

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

New Delhi, Dated, the 11<sup>th</sup> Feb, 2009.

To,

The Home Secretaries of all States / UTs  
The DGPs and IGP's of all States / UTs.

Subject: 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. Ministry of Home Affairs has entered into Mutual Legal Assistance Treaties / Agreements 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.

2. 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.

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

Yours faithfully,

Amar Chand

(Amar Chand)

Under Secretary to the Govt. of India

Encl : As above.

Copy to :-

- (i) Ministry of Law and Justice, Department of Legal Affairs, Shastri Bhawan, New Delhi.
- (ii) Ministry of 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.



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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 (Cr.P.C.) 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/Agreement with 22 countries which provides 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 the assurance of reciprocity to the concerned foreign Government through our 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 Mission/Embassy, 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 the 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

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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 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.

(i) All requests for service of summons / notices / judicial processes on persons residing abroad shall be addressed to the Under Secretary (Legal), I S-II Division, Ministry of Home Affairs, 9<sup>th</sup> 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 assistance sought.
- (b) The offences alleged to have been committed, a copy of the applicable laws and maximum penalties for these offences.
- (c) Name, designation, telephone and fax No. 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 report may be returned.
- (e) Approval of the competent authority to bear any expenditure, which may be charged by the foreign Government / Agency for service of the documents.
- (f) Degree of confidentiality required and the reasons therefor (in case of confidentiality requirement).
- (g) Any time limit within which the request should be executed. This will be subject to allowance of sufficient



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margin of time by the requesting agency, as indicated in para 3 (iv) of the guidelines.

- (ii) MHA, on receipt of a request, will examine it in view of the provisions of Treaty, if exists, with the requested country and as per the provision of Cr.P.C. in case of a non-treaty country.
- (iii) India has a MLAT with Singapore and the Government 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 -I to these guidelines.
- (iv) MHA requires at least a period of twelve weeks time for service of such notices in the concerned country. It is, therefore, imperative that a date of hearing / appearance may be decided accordingly.
- (v) In the case of non-English speaking countries, the notices should be accompanied with certified / authenticated translation (in duplicate) in the official language of the country where the notice is proposed to be served.
- (vi) Name and Address of the individual / organisation should be complete in all respect and P.O. Box No. and Passport No. will not suffice as address of the individual.
- (vii) 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.
- (viii) MHA does not undertake service of the non-bailable warrants of arrest. The service of the Non-bailable arrest warrants amounts to the extradition of an individual. The requests 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.

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(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 forwarding 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 service of Indian Summons.

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