

TREATY
BETWEEN THE
REPUBLIC OF
INDIA
AND
THE REPUBLIC OF
AZERBAIJAN
ON
LEGAL AND JUDICIAL
COOPERATION
IN
CIVIL AND COMMERCIAL
MATTERS.

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The Republic of India and the Republic of Azerbaijan, hereinafter referred to as the Contracting Parties;

Being desirous of strengthening the bond of friendship between the two countries and promoting fruitful cooperation in the judicial and legal spheres;

Recognizing the need to facilitate the widest measure of legal assistance in civil and commercial matters;

HAVE AGREED as follows:

SCOPE OF APPLICATION

Article 1

1. The Contracting Parties shall grant each other under this Treaty the widest measure of mutual legal assistance in civil and commercial matters in accordance with their national laws.
2. Assistance under this Treaty shall apply in:
 - a. service of summons and other judicial documents or processes;
 - b. taking of evidence by means of Letters of Request or commissions;
 - c. execution of decrees, settlements and arbitral awards.

CENTRAL AUTHORITIES AND AUTHENTICATION OF DOCUMENTS

Article 2

1. Requests for legal assistance shall be made through the Central Authorities of the Contracting Parties.
2. In the Republic of India, the Central Authority is the Ministry of Law and Justice. In the republic of Azerbaijan, the Central Authority is the Ministry of Justice.
3. Unless otherwise stated, all the documents in connection with the legal assistance shall be officially signed by the Court under its seal which shall be authenticated by the Central Authority of the requesting Party

SERVICE OF SUMMONS, JUDICIAL DOCUMENTS AND PAPERS

Article 3

1. The service of summons and other judicial documents shall be effected in accordance with the procedure provided for in the laws of the Requested Party, or by a particular method desired by the Requesting Party, unless such a method is incompatible with the law of the Requested Party.
2. The summons and other judicial documents served in pursuance of this Treaty shall be deemed to have been served in the territory of the Requesting Party.
3. The provisions of paragraph 1 of this Article shall not preclude the right of the Contracting Parties to effect such service, through its diplomatic or consular representatives, of summons and other judicial documents on its nationals residing in the territory of the other Contracting Party without application of any compulsion. Service in such cases shall entail no responsibility for the State of accreditation.
4. Subject to the provisions of paragraph 2 of this Article, summons and other judicial documents may be served directly through postal channels or by delivery to an addressee who accepts it voluntarily without application of any compulsion.
5. Any claim about the addressee being a national of the State in whose territory the service is to be effected shall be determined in accordance with the law of the State.

Article 4

The request for the service of summons and other judicial documents shall furnish all particulars concerning the name and title, place of residence or business of the addressee and a list of documents and papers to be served on that person. Where any special mode of service is desired, this should also be indicated in the request.

Article 5

1. A request for service of summons and other judicial documents, which is in conformity with the provisions of this Treaty, may not be refused, unless the Requested Party considers that compliance with the request would infringe its sovereignty, security or public policy.
2. Service may not be refused on the ground that the request does not show sufficient legal grounds supporting the merits of the case.
3. Whenever the service is not effected, the Requested Party shall forthwith notify the Requesting Party of the reason therefor.

Article 6

The competent authority in the Party requested shall serve the said documents and papers in accordance with the laws and rules applicable in this regard. No fees and costs may be levied for effecting such service.

2. Service may be effected in a special mode or manner specified by the Requesting Party, provided that it does not contravene the laws of the Requested Party and further subject to the payment of costs of such special mode of service.

Article 7

1. The powers of the competent authority in the Requested Party shall be limited to the delivery of the judicial documents and papers to the addressee.

2. Delivery shall be proved either by the signature of the addressee on the copy of the judicial document or paper, or by a certificate issued by the competent authority stating the name of the addressee, the date and mode of delivery, and where such delivery could not be effected, the reason for such non-delivery.

3. A copy of the judicial documents or paper signed by the addressee or a certificate proving delivery shall be sent to the requesting authority through the Central Authority.

TAKING OF EVIDENCE

Article 8

1. The judicial authorities of a Contracting Party may in accordance with the provisions of the law of that Party, request for the taking of evidence in civil and commercial matters by means of Letters of Request addressed to the competent judicial authorities of the other Party.
2. For the purpose of this Treaty, taking of evidence shall be deemed to cover:
 - a. the taking of the statements, on oath or otherwise, of a witness;
 - b. the submission of oath to a witness, with regard to any legal proceedings; and
 - c. the production, identification or examination of documents, records, samples relevant to the evidence requested and submitted by the person whose evidence is taken under sub-paras (a) & (b) above.
3. A Letter of Request shall specify:
 - a. the judicial or other competent authority requesting the evidence;
 - b. the nature of the proceedings for which the evidence is required and all necessary information related thereto;
 - c. the names and addresses of the parties to the proceedings;
 - d. the evidence to be obtained; and
 - e. the names and addresses of the persons to be examined.
4. Where deemed necessary, the Letters of Request shall be accompanied by a list of interrogatories to be put to the witnesses or other persons involved or a statement of the subject matter about which they are to be examined and the documents relevant to such evidence or statement.
5. The Letters of Request shall indicate the manner in which the evidence may be required.

Article 9

The judicial proceedings performed by way of a Commission in pursuance of the provisions of this Treaty, shall have the same legal effect as if it is performed by a competent authority in the Requesting Party.

Article 10

1. The competent authorities of the Requested Party shall execute the Letters of Request in accordance with the provisions of its own laws and obtain the evidence required by applying the same methods and procedures as are permissible under its laws, including the same appropriate methods of compulsion.

2. The Requested Party shall follow any special method or procedure which has been expressly specified by the Letter of Request insofar as it is not incompatible with its laws and practices.

3. The Letters of Request shall be executed as expeditiously as possible.

4. The Requesting Party shall, if it so desires, be informed of the time when, and the place where, the proceedings will take place, in order that the parties concerned, and their representative, if any, may be present. This information shall be sent directly to the parties or their representatives when the Requesting Party so requests.

5. When the Letter of Request has been executed, the necessary documents establishing its execution shall be sent to the Requesting Party.

6. In every instance where the Letter of Request is not executed in whole or in part, the Requesting Party shall be informed immediately and advised of the reasons.

Article 11

The execution of a Letter of Request may be refused only to the extent that:

- a. the execution of the letter does not fall within the functions of the judiciary; or
- b. the Requested Party considers that its sovereignty or security would be prejudiced by its execution.

2. Execution may not be refused solely on the ground that under its internal law, the Requested Party claims exclusive jurisdiction over the subject matter of the action or that its internal law would not admit a right of action on it.

Article 12

The execution of Letters of Request and the taking of evidence by the Requested Party shall not give rise to any reimbursement of charges, expenses or costs, under whatever description by the Requesting Party. However, the Requested Party shall have the right to seek reimbursement of:

- a) any expenses and charges paid to the witnesses, experts or interpreters; and
- b) any costs and expenses occasioned by the use of a special procedure on request.

Article 13

A diplomatic officer or Consular Agent of either Contracting Party may, in the territory of the other Party, take the evidence, without compulsion of nationals of the party which he represents, in aid of judicial proceedings commenced in the courts of the Contracting Party which he represents.

RECOGNITION AND EXECUTION OF DECREES AND ARBITRAL A WARDS

Article 14

1. Each of the Contracting Parties shall, in accordance with its laws, recognize and/or execute decrees passed by the Courts of the other Contracting Party in civil, commercial and personal matters on the basis of final judgement including orders awarding damages in criminal cases.

2. The term 'Decree' as used in this Treaty, whatever its designation, means any decision rendered in judicial proceedings by a competent court of the Contracting Parties.

Article 15

In disputes involving the question of capacity or status of a person, the courts of the Party of which that person is a national at the time of institution of the suit shall be competent in those matters.

Article 16

The courts of the Party where immovable property is situated shall be competent to determine the rights connected with such property.

Article 17

In matters other than capacity or status of a person or immovable property, the courts of a Contracting Party shall have jurisdiction in the following cases:

- a. if the defendant has his domicile or residence in the territory of that Party at the time of institution of the suit;
- b. or the defendant has at the time of institution of the suit, a place or a branch of commercial or industrial nature or works for gain in the territory of that Party, and the suit relates to such activity;
- c. or by an express or implied agreement between the plaintiff and the defendants, the contractual obligations giving rise to the litigation are or have to be performed in the territory of that Party;
- d. or in case of non-contractual liability the act is committed in the territory of that Party;
- e. or the defendant expressly or impliedly submitted to the jurisdiction of the courts of that Party, and the law of that Party allows such submission.
- f. or any application for provisional measures, if the courts of such party are deemed competent to hear the principal dispute, by virtue of the provisions of this Treaty.

Article 18

Subject to the provisions of this Treaty, the courts of the State requested to recognise or execute a decree shall, when examining the grounds of jurisdiction exercised by the Courts of the other Contracting Party, be bound by the facts stated in that decree and on which jurisdiction is based, unless the said decree had been passed in absentia.

Article 19

A decree shall not be recognised or executed if it is not recognizable or executable under the laws of the Requested Contracting Party.

Article 20

Procedures relating to recognition or execution of a decree shall be subject to the laws of the Requested Party

Article 21

1. The competent judicial authority in the Party requested to recognise or execute a decree shall, without reviewing the merits of the case, confine itself to ascertaining the compliance of the decree with the conditions provided for in this Treaty.
2. The competent judicial authority in the Requested Party shall, when necessary, in executing the decree, take the necessary action to notify the decree in the same manner as it would have done had it been passed in its own territory.
3. The order for execution may be made for the whole or part of the decree, if the execution of such part of the decree is severable.

Article 22

The Central Authority of the Contracting Party requesting recognition or execution of a decree in the other Contracting Party, shall submit the following:

- a) an official copy of the decree.
- b) a certificate showing that the decree is final and executable, unless that is provided for in the decree itself.
- c) in case of a decree in absentia, an authenticated copy of the summons or any other documents showing that the defendant was duly summoned.

Article 23

1. The settlement of a claim which is made and filed before a judicial authority of either Contracting Party competent to consider the claim according to its national law shall be recognised and enforced in the territory of the other Contracting Party, after ascertaining that it is executable in the Party in which it was concluded, and that it does not contain any provisions contravening the constitutional rules or public policy of the Requested Party.
2. The party requesting recognition or execution of a settlement must submit an official copy and a certificate from the judicial authority stating the extent, if any, to which the decree has been satisfied or adjusted.

ARBITRAL AWARDS

Article 24

1. Without prejudice to the provisions of Articles 23 and 24 of this Treaty, arbitral awards given in the territory of either Party shall be recognised and enforced in the other Party provided that:

- a) the award of arbitrators is based on a written agreement of the parties to the dispute to submit to arbitrators for determination of any specific or future dispute arising out of legal relations.
- b) the award is made on matters arbitrable according to the law of the Party requested to recognise its enforcement unless it is contrary to the public policy of the Requested Party.

2. The party requesting the recognition and enforcement of an award, shall produce a copy of the award accompanied by a certificate of the competent judicial authority in the Requesting Party to the effect that the award is executable.

3. A certified copy of the Treaty between the disputant Parties empowering the arbitrators to decide the dispute shall also be produced.

Article 25

1. This Treaty shall be without prejudice to any rights and obligations of the Parties pursuant to other Treaties.

2. This Treaty shall apply to any requests for mutual legal assistance relating to any civil or commercial matter arising either prior to or after its entry into force.

Article 26

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

RATIFICATION AND TERMINATION

Article 27

1. This Treaty shall be subject to ratification and it shall enter into force on the date of exchange of the instruments of ratification.

2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Authorities, have signed this Treaty.

Done in duplicate at New Delhi on this 4th day of April, 2013 in Hindi, Azerbaijani and English languages, each version being equally authentic: in case of any interpretational difference, the English text shall prevail.



For the Republic of India



For the Republic of Azerbaijan