

AGREEMENT

ON

MUTUAL JUDICIAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF INDIA

AND

THE GOVERNMENT OF THE REPUBLIC OF TURKEY

The Government of the Republic of India and
the Government of the Republic of Turkey,

Desiring to regulate and to render mutual judicial
assistance in civil and commercial matters and to
make provision for the legal protection of their
respective nationals in each other's territory,

Have resolved to conclude the following Agreement
to this effect.

CHAPTER I

GENERAL PROVISIONS

Article 1

Provision for Mutual Judicial Assistance

The Contracting Parties undertake to afford each other, in accordance with the provisions of this Agreement, mutual judicial assistance in civil and commercial matters.

Article 2

Scope of Assistance

1. Under the provisions of this Agreement, mutual judicial assistance in civil and commercial matters, shall cover:
 - a) The taking of evidence by means of Letters Rogatory/ Letters of Request;
 - b) The transmission to and service of judicial documents on persons concerned, in the territory of the other Contracting Party; and
 - c) The protection and access to the courts for the nationals of either Contracting Party.
2. For the purposes of this Agreement
 - a) The terms 'persons' shall be deemed to mean and to include "physical persons or individuals" and "juridical persons" of any nationality

- b) The terms 'nationals' shall be deemed to mean all persons wherever domiciled, either physical or juridical, bearing the nationality of each Contracting Party under its own laws.

Article 3

Refusal of Assistance

Request for mutual judicial assistance may be refused only to the extent that the Requested Party considers that its sovereignty, security or public order would be prejudiced thereby or that its relevant laws do not provide for any remedy in the matter under consideration.

Article 4

Channel and Language of Communication

1. The request for assistance shall be transmitted through the diplomatic or consular channels to the competent authorities of the Requested Party.
2. The request for assistance and the documents shall be drawn up or a certified copy thereof shall be provided in the English language.

CHAPTER II

TAKING OF EVIDENCE

Article 5

Letters Rogatory/Letters of Request

1. When a judicial authority of one of the Contracting

Parties requires that evidence should be taken in the territory of the other Contracting Party, such evidence may be taken by means of Letters Rogatory/Letters of Request in any one of the ways prescribed in Articles 7 and 8.

2. For the purpose of this Agreement, 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-paragraphs (a) and (b) above.

Article 6

Contents of Letters Rogatory/Letters of Request

1. The judicial authorities of the Requesting Party may, in accordance with the provisions of the law of that Party, ask for the taking of evidence in civil and commercial matters by means of Letters Rogatory/Letters of Request addressed to the competent judicial authorities of the Requested Party.

2. A Letter Rogatory/Letter of Request should normally specify:

- a) The judicial authority requesting the evidence to be obtained;

- b) The nature of the proceedings for which the evidence is required, and all necessary information related thereto;
- c) The names and the addresses of the parties to the proceedings and, their representatives, if any;
- d) The evidence to be obtained; and
- e) The names and addresses of the persons to be examined.

3. Where deemed necessary, the Letters Rogatory/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.

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

The Requesting Party may request the other Party to allow the questions to be asked orally where the parties or their representatives should desire so, where allowed by laws of the Requested Party.

Article 7

Execution of Letters Rogatory/Letters of Request

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

The Requested Party shall follow any special method or procedure which has been expressly specified by the Requesting Party in the Letters Rogatory/Letters of Request in so far as it is not incompatible with the law and practice of the Requested Party.

The Letters Rogatory/Letters of Request shall be executed as expeditiously as possible.

2. If the judicial authority of the Requested Party to whom the Letters Rogatory/Letters of Request has been transmitted is not competent to execute it, such authority shall, except in cases where execution is refused in accordance with Article 8, forward, of its own accord, the Letters Rogatory/Letters of Request to the competent authority in the Requested Party.

3. When the Letter rogatory/Letter of Request has been executed, the necessary documents establishing its execution shall be sent by the Requested Party to the other through the same channels as has been used in its transmission.

4. In every instance where the Letter Rogatory/Letter of Request is not executed, either in whole or in part, by the authority to whom it has been addressed, the Requesting Party shall be informed immediately of the reasons on which the execution of the Letter Rogatory/Letter of Request has been refused.

Article 8

Reasons for refusal

1. Apart from the reasons provided for in Article 3, the execution of Letters Rogatory/Letters of Request may only be refused:
 - a) If the authenticity of Letters Rogatory/Letters of Request is not established; or
 - b) If the execution of Letters Rogatory/Letters of Request in the Requested Party does not fall within the functions of the judiciary.
2. If the Requested Party considers that Letters Rogatory/Letters of Request do not comply with the provisions of this Agreement, it shall promptly inform the Requesting Party and specify its objections thereto.

Article 9

Expenses

1. The execution of Letters Rogatory/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.
2. Nevertheless, the Requested Party shall have the right to require the Requesting Party to reimburse:
 - a) Any expenses and charges paid to the witnesses, experts or interpreters;
 - b) Any costs incurred to secure the attendance of the

- witnesses who have not appeared voluntarily; and
- c) Any costs and expenses occasioned by the use of a special procedure under Article 7.

CHAPTER III

SERVICE OF DOCUMENTS

Article 10

Request for Service of Documents

1. In civil or commercial matters, either Contracting Party may transmit to the other Party requests for service of summons and other judicial documents to be served on persons in the territory of that Party.

However, each Contracting Party shall be free to effect service of judicial or extra-judicial documents on its own nationals, without using compulsion, directly through its diplomatic or consular missions in the territory of the other Party.

2. Requests for service of such summons or other judicial documents shall be forwarded by the Requesting Party to the competent authority of the Requested Party through its diplomatic or consular mission acting for it.

The requests for service shall be accompanied by the documents to be served. The requests and the documents shall both be furnished in duplicate together with their certified translations in the English language.

Article 11

Contents of the Requests

1. The requests for service of summons and other judicial documents shall indicate:

- a) The title of the authority making the request;
- b) The nature of the document to be served;
- c) the name, address and identity of the person to be served;
- d) The names and identities of the parties, if any; and
- e) The date, time and place of appearance, where necessary.

2. In the request for service of documents, the Requesting Party may require the application of a particular method of service, if such method is not incompatible with the laws of the Requested Party.

Article 12

Effecting the Service of Documents

1. The competent authority of the Requested Party shall effect the service of the judicial documents either:

- a) In the manner prescribed by its own laws for the service of similar documents in its territory, or
- b) By a particular method required by the Requesting Party in its request for service in so far as such method is not incompatible with the laws of the Requested Party.

2. Subject to the provision of paragraph (1), sub-paragraph (b) above, the service of the document may always be effected by simple delivery of the document to the addressee who will accept it voluntarily.

Article 13

Refusal of Service of Documents

1. The execution of a request for service, duly made in accordance with the provisions of this Agreement, may be refused by the Requested Party if:

- a) The authenticity of the request for service is not established, or
- b) For the reasons specified in Article 3.

2. If the Requested Party considers that the request for service does not comply with the provisions of this Agreement, it shall promptly inform the Requesting Party of its reasons for refusal of service of documents.

3. In every instance where a request for service is not executed by the competent authority of the Requested Party, that Party shall, as soon as possible, inform the other Party through the same channel as used in the transmission of the request, and shall state the reasons whereby the execution of the request has been refused.

Article 14

Proof of Service

1. The competent authority of the Requested Party by whom the request for service is executed shall furnish to the Requesting Party either the receipt duly signed and dated by the addressee and certified by the competent authority or a certificate proving the service and stating the manner, the place and the date of service and the person to whom the document was delivered.

2. When the service of the document has not been effected by the Requested party, the certificate shall specify the reasons which have prevented the service of the document and the fact, the manner and the date of such attempted service.

The certificate in proof of service or attempted service shall be placed on the copy of the document served or attached thereto, and shall be forwarded to the Requesting Party.

Article 15

Expenses of Service

1. The service of judicial documents shall not give rise to any payment or reimbursement of fees, costs or taxes, under whatever description, by the Requesting Party.

2. However, in cases where the documents have been duly served, the Requesting Party shall repay or reimburse, in accordance with the laws of the Requested Party, any charges and expenses occasioned by and payable for:

- a) The employment of a judicial official or of a person competent under the law of the Requested Party to effect the service; or
- b) The use of a particular method of service as required by the Requesting Party under Article 12, paragraph 1 (b).

These charges and expenses, as provided for above, shall not exceed such amounts as are usually allowed in the courts of the Requested Party.

CHAPTER IV

FINAL PROVISIONS

Article 16

Entry into Force

This Agreement shall be subject to ratification. It shall enter into force thirty days after the exchange of the instruments of ratification and shall remain in force for an indefinite period.

Article 17

Termination

Either Contracting Party may terminate this Agreement by giving a six months prior written notice to the other Party.

IN WITNESS WHEREOF, the respective Plenipotentiaries of the Contracting Parties have signed this Agreement and have affixed hereto their seals.

Done at A n k a r a this Eighteenth day of July 1988
in duplicate and in the English language.

FOR THE GOVERNMENT OF THE
REPUBLIC OF INDIA

A handwritten signature in dark ink, appearing to read 'K. Natwar-Singh', with a stylized flourish at the end.

K. NATWAR-SINGH
MINISTER OF STATE FOR
EXTERNAL AFFAIRS

FOR THE GOVERNMENT OF THE
REPUBLIC OF TURKEY

A handwritten signature in dark ink, appearing to read 'A. Mesut Yilmaz', with a stylized flourish at the end.

A. MESUT YILMAZ
MINISTER OF FOREIGN AFFAIRS