

**AGREEMENT BETWEEN
THE REPUBLIC OF INDIA
AND
THE STATE OF KUWAIT
ON JURIDICAL AND JUDICIAL COOPERATION IN CIVIL AND
COMMERCIAL MATTERS**

The Government of the Republic of India and the Government of the State of Kuwait (hereinafter referred to as the "Contracting Parties");

Being desirous of strengthening the bonds 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 and judicial 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 Agreement the widest measure of mutual legal and judicial assistance in civil and commercial matters in accordance with their national laws.
2. Assistance under this Agreement shall apply to:
 - a) service of summons, court notices and other judicial documents, or processes;
 - b) taking of evidence by means of Letters of Request or Commission;
 - c) execution of decrees.
3. This Agreement shall be without prejudice to any rights and obligations of the parties pursuant to other treaties or arrangements.

4. This Agreement shall apply to any requests for mutual legal and judicial assistance relating to any civil or commercial matters arising either prior to or after its entry into force.

CENTRAL AUTHORITIES AND AUTHENTICATION OF DOCUMENTS

Article 2

1. Requests for legal and judicial 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 & Justice (Department of Legal Affairs). In the State of Kuwait, the Central Authority is the Ministry of Justice (International Relations Department).
3. Unless otherwise stated, all the documents in connection with the legal and judicial assistance shall be officially signed by the court under its seal, which shall be authenticated by the Central Authority of the Requesting Party.
4. 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 Party, or in English.

SERVICE OF SUMMONS, COURT NOTICES, AND OTHER JUDICIAL DOCUMENTS

Article 3

1. Service of summons, court notices 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. Summons, court notices and other judicial documents served in pursuance of this Agreement 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, court notices 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 other Contracting Party.
4. Service of summons, court notices and other judicial documents may be effected in special manner by an express request from the Requesting Party provided that it shall not be incompatible with the laws of the Requested Party. Summons, court notices and other judicial documents, served in accordance with the provisions of this Agreement shall have the same legal effect as if they had been served in the territory of the Requesting Party.
5. Any claim about the addressee being a national of the State in whose jurisdiction the service is to be effected shall be determined in accordance with the law of that State.

Article 4

Any request for the service of summons, court notices and other judicial documents shall be accompanied by all particulars concerning the name and title, place of residence or business of the addressee and a list of documents 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, court notices and other judicial documents, which is in conformity with the provisions of this Agreement, may not be refused, unless the Requested Party considers that compliance with the request would infringe its sovereignty, security, public order or national interest.
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 reasons therefor.

Article 6

1. The competent authority in the Requested Party shall serve the judicial 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.

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 the 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 Party 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, through the channels stated in Article 2 of this Agreement.
2. For the purpose of this Agreement, taking of evidence shall be deemed to cover:
 - a) taking of statements, on oath or otherwise, of a witness;
 - b) submission of oath to a witness, with regard to any legal proceedings; and
 - c) production, identification or examination of documents, record, 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) judicial or other competent authority requesting the evidence;
 - b) nature of the proceedings for which the evidence is required and all necessary information related thereto;
 - c) names and addresses of the parties to the proceedings;
 - d) evidence to be obtained; and
 - e) 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 about which they are to be examined and the documents relevant to such evidence or statement.

5. The Letters of Request shall indicate whether the evidence required is to be taken on oath or affirmation.

Article 9

The judicial proceedings performed by way of a Commission in pursuance of the provisions of this Agreement shall have the same legal effect as if 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 methods and procedures as are permissible under its laws, including 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 representatives, 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

1. 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, security, public order or national interest would be prejudiced by its execution.
2. Execution may not be refused solely on the ground that under its internal laws the Requested Party claims exclusive jurisdiction over the subject matter of the action or that its internal laws would not admit a right of action on it.

Article 12

The execution of Letters of Request and 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,
- b) any costs incurred to secure the attendance of witnesses who have not appeared voluntarily, and
- c) any costs and expenses occasioned by the use of a special procedure on request.

Article 13

1. A witness or an expert, whatever his nationality, appearing on a summons before the judicial authorities of the Requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or

omissions prior to his departure from the territory of the Requested Party.

2. The immunity provided for in this Article shall cease when the witness or the expert, having had for a period of 30 consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left, has returned thereto.

Article 14

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.

Article 15

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

RECOGNITION AND EXECUTION OF DECREES

Article 16

1. Each of the Contracting Parties shall, in accordance with its laws, recognize and execute conclusive decrees passed by the courts of the other Contracting Party in civil, commercial or personal matters and by criminal courts in civil matters.
2. The term "Decree" as used in this Agreement, whatever its designation, means any decision or order rendered in judicial proceedings by a

competent court or arbitral tribunal or other quasi-judicial authority of the Contracting Parties.

3. The provisions of this Agreement shall also apply to interim or provisional measures.

Article 17

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 in those matters.

Article 18

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

Article 19

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) the defendant has his domicile or residence in the territory of that Contracting Party at the time of institution of the suit; or
- b) 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 Contracting Party and the suit relates to such activity; or

- c) 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 the territory of that Contracting Party; or
- d) in case of non-contractual liability the act is committed in the territory of that Contracting Party; or
- e) the defendant expressly or impliedly submitted to the jurisdiction of the courts of that Contracting Party, and the law of that State allows such submission; or
- f) or any application for interim or provisional measures, if the courts of such Contracting Party are deemed competent to hear the principal dispute, by virtue of the provisions of this Agreement.

Article 20

Subject to the provisions of this Agreement, the court of the Contracting Party requested to recognize and 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 21

A decree shall not be recognized or executed in the following cases:

- a) if it is not conclusive and executable; or
- b) it has not been pronounced by a court of competent jurisdiction; or
- c) it has not been given on the merits of the case; or
- d) it appears on the face of the proceedings to be founded on violation of the international law or the applicable law; or
- e) the proceedings in which the judgment was obtained are opposed to natural justice; or
- f) it has been obtained by fraud; or

- g) it sustains a claim founded on a breach of any law in force, or is contrary to the constitutional rules or the principles of public order or national interest in the Requested Party; or
- h) it contravenes the rules concerning the legal representation of persons suffering from lack of capacity in the Requested Party; or
- i) it is passed *in absentia* and the defaulting party was not duly summoned in accordance with the rules applicable in his country; or
- j) the dispute in which the decree was passed is pending in a suit before one of the courts in the Requested Party, between the same parties and involving the same cause of action, and that suit was raised before one of the courts of the latter Contracting Party, at a date prior to the raising of that dispute in the court of the Contracting Party which passed the decree, and provided that the court before which the suit was raised, is competent to hear and decide upon it.

Article 22

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

Article 23

1. The competent judicial authority in the Contracting Party requested to recognize 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 Agreement.
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 24

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 document showing that the defendant was duly summoned; and
- d) if the request is only for execution of a decree, an official copy in properly executable form.

Article 25

1. The judgment passed for 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 recognized and enforced in the territory of the other Contracting Party, after ascertaining that it is executable in the Party in which it was rendered and that it does not contain any provisions contravening the constitutional rules, public order or national interest of the requested Contracting Party.
2. The Contracting Party requesting recognition or execution of a judgment 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 26

1. Arbitral awards given in the territory of either Contracting Party shall be recognized 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; and
 - b) the award is made on matters arbitrable according to the law of the Party requested to recognize and enforce the award, unless it is contrary to the public order or national interest of the Requested Party.
2. The Contracting 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 agreement between the disputant Parties empowering the arbitrators to decide the dispute shall also be produced.

RATIFICATION AND TERMINATION

Article 27

This Agreement shall be subject to ratification in accordance with the constitutional procedures in force in both Contracting Parties. It shall become effective from the date of the last intimation, by which either Contracting Party shall inform the other that all the necessary legal procedures for the enforcement of the Agreement have been fulfilled.

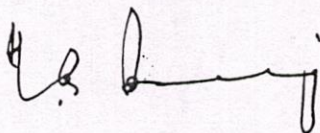
Article 28

This Agreement has been concluded for an indefinite period of time. Either of the Contracting Parties may terminate this Agreement by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Agreement shall cease to have any force or effect.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at New Delhi on 16th day of August 2005 in two originals each in Hindi, Arabic and English languages, each text being equally authentic. However, in case of difference, the English text shall prevail.

**FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA**



**FOR THE GOVERNMENT OF
THE STATE OF KUWAIT**

