

# INDIA

## **I. Introduction**

India is able to cooperate for non-criminal proceedings related to corruption on the basis of applicable Mutual Legal Assistance Treaties. Where the mutual legal assistance sought is not covered by such agreements/treaties with the requesting State, it shall be on reciprocal basis.

The Ministry of Law and Justice, Department of Legal Affairs, Government of India is the nodal authority for Mutual Legal Assistance Treaty in Civil and Commercial Matters.

## **II. Conditions to be met prior to the submission of a formal request**

The existence of Mutual Legal Assistance Treaty is required as a condition to be met before the submission of a formal cooperation request in terms of the said Treaty.

Additionally, the provisions of the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996, provide for execution of decrees, enforcement of arbitral awards, examination of witnesses and service of summonses under the respective statutes as well.

The overview of the relevant statutory provisions in this regard are as follows:

### **(1) Execution and Enforcement**

**(1)(a) Execution of decrees passed by Courts in reciprocating territory (Section 44A of the Code of Civil Procedure, 1908)** - Applies to Decrees of any Superior Court of Reciprocating Territory.

Reciprocating Territory – means any country or territory outside India which the Government of India may, by notification in the Official Gazette, declare to be a reciprocating territory for the purpose of section 44A CPC, 1908.

Superior Court- with reference to any such territory, means such Courts as may be specified in the said notification

Decree- with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect to a fine or other penalty, but shall in no case include an arbitration award, even if such award is enforceable as a decree of judgment.

**(1)(b) Enforcement of Certain Foreign Awards - New York Convention Awards (Section 44(b) of Arbitration and Conciliation Act, 1996)** - Applies *inter-alia* in one of such territories as the Government of India, being satisfied that reciprocal provisions have been made, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

**(1)(c) Enforcement of Certain Foreign Awards - Geneva Convention Awards (Section 53(b) and (c) of Arbitration and Conciliation Act, 1996)** - Applies in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule to the Act and between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule to the Act, and of whom the other is subject to the jurisdiction of some other powers

aforesaid and in one of such territories as the Government of India, being satisfied that reciprocal provisions have been made, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

**(2) Examination of witnesses under the Code of Civil Procedure, 1908.**

**(2a) Section 77** - Provides that in lieu of issuing a commission, the Court may issue a letter of request for examining a witness residing at any place not within India.

**(2b) Section 78** - Provides for applicability of provisions as to execution and return of commissions for the examination of witnesses, subject to such conditions and limitation as may be prescribed, *inter-alia* to Courts of any State or country outside India.

**(3) Service of foreign summonses.**

**(3a) Section 29(c) of Code of Civil Procedure, 1908** - Applies to summonses and other processes issued by *inter-alia* any Civil or Revenue Court outside India to which the Government of India has, by notification in the Official Gazette declared the provisions of this Section to apply.

**Note** - For further detailed provisions, the executed Mutual Legal Assistance Treaties, the Code of Civil Procedure, 1908 and the Arbitration and Conciliation Act, 1996 may be referred.

**III. Scope of Assistance**

In regard to cooperation in civil and commercial matters, in terms of the Mutual Legal Assistance Treaty and/or the statutory provisions, as the case may be, India provides assistance for taking of evidence and statements, obtaining bank records, executing precautionary measures, locating persons, serving of documents, communicating procedural acts (e.g. service of process, subpoena, legal notice), recognizing judgments and identifying, tracing, freezing and recovering of assets. Nevertheless, recovery of assets can be done only after completion of trial. India does not provide cooperation relating to administrative proceedings.

**IV. Information to be included in the request**

When submitting a formal cooperation request to India, the requesting country must provide information regarding the requesting authority, the Central Authority (as defined within the Mutual Legal Assistance treaty to be used as basis for request) and the requested authority. The requisite information in terms of the statutory provisions may also be required to be provided, as the case may be.

The legal basis of the request must also be included in the assistance request as well as a transcription of legal provisions and references and summary of the proceedings that gave rise to the request. Furthermore, the requesting country must provide a brief statement of facts, the objectives and assistance requested.

**V. Urgency**

It is possible for the requesting State to solicit urgency in the execution of the request, but it depends upon the facts and circumstances of the case and the contents of Mutual Legal Assistance Treaty signed between the two countries.

**VI. Steps to follow when seeking assistance from India**

The steps for seeking assistance would be in terms of the Mutual Legal Assistance Treaty and/or the statutory provisions, as the case may be.

**VII. Contact information of the Central Authority**

In order to seek cooperation in Civil, Commercial and administrative matters in India, the following address may be contacted.

In-Charge,  
Judicial Section,  
Ministry of Law and Justice,  
Department of Legal Affairs,  
Government of India,  
Dr. Rajendra Prasad Road,  
Shastri Bhawan,  
New Delhi- 110001.