

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs,
IS Division-II:Legal Cell

New Delhi, dated the 11th Feb, 2009

To

The Home Secretaries of all States/UTs,
The DGPs and IGPs of all States/UTs.

Sub : Comprehensive guidelines regarding service of summons/notices/
Judicial process on the persons residing abroad.

Sir,

Section 105 of Criminal Procedure Code (Cr.P.C.) provides for reciprocal arrangements to be made by Central Government with the foreign governments with regard to the service of summons / warrants/ judicial processes. MHA has entered into Mutual Legal Assistance Treaty/ Arrangements with 25 countries. In respect of other countries, the Ministry attempts to serve the judicial papers by giving an assurance of reciprocity. However, despite this Ministry's best efforts the summons and other judicial process get delayed for various reasons.

With a view to streamlining the procedure, MHA has examined the matter and comprehensive guidelines are enclosed covering various aspects of service of the summons/ Notices/ Judicial process on persons residing abroad.

You are requested to kindly have these comprehensive guidelines circulated amongst all courts/ all investigating officers under your jurisdiction for strict compliance.

Yours faithfully,

Sd/-

(Amar Chand)

Under Secy. To the Govt. of India

Encl : As above.

Copy to :

- i) M/o Law and Justice , Deptt. Of Legal Affairs, Shastri Bhawan, New Delhi
- ii) M/o External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi.
- iii) JS(PP), MHA, Lok Nayak Bhawan, Khan Market, New Delhi
- iv) JD(Policy), CBI, North Block, New Delhi
- v) Joint Director, IB, New Delhi.

No. 25016/17/2007-Legal Cell
Government of India
Ministry of Home Affairs

Subject: Comprehensive guidelines referred to in Letter No. 25016/17/2007-Legal Cell, dated _____ of Internal security Division, Ministry of Home Affairs regarding service of summons/notices/judicial process on persons residing abroad.

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Section 105 of Criminal Procedure Code (CrPC) speaks of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries which provide for serving of documents. These countries are Switzerland, Turkey, United Kingdom, Canada, Kazakhstan, United Arab Emirates, Russia, Uzbekistan, Tajikistan, Ukraine, Mongolia, Thailand, France, Bahrain, South Korea, United States of America, Singapore, South Africa, Mauritius, Belarus, Spain and Kuwait. In other cases the ministry makes a request on the basis of assurance of reciprocity to the concerned foreign government through the mission / Embassy. The difference between the two categories of the countries is that the country having MLAT has obligation to consider serving the documents whereas the non-MLAT countries does not have any obligation to consider such a request.

Summons/notices/judicial processes issued by the Indian Courts.

2. The summons/warrants/judicial processes received by MHA are forwarded to the concerned Indian Missions/Embassies which in turn, takes up the matter with the designated authority in that country. In case of MLAT countries, the manner of communication is as laid down in MLAT and can be either directly between MHA and the Central Authority or can be through the diplomatic channel. The designated authority after considering the request directs its agency to serve the document on the concerned person and the report of the service, if any is also received through the same chain. This is broadly the system in majority of the countries. However, in some countries private companies/NGOs have also been entrusted with the service of judicial papers.

3. Based on the experience gained, some guidelines are given below which may be followed while making a request to MHA for service of judicial processes. It may, however, be noted that it is the discretion of the requested country to serve the documents and any time frame for a positive response cannot be predicted.

- a) All requests for service of summons/notices/judicial processes on persons residing abroad shall be addressed to the Under Secretary(Legal), IS-II Division, Ministry of Home Affairs, 9th Floor, Lok Nayak Bhawan, New Delhi- 110003. All requests shall be forwarded through post only with a covering letter from the Registrar/Court official giving the following information:
 - a) Material facts of the criminal matter including purpose of the request and the nature of the assistance sought.
 - b) The offences alleged to have been committed, a copy of the applicable laws and maximum penalties for these offence.

- c) Name, designation, telephone and fax number of the person/officer who will be able to give any clarification, if required.
 - d) The complete address of the issuing authority to which the judicial papers/service reports may be returned.
 - e) Approval of the competent authority to bear any expenditure, which they be charged by the foreign government/agency for the service of the documents.
 - f) Degree of confidentiality required and the reasons therefore(in case of confidentiality requirement).
 - g) Any time limit within which the request should be executed. This will be subject to allowance of sufficient margin of time by the requesting agency, as indicated in para 3(iv) of the guidelines
- b) MHA, on receipt of request, will examine it in view of the provisions of treaty, if exists, with the requested country and as per the provision of CrPC in case of non-treaty country.
 - c) India has a MLAT with Singapore and the Govt. of Singapore has prescribed a proforma which shall be completely filled and sent alongwith the request for service of judicial documents. The said proforma is at Annexure – 1 to these guidelines.
 - d) MHA requires at least a period of 12 weeks times for service of such notices in the concerned countries. It is, therefore imperative that a date of hearing/appearance may be decided accordingly.
 - e) In the case of non English speaking countries, the notices should be accompanied with the certified/authenticated translation(in duplicate) in the official language of the country where the notice is proposed to be served.
 - f) Name and address of the individual/organization should be complete in all respect and PO BOX no. and Passport no. will not suffice as address of the individual.
 - g) Ministry of Home Affairs responsibility to service the summons is only in Criminal Matters. Hence, summons in Criminal matters only may be sent to the Ministry for service abroad.
 - h) MHA does not undertake service of the non-bailable warrants of arrest. The service of non-bailable arrest warrents amounts to the extradition of the individual. The request for extradition are based on certain legal procedures contained in applicable treaties negotiated on the basis of the International Principle of Extradition. Such requests are to be forwarded to the Ministry of External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi – 110001.

(A) SUMMONS ISSUED BY THE FOREIGN COURTS/AUTHORITIES:-

4. The summons issued by the Foreign Courts/Authorities and received in MHA will be served by the State Police through CBI-Interpol. However, Indian Mission/MEA while forwarded such requests to MHA will ensure that:-
 - a) The summon is followed with a translated copy in the Indian language.
 - b) A reasonable time say 10 weeks is allowed after the summons are received in the Ministry of Home Affairs.
 - c) An Assurance of Reciprocity(AOR) is followed from the countries which insist for the same in respect of Indian Summons.

Annexure-1

[Form for requests from prescribed foreign countries to Singapore for Assistance]
TO: The Central Authority in the Republic of Singapore
FROM: The Central Authority in India -Ministry of Home Affairs

REQUESTS FOR MUTUAL LEGAL ASSISTANCE
IN A CRIMINAL MATTER

Certificate on behalf of
The Central Authority in India- Ministry of Home Affairs

I, [name, appointment /position of person certifying] on behalf of the Central Authority in India, Ministry of Home Affairs, who is responsible for [state area of responsibility e.g. criminal prosecutions, investigations] in the [requesting party] and who is also authorized to make requests for mutual legal assistance in criminal matters (in the Ministry of Home Affairs – India) certify that the Ministry of Home Affairs- India respectfully requests the assistance of the Government of the Republic of Singapore in a [Criminal matters].

REQUEST

This request is made pursuant to the Agreement between the Govt. of Republic of Singapore and the Govt. of India agreed on 29th June 2005 (hereinafter “ The Agreement”) concerning Mutual Legal Assistance in Criminal matters.

NATURE OF REQUEST

This request relates to the [describe subject of criminal matter e.g. service of summons/Notices/judicial processes issued by the Hon'ble Court _____ In Case number _____ u/s _____]. The authority having the conduct of the criminal matter is [describe authority concerned with the criminal matter]

CRIMINAL OFFENCES/APPLICABLE LEGISLATION/PENALTIES

[Set out the offences alleged to have been contravened in relation to the criminal matter as well as maximum penalties for these offences and attached copies of applicable legislative provisions. State identity of suspect/ accused person if known) e.g.

Offence u/s _____ of the Indian Penal Code/ Cr.PC (define the section)

Section _____ “ _____ ”
“Quote”

1State whether it is an investigation, prosecution or an ancillary criminal matter. Criminal matter is defined in section 2 of Singapore Mutual Assistance in Criminal Matters Act (Cap 1904). An electronic version of this is available at <http://statutes.leg.gov.sg/>

STATEMENT OF FACTS

[DESCRIBE the material facts of the criminal matter including in particular, those necessary to establish circumstances connected to evidence sought in the Requesting Party and the relevance of Singapore evidence to the criminal matter in the Requesting Party. Such other information as is required where the request relates to particular heads of assistance (e.g. location of persons, enforcement of confiscation order) should also be stated) e.g.

PURPOSE OF REQUEST

By this request it is intended to [state purpose which is intended to be achieved by the assistance sought to secure admissible evidence to be used in the trial of ____] e.g. serve a summons issued by the Hon'ble Court _____ in case no. _____ u/s _____ of the Indian Penal Code/ Cr.PC and to secure the presence of the accused before the said court on _____ (date and time)

MANDATORY ASSURANCE & UNDERTAKINGS

It is confirmed that this request:

- (a) does to the prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it alleged to have been committed or was committed, an offence of a political character.
- (b) is not made for the purpose of the prosecuting punishment or otherwise causing prejudice to the person on account of that person's race, religion, nationality or political opinions.
- (c) does not relate to the prosecution of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or by other authority [Requesting party] i.e. of the Government of India in respect of that offence or of another offence constituted by the same act or omission as that offence.

The Central Authority in [Requesting Party] i.e. India – Ministry of Home Affairs further undertakes that:

- (a) that any of the evidence / thing obtained pursuant to this request will only be used for the purpose of the request in connection with [State particulars of criminal matters]; and e.g. Case No. _____ u/s _____ of the Indian Penal Code /CrPC; and
- (b) that should the Hon'ble Attorney General of the Republic of Singapore require the return of any evidence / thing obtained pursuant to this request, at the conclusion of [state particulars of criminal matters] for e.g. case no. _____ and of all consequential appeals, the evidence/ thing will be returned to the Honorable Attorney General of the Republic of Singapore.

ASSISTANCE REQUESTED

The Government of Republic of Singapore is requested to take such steps as are necessary to give effect to the following:
[describe particular type of assistance required] e.g.

To serve the summons issued by the Hon'ble Court of _____ in Case No. _____ u/s _____ of the Indian Penal Code/ Cr.PC on the accused Mr. _____ r/o _____.

EXECUTION OF REQUEST

Confidentiality

[State confidentiality requirements of the Requesting Party, if any] e.g.

There is no requirement of confidentiality in this matter.

Procedure to be followed

It is requested that the following procedures be observed in the execution of the request

[State details of manner and form² in which evidence is to be taken and transmitted to the requesting party, if relevant]

[State any special requirements as to certification/ authentication of documents]

[State if attendance by representative of the requesting party at examination of witnesses/ execution of request is required and, if so, the title of the post held by the proposed representative.

e.g.

The summon along with the copy of the complaint filed in the court may be served upon _____ and his signature on the duplicate copy of the summon may be taken as token of acknowledgment and forwarded to the Ministry of Home Affairs, Government of India, through diplomatic channel.

Period of Execution

It is requested that the request be executed within [State period giving reasons i.e. specify likely trial or hearing dates or any other dates/ reasons relevant to execution of requests] E.g. at least 10 days before i.e. (date) _____, which is the next date of hearing in the Court of _____

Signed by : _____
Name /Designation : _____
Office : _____
Date : _____

²please provide proforma or form of words as appropriate

SAMPLENOTICETOPERSONSERVEDUNDERARTICLE14

TO

[State name and address of person to be served] e.g.
Mr. R Ravindran
93, Loyang View
Singapore 507188

The Central Authority in India – Ministry of Home Affairs [Requesting State] has made a request pursuant to the Agreement between the Government of Republic of Singapore (Requested State) and the Government of India (Requesting State) concerning Mutual Legal Assistance in Criminal Matters for the service of the attached process:

[describe process and documents, if any to be served] e.g.

Viz: to serve summons issued by the Ld. Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No.4700982/SS/2007 u/s 500 of the Indian Penal Code.

Please note that by serving the process on behalf of the Central Authority in India – Ministry of Home Affairs [Requesting State], the Government of Republic of Singapore [Requested State] takes no position with respect to the merits of any proceedings in the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in CC No. 4700982/SS/2007 u/s 500 of the Indian Penal Code in the [Requesting State].

Please review the attached process carefully for instruction and deadlines. If you have any questions about them you may wish to consult a lawyer. You may also contact [[the representative of the Requesting State] directly at [Phone number or other contact details] e.g. Mr. Jayant L Phoujdar, Advocate, Mumbai High Court directly at 022-66377902, 79037904.

However, if the process is a process other than a summons to appear as a witness under the law of the India [Requesting State], please note that [to be advised by the Requesting State of other possible consequences, if any under its law if the person refuses or fails to accept service or fails to comply with the terms of service of process]. E.g. warrant of arrest will be issued by the Additional Chief Metropolitan Magistrate, 47th Court, Esplanade , Mumbai, if the person refuses or fails to accept service or fails to comply with the terms of service of process.

(_____)

Central Authority of India – Ministry of Home Affairs.

Date: