evidence of a witness or expert for the purpose of proceedings pending before that judicial authority; (b) the State in which the evidence is to be recorded shall give its endorsement or authorisation to the Commissioner to record such evidence; and (c) the authorisation shall be subject to such terms and conditions as may be specified.

CHAPTER IV

Requests for Information and Documents

Articles 23 and 24

Chapter IV, consisting of Articles 23 and 24, deals with the question of mutual assistance between the States Parties to the bilateral arrangements. Whilst the provisions of Chapter 11 (Service of Process) and Chapter III (Taking of Evidence) are concerned with matters which are initiated principally at the instance of a party to a pending judicial proceeding, the provisions of Chapter IV are more concerned with furnishing of documents, judicial records and information which a State or a State functionary may require.

Article 23 accordingly, provides that the States Parties to the Arrangements 'should upon the request of each other furnish information on their laws and regulations relating to civil or commercial matters both substantive and procedural. The main objective behind this provision is that the States - which agree to enter upon Arrangements for judicial assistance: ought to be informed about the laws and regulations in force both substantive and procedural in each others territory.

Article 24 is concerned with requests for furnishing of judicial records. It is well-known that by reason of comity of courts within a country judicial records are freely made available by one court to another upon its request. The same principle is extended in regard to the courts of the Contracting States Parties to the bilateral Arrangements. These, however, have been made subject to two conditions, namely: (i) that the request should be channelised through the Central Agency which should specify the purpose for which the records or the information have been requested; and (ii) that the information or records so furnished shall not be used for any other purpose. Paragraph 3 provides for reimbursement of costs which may arise under this article. Nothing prevents the requesting State from charging the litigants in the requesting State for the expenses.

CHAPTER V

Final Provisions

Articles 25 to 29

Chapter V contains the final provisions which are generally incorporated in International Conventions or bilateral agreements.

Article 25 has the usual provisions concerning entry into force of the bilateral Arrangements. Some views have been expressed that ratification should not be required in this type of agreement which are basically in the nature of Executive arrangements. The article has therefore been placed within brackets.

Article 26 is rather important and it needs consideration of Member Governments. What is intended to be provided here is that the present bilateral Arrangements should not affect the existing or any future bilateral or multilateral agreements or other Arrangements between the Contracting States except to the extent specified. The objective behind this provision is basically two fold. Firstly, that co-operation through reciprocal assistance in judicial matters should be encouraged in whatever form they are brought about and the possibility of there being more than one set of arrangements for the purpose could be contemplated. Secondly, it is intended to safeguard the provisions of other present or future international, bilateral or multilateral instruments, containing regulations in certain fields concerning matters covered by the present Arrangements. So far as the future is concerned, the underlying idea of these Arrangements

is to permit the Contracting States to conclude agreements supplementing its provisions or facilitating the application of the principles it contains.

The note in the text refers to the possibility that the bilateral Arrangement may be in conflict with existing instruments or practices.

To the extent that the bilateral Arrangements are in conflict with existing multilateral agreements to which both Contracting States are Parties, these States should first consider whether the multilateral agreement in question allows them to depart from the provisions of that multilateral agreement. If the multilateral agreement does not allow such a departure, the bilateral Arrangements should be adapted accordingly. If the multilateral agreement does give the States Parties to it freedom to provide for different solutions, the Contracting States may freely enter into the bilateral Arrangements.

To the extent that the bilateral Arrangements are in conflict with existing bilateral instruments or practices binding both Contracting States, the Contracting States will have to make a choice between the draft bilateral Arrangements and the existing practice. They may choose to maintain the existing provisions; in that case the conflicting provisions should not be included. Or they may prefer the provisions of the bilateral Arrangements; in that case they should specify that the provisions of the existing instrument or practices are replaced or superseded by the bilateral Arrangements.

Article 27 provides for the settlement of any difficulties which may arise under these Arrangements through negotiations.

Article 28 deals with the question of revision of these Arrangements. It was felt that in view of certain important innovations introduced in the text of these Arrangements, it would be desirable to allow States Parties to assess the working of the Arrangements on the basis of practical experience and to revise any of the provisions that may be considered necessary.

Article 29 deals with the question of denunciation of these Arrangements.

Appendix: Certain suggestions made by the representative of Pakistan at the Working Group Meeting have been reproduced in the Appendix in order to bring them to the notice of Governments. Although the Working Group did not feel inclined to incorporate the suggestions in the Model text of the bilateral arrangements it was felt that some of the Governments may find them useful for inclusion in bilateral arrangements with certain countries.