

**Treaty between the Republic of India and the Republic of Kazakhstan
on Mutual Legal Assistance in Civil Matters**

The Republic of India and Republic of Kazakhstan hereinafter referred to as Contracting Parties;

being desirous of strengthening bonds of friendship between the two states and promoting fruitful cooperation in the judicial and legal spheres;

recognizing the need to facilitate the widest measure of legal assistance in civil matters within the scope of this Treaty;

HAVE AGREED as follows:

**Article 1
Scope of application**

1. The contracting Parties shall grant each other under this Treaty the widest measure of mutual legal assistance in civil matters in accordance with their laws.
2. Legal assistance under this Treaty shall include:
 1. service of summonses and other judicial documents or processes;
 2. the taking of evidence by means of letters of request or commissions;
 3. recognition and execution of court decisions and arbitral awards.
3. This Treaty shall be without prejudice to any rights or obligations of the Contracting Parties pursuant to other treaties and arrangements.
4. This Treaty shall apply to any requests for mutual legal assistance relating to civil matter arising after its entry into force.

Article 2

Central authorities and authentication of documents

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 Ministry of Law and Justice. In the Republic of Kazakhstan the Central Authority is Ministry of Justice of the Republic of Kazakhstan.
3. However, each Contracting Party reserves its right to replace the Central Authority, and shall forthwith notify the other Contracting Party of it through the diplomatic channels.
4. Unless otherwise stated all the documents in connection with the legal assistance shall be officially signed and sealed by the court or other competent authority under its seal which shall be confirmed to be true by the Central Authority of the requesting Contracting Party.
5. All requests and supporting documents shall be furnished in duplicate and shall be accompanied by a translation into one of the official languages of the Requested Contracting Party.

Article 3

Service of summonses and other documents

1. Summonses and other judicial documents shall be served:
 - 1) in the case of the Republic of India, through the courts in whose jurisdiction the concerned persons reside;
 - 2) in the case of the Republic of Kazakhstan, through the courts or other authorized bodies in whose jurisdiction the concerned persons reside.
2. The service of summonses and other judicial documents shall be effected in accordance with the procedure provided for in the laws of the requested Contracting party, or by a particular method desired by the

requesting Contracting Party, unless such a method is incompatible with the law of the requested Contracting Party.

3. The summonses and other judicial documents served in pursuance of this Treaty shall be deemed to have been served in the territory of the requesting Contracting Party.

4. 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 or other judicial documents to its own 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.

5. Subjects to the provisions of paragraph 2 of this Article, summonses and other judicial documents may be served directly through postal channels or by delivery to an addressee who accepts it voluntarily.

6. Any claim about the addressee being a national of the Contracting Party in whose jurisdiction the service is to be effected shall be determined in accordance with the laws of this Contracting Party.

Article 4

The content of the request for the service of judicial documents

The request for the service of summonses and other judicial documents shall contain 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, should also be indicated in the request.

Article 5

Execution of request for service of judicial documents

1. A request for service of summonses and other judicial documents, which is in conformity with the provisions of this Treaty, may not be

refused, unless the requested Contracting 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 Contracting Party shall forthwith notify the requesting Contracting Party of the reasons therefore.

Article 6 **Service of judicial documents**

1. The competent authority in the requested Contracting Party shall serve the said documents in accordance with the laws applicable in this regard. No fees and costs may be levied for effecting such service.
2. Service may be effected in a special mode specified by the requesting Contracting Party, provided that it does not contravene the laws of the requested Contracting Party and further subject to the payment of costs of such special mode of service.

Article 7 **Proving of service of judicial documents**

1. The powers of the competent authority in the requested Contracting 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 reasons for such non delivery.

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

4. In case of non-delivery, the Central Authority of the Requested Contracting Party shall soon return the original judicial documents and papers with the written reasons for such non-delivery to the Central Authority of the requesting Contracting Party.

Article 8 **Taking of evidence**

1. The judicial authorities or other authorized organs of one Contracting Party may in accordance with the provisions of the laws of that Party, request for the taking evidence in civil matters by means of letters of request addressed to the competent judicial authorities or other authorized bodies of the other Contracting Party.

2. For the purpose of this Treaty, taking of evidence shall be deemed to cover:

1) the taking of the statements of the parties and evidence of witnesses in accordance with the laws of the requested Contracting Party;

2) the production, identification or examination of documents, records, material evidence requested and submitted by the person whose evidence is taken under subparagraph 1) above.

3. A letter of request shall specify:

1) the judicial authority or other authorized body requesting the evidence;

2) the nature of the proceedings for which the evidence is required and all necessary information related thereto;

3) the names and addresses of the parties to the proceedings;

- 4) the evidence to be obtained; and
- 5) 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 description of the subject matter about which they are to be examined and the documents relevant to such evidence or statement.

Article 9

Execution of letters of request for taking of evidence

1. The competent authorities of the requested Contracting Party shall execute the letters of request in accordance with its laws and take the evidence by applying the same methods and procedures as are permissible under its laws, including the appropriate methods of compulsion.
2. The requested Contracting Party shall follow the special method or procedure which has been specified by the letter of request insofar as it is not incompatible with its laws.
3. The letter of request shall be executed as expeditiously as possible.
4. The requesting Contracting 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 representatives, if any, may be present. This information shall be sent directly to the parties or their representatives when the requesting Contracting Party so requests.
5. When the letter of request has been executed, the necessary documents establishing its execution shall be sent to the requesting Contracting Party.
6. In every instance where the letter of request is not executed in whole or in part, the requesting Contracting Party shall be informed immediately and advised of the reasons.

Article 10
Refusal of request for execution

1. The execution of a letter of request may be refused only to the extent that:

- 1) the execution of the letter does not fall within the functions of the courts or other competent authorities of the requested Contracting party;
- 2) the requested Contracting 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 laws the requested Contracting Party has exclusive jurisdiction over the subject matter of the action or that it would not admit a right of action on it.

Article 11
Reimbursement of expenses for execution of requests

The execution of letters of request and the taking of evidence by the requested Contracting Party shall not give rise to reimbursement of any charges, expenses or costs, by the requesting Contracting Party. However, the requested Contracting Party shall have the right to seek reimbursement of:

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

Article 12
Taking of evidence by diplomatic officer or consular agent

A diplomatic officer or consular agent of either Contracting Party may take the evidence in the territory of the other Contracting Party, without compulsive measures in relation to nationals of the Contracting Party which

he represents, in aid of judicial proceedings commenced in the courts of the Contracting Party which he represents.

Article 13

Taking of evidence by other persons

A person duly appointed by the courts of requesting Contracting Party may, without compulsion, take evidence in the territory of the other Contracting Party, in accordance with the laws of that Party.

Article 14

Recognition and execution of decrees

1. Each of the Contracting Party shall, in accordance with its laws, recognize and/or execute decrees passed by the Courts of the other Contracting Party in civil matters.
2. The term "Decree" as used in this Treaty shall mean a decision rendered in judicial proceedings by competent courts of the Contracting Parties.
3. This Treaty shall not apply to interim or provisional measures, or decrees passed in cases, in creditors' claims related to bankruptcy as well as taxes, levies, fines collection.

Article 15

Capacity and status of a person

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

Article 16
Determination of property rights

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

Article 17
Court jurisdiction

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

- 1) if the defendant has his domicile or residence in its territory at the time of institution of the suit;
- 2) if the defendant has, at the time of institution of the suit, an enterprise/establishment or a branch in its territory, and the suit relates to the activity of that enterprise/establishment or branch;
- 3) if, by an express or implied agreement between the plaintiff and the defendant, the contractual obligations giving rise to the litigation are or have to be performed in its territory;
- 4) in case of non contractual liability the act is committed in its territory;
- 5) if the defendant expressly or impliedly submitted to the jurisdiction of its courts, and its laws allow such submission;
- 6) application of provisional measures, if its courts are deemed competent to hear the principal dispute, by virtue of the provisions of this Treaty.

Article 18
Grounds for recognition and/or execution of decrees

1. The requested Court of the Contracting Party shall recognize and execute a decree in accordance with its laws.
2. The requested Court of Contracting Party shall consider the decree for its compliance in accordance with the provisions of this Treaty.
3. The requested Court of the Contracting Party, if required, may ask for additional information with regard to the procedures relating to recognition or/and execution of a decree under this Treaty.

Article 19
Refusal of recognition and execution of a decree

The recognition and execution of a decree could be denied if in accordance with laws of the requested Contracting Party that decree can not be recognized and executed.

Article 20
Procedures relating to recognition and/or execution of a decree

Procedures relating to recognition and/or execution of a decree shall be subject to the laws of the requested Contracting Party.

Article 21
Competent Court

1. The competent judicial authority in the Contracting Party requested to recognize and/or execute a decree shall, without reviewing the merits of the case, ensure the compliance of the decree with the conditions provided for in this Treaty and shall state the results in its decision.
2. The competent judicial authority in the requested Contracting Party shall, when necessary, in executing the decree, take the necessary action to

accord to the decree the same publicity, which it would have, if it had been passed in the territory of requested Contracting Party.

3. The order for execution may be made by the competent judicial authority of requested Contracting Party for the whole or part of the decree, if the execution of such part of the decree is severable.

Article 22

List of documents to be submitted for recognition and/or execution of a decree

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

- 1) an official copy of the decree in the proper executable form;
- 2) a certificate showing that the decree is valid and executable, unless that is provided for in the decree itself;
- 3) in case of a decree in absentia, an authenticated copy of the summonses or any other document showing that the defendant was duly summoned;
- 4) a certificate about the part of the decree that has already been executed, if the decree is severable.

Article 23

Settlement of claims

The settlement of a claim which is made and filed before a court of either Contracting Party competent to consider the claim according to its laws shall be recognized and enforced in the territory of the other Contracting Party, after ascertaining that it is executable in the State in which it was concluded, and that it does not contravene the laws of the requested Contracting Party.

Article 24
Arbitral awards

1. Without prejudice to the provisions of Articles 20 and 23 of the Treaty the arbitral awards which have been rendered in the territory of any Contracting Party shall be recognized and enforced by other Contracting Party provided that:

1) the award of arbitrators is based on the written consent of Parties to the proceedings to submit to it with the purpose of settling of any dispute arisen from legal relations;

2) the arbitral award have been rendered in relation with the matter which can be the matter of arbitration in accordance with the laws of the requested Contracting Party to recognize or execute the court decision.

2. The Contracting Party requesting to recognize and execute the arbitral award shall produce the copy of the award which shall be accompanied by the decision issued by the competent court of the requesting Contracting Party and certifying that the arbitral award may be executed.

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

Article 25
Changes and amendments

The Contracting Parties, may, by mutual consent, amend the Treaty which shall be subject to ratification by the procedure established for this Treaty.

Article 26
Consultations

The Contracting Parties shall consult promptly at the request of either Contracting Party, concerning the interpretation and application of this Treaty.

Article 27
Ratification and Termination

1. This Treaty shall be subject to ratification and shall enter into force on the date of exchange of instruments of ratification.
2. Either of the Contracting Party 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.

Done in duplicate at Astana this the 16th Day of April 2011 in Russian, Hindi and English languages, each version being equally authentic. In case of any interpretation difference the English text shall prevail.


FOR
THE REPUBLIC OF
INDIA


FOR
THE REPUBLIC OF
KAZAKHSTAN