

PART D.—COMMISSIONS AND LETTERS OF REQUEST FOR THE  
EXAMINATION OF WITNESSES IN FOREIGN COUNTRIES

1. There are two methods of obtaining evidence in foreign country, namely, by a Letter of Request addressed to a foreign Court or by means of a Commission appointing an individual to take the evidence thus constituting him *pro tanto* an officer of the Court. It may be noted that the Commissioner has ordinarily no power to compel the attendance of a witness. He can only invite the witness to present himself and give evidence. If the witness declines to do so, the Commissioner is helpless. If, on the other hand, recourse is had to a Letter of Request addressed to the foreign Court concerned, the latter can, if necessary, exercise its power of compulsion.

Letters of request is preferable.

Further a Commissioner can record evidence only if the local law of the country where the commission is sent permits the Commissioner to record evidence.

It will appear from the above that a letter of Request is ordinarily the more appropriate method in the case of foreign countries.

2. Whenever a court issues a Commission or other process for the examination of a witness in England, the High Court in England will itself appoint an examiner to take the evidence, if application is properly made to it for the purpose. It must, however, be borne in mind that the Court cannot act in any way unless moved to do so by a proper application. In every case, therefore in which the help of the High Court in England is desired, the party interested must instruct a solicitor in England to apply to the said court to make the necessary order. The papers are not to be forwarded through High Court. The Court has simply to make an order for the examination of a witness and handover a copy of its order with interrogatories and cross-interrogatories to the party concerned who will move the High Court in England through a solicitor to take steps for the examination of the witnesses.

Commission for England.

3. India is not a party to any civil procedure convention and, therefore, it depends entirely on the local law of the foreign country in question whether British Consular Officers are permitted to serve documents or to take evidence on behalf of courts in India and, if so, under what circumstances. Where it is not known that he is so permitted a British Consular Officer should not be appointed as a

Commission to British Consular Officer.

Commissioner or Examiner to take evidence in any case unless and until the permission of the Foreign Office has been obtained. When the permission of the Secretary of State is sought for the taking of evidence by a British Consular Officer in a Foreign country other than the United States of America, the nationality of the intended witness or witnesses should be stated .

The names of the countries where there is no difficulty as regards the taking of evidence by British Consular Officers and in the case of which it is unnecessary to apply for permission to the Foreign Office are given in the Schedule to this part of the Chapter.

Forms. 4. Commissions should be issued in form No. 7 Appendix H. C. P. Code. In countries where process to compel the attendance of the witness will not be issued by the local courts, the words "Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application" should be deleted from the form.

Special Procedure. 5. There should be a formal order appointing a stated person to execute the Commission, and the name of the Commissioner should be filled up in the form. Orders appointing a British Consular Officer to take evidence should refer to His Majesty's Consul (Consul-General) at..... or his Deputy.

6 For special procedure in regard to particular foreign countries see Chapter 10-E.

LETTERS OF REQUEST

Addressee. 7. Letters of Request are addressed to the Judicial authorities of the country in which the evidence is to be recorded. These authorities can enforce the attendance of witnesses by civil process as Courts in India can do.

Note.—Letters of Request are not to be employed to obtain evidence from the United States of America, which prefer *the* method of commissions to be employed and will enforce the attendance of witnesses before Commissioner. All other countries receive and execute Letters of Request.

Form. 8. Commissions and Letters of Request for Burma should be forwarded by the High Court of Punjab at Chandigarh, direct to the High Court, Rangoon.

Ditto. 9. The Letters of Request should begin with the name of the Court issuing it and the title of the case in which it is issued.

11. Form No. 8 in Appendix H should be carefully read and properly filled in after making necessary alterations, e.g:—

Instructions for filling In form.

(a) Where *viva vow* examination is not to be made these words should be deleted.

(b) If the request is directed to a foreign Court, the words 'through the Ministry of External Affairs of the Government of India for transmission' should be inserted after the words 'other witnesses' in the last line of this form.

(c) In the heading "the President and Judges etc. etc. or as the case may be", the correct designation of the presiding officer of the Court should be given. It should not be addressed to the Registrar of the Court or Consular Officer, etc., who are not presiding officers of the Court.

(d)The words "together with such request in writing, if any, for the examination of other witnesses" should be deleted where the Letter of Request is not to be returned for the examination of other witnesses.

(e)The laws of some countries e.g. Japan require that the parties to the case should be informed of the date fixed for the examination of the witnesses.

This naturally involves a great delay. So where it is desired that notice of the date fixed should not be given to the parties this fact should be mentioned in the Letter of Request and the words "in the presence of the agents of..... attend such examination" should be deleted.

12. Where the proper description of the Foreign Judicial Authority in question is not known, the Letter of Request should be addressed to the Competent Judicial Authority in.....(name of the country concerned).

When proper address is not known.

13. Where witnesses reside in different states of the same country, separate Letters of Request for each state should be sent.

Witnesses living in different states.

14.Foreign Courts should not be asked in Letters of Request to name and appoint experts to give evidence, or themselves to collect evidence.

Foreign Courts not to collect evidence or appoint experts,

Mode of  
preparation.

15. The letter of Request in duplicate should be signed by the Judge or Registrar of the Indian Court and bear the official seal of the Court. The letter of Request in duplicate should either at the foot thereof contain a Schedule of all relevant documents forming part of such Letter of Request or be followed immediately by an Index of such documents. The first document should be a concise narrative of the action of the parties thereto and of the course to be pursued. This document and the other documents which should be as far as possible in chronological order should be numbered or lettered to correspond with the Schedule or Index mentioned above. If any of the documents in the Letter of Request are in original, the copies appearing in the duplicate Letters of Request should be certified by an official of the Court that they have been examined and should bear the seal of the Court.

*General*

General.

16. The following general instructions should be observed when issuing Commissions or Letters of Request:-

To be issued  
only when  
absolutely  
necessary.

17. Order XXVI, Rule 5 of the Code of Civil Procedure lays down that a Court may issue a Letter of Request or Commission if it is satisfied that the evidence of a person residing at any place not within India is necessary.

Court should, therefore exercise proper discretion in dealing with applications for the issue of such letters of Request and Commissions which should be granted only in exceptional cases. In suits of a comparatively petty nature it is obviously undesirable to allow the delay in disposal which is bound to result from the issue of a Letter of Request or Commission.

Fixing of dates.

18. In no case should a precise date be fixed in the Letter of Request for the return of the service. It is impossible for a Court in India to order a date before which a foreign judicial authority must execute a request which it is under no obligation to execute at all.

A sufficiently long date, however, (in any case not less than four months) may be fixed for the appearance of the parties before the Court in expectation of the return of the service after making allowance (a) for the time which is bound to be taken by the various channels through which the documents have to pass, and (b) the distance and means of communication between the place of residence of

the witness and the place where his evidence is to be recorded and the time required for service on the person to be examined.

19. The table below shows the approximate cost required for the execution of Letters of Request and Commission etc., in various foreign countries.

Fees and how to remit them.

Mission					Deposit Required
					Rs.
Ethiopia	..	..	..	..	200
New York	..	..	..	..	700
Dacca	..	..	..	..	300
London	..	..	..	..	850
Pondicherry	..	..	..	..	150
Canada	..	..	..	..	750
Capetown	..	..	..	..	100
Singapore	..	..	..	..	100
Washington	..	..	..	..	700
Suva	..	..	..	..	250
Buenos Aires	..	..	..	..	200
Port Louis	..	..	..	..	150
Aden	..	..	..	..	60
Indo-china	..	..	..	..	400
Canberra(Tanmania)	..	..	..	..	100
Canberra (South Austrialia)	..	..	..	..	500
Canberra (Victoria)	..	..	..	..	100
Canbera (Queensland)	..	..	..	..	200

In regard to the countries which are not included in the table, a sum of rupees two hundred may be considered to be an adequate deposit. Each individual case may be settled on its merits and with reference to the nature and volume of work required to be performed.

Before sending such documents for execution abroad, the parties should be asked to deposit the necessary amount with the Court for meeting expenses, subject to adjustment later on.

The fees for the execution of Commissions and Letters of Request should be remitted direct by bank drafts drawn in favour of the executing courts concerned in all Foreign Countries. Necessary permission is to be obtained for the purpose from the Reserve Bank of India, application being made to any of its offices.

Channel of transmission.

20. Commission and Letters of Request should not be sent direct (except where it is so provided) but should be forwarded to the Registrar, High Court of Punjab at Chandigarh, through the District Judge. In countries where the Government of India have diplomatic representatives of their own such documents should be routed through those diplomatic representatives, but in countries where the Government of India have not as yet appointed diplomatic representatives the issue of such documents should be between the foreign office of the country concerned and the Ministry of External Affairs and Commonwealth Relations and the Union of India. An exception is made in the case of certain countries, viz., the Federated Malaya State, Iraq and Nepal to which processes may be forwarded direct by the Indian Courts.

21. The Chief Commissioner, Delhi, represents the Government for the Union territory of Delhi.

Translation.

22. Commissions and Letters of Request, interrogatories and cross-interrogatories and all other accompaniments should be translated in duplicate into English and in the language of the country where the writ is to be executed. Such translations should be certified to be correct.

Documents should be typed.

23. All the documents should be neatly typed on superior paper of full-scape size and should be expressed in grammatical and properly spelt idiomatic English.

Signature and seal.

24. The Commission and Letter of Request and all their enclosures should be signed and sealed, by the Presiding Officer of the Court. The signature and seal impression should be clear.

Addresses of witnesses.

25. The exact postal addresses and full name and description of the persons to be examined should be given in the writ of Commission or Letter of Request and also in the forwarding letter or in the first document referred to in rule 14.

Preparation of the writ of commission.

26. A complete description of the enclosures accompanying the writ of Commission should be given in the writ as well as in the forwarding letter and such lists should be prepared in triplicate.

Translation,

27. Where the language of the country to which the Commissions or Letter of Request is sent is not English a specific request should be made that the executing Court or Consular Officer should cause translations of all the documents sent by him to be made in English and money for that purpose should be recovered in advance from the

party concerned. Similarly where a party at whose instance a Commission or Letter of Request is issued is unable to prepare a translation of the documents in the language of the country concerned, a request should be made that translation be arranged by the India Office or Consular Officer concerned and costs of such translation should be recovered in advance. Approximate\* charges for translations into certain foreign languages are given below:

Per folio of 72 words.

French	}	..1/6 d.
German		
Spanish		
Portugues		
Italian		
Dutch	}	2/3 d.
Scandinavian		
Russian	}	3 d.
Polish		
Czechoslovak	}	4.6 d.
Hungarian		
Roumanian		
Greek		
Finish		
Serbian	}	

*Note.*—1 The above charges relate to translation of the ordinary matter. At least 50 per cent extra is charged when the documents are of a legal or technical nature.

*Note.*—2 Where evidence is being taken by a British Consular Officer, it is not necessary to supply translations of any document which are *in* English or in the language of the country where the Consular Officer resides, but translations should be furnished in the other cases.

28. In cases where both parties are to be represented at the examination, the Letter of Request or Commission may be sent either without interrogatories, a request being made that the local agents of the parties be permitted to appear at the examination of the witnesses and ask or submit the questions which they desire to ask, or with interrogatories, a request being made that the local agent might be permitted to ask other supplementary questions. If neither party proposed to attend or be represented at the taking of the evidence this fact should be noted in the Letter of Request or Commission in order to avoid delay.

Procedure when parties are to be represented at examination

*Note.*—The names and addresses of the local agents should always be given.

\*Vide copy of Letter from the India Office to the Secretary to the Government of India, External Affairs Department, Simla, No. P & J 3560/38, dated 4th August, 1938.

Preparation of writ .

29. The Court sending the Commission or Letter of Request should satisfy itself that the interrogatories and cross-interrogatories which are enclosed, are legibly written in an intelligible language and all the documents to which a reference is made in them have been attached.

All such documents should be duly authenticated and marks of identification should be put on them.

Signing, etc., of interrogatories.

30. The interrogatories and cross-interrogatories should be signed by the parties and their counsel, if any, and should be inserted in proper sequence in the complete Letter of Request and Commission and in the certified copies of the translation.

Duplicate copies of documents.

31. Duplicate copies of all documents should be furnished and marked as duplicate.

Binding of the papers.

32.(1) The complete Letter of request or Commission with the accompanying documents should be on strong paper and sewn together in a parchment paper cover down the left hand side, the end of the silk, tape or thread with which they are sewn being brought out on the front cover and the ends sealed down and the binding signed and sealed by the Judge so that there is no possibility of the removal, substitution or addition of any sheet without breaking the seal.

Arrangement of the papers.

(ii) The Letter of Request and accompanying documents should be in the following order :—

(a) Letter of Request.

(b) Index in English if not included in (a). This must be complete that is to say every document in the bundle and which follows the letter of request must be separately specified together with its serial or page number corresponding to the number opposite that document in the index or the whole bundle of documents following the letter of request must be paged consecutively. Moreover, all numbers appearing at the top or foot of any page of the documents other than the number (if any), assigned to that page by the index should be deleted.

(c) Narrative if not included in (a) including, where necessary, an explanation of the reasons for the institution of two suits for the same amount.



(d) Interrogatories, cross-interrogatories and re-interrogatories. These should contain the same description of witnesses as appears in the letter of request.

(e) Other documents (in chronological order) accompanying the letter of request.

(f) Translations of (a) to (e) inclusive where necessary arranged in the same order and each one of them properly certified by an official of the Court as true translation.

(g) Duplicates of (a) to (f) inclusive and not excluding telegrams arranged in the same order and each one of them properly certified by an official of the Court as true copies.

Responsibility of the Presiding Officer for correct preparation.

33. The preparation of a letter of Request or Commission must not be left to clerks. The Presiding Officer of the issuing Court will primarily be held responsible for its accuracy and completeness in every respect before transmission to the High Court, and it is the duty of the Superintendent to the District Judge to examine the Letter of Request and Commission and its accompaniments carefully, and to see that all instructions have been complied with.

Authority to engage a lawyer to execute writ.

34. In some countries there is no machinery for summoning witnesses and to administer the interrogatories before the appropriate Court (e.g., British Columbia). It will be better if authority be given to engage a lawyer for that purpose in the forwarding letter.

35. Letters of Request and Commission should always set forth a clear and concise explanation of the exact points on which it is desired that the witnesses should be examined.

Points of examination of witnesses should be specified.

(SCHEDULE, VIDE PARAGRAPH 3, CH-10-D.)

*List of Foreign Countries in which British  
Consular Officers may take evidence, if tendered  
Voluntarily:—*

Argentine Republic  
Bolivia  
Brazil  
Bulgaria  
Chile  
Columbia  
Costa Rica  
Cuba  
Czechoslovakia  
Denmark  
Danzig  
Equador  
Estonia  
Finland  
France  
Greece  
Guatemala  
Honduras  
Hungry\*  
Italy (except Trieste) Lithuania.  
Mexico  
Netherlands  
Nicaragua  
Norway †  
Peru  
Poland  
Portugal  
Salvador  
Spain  
Sweedden  
United States  
Uruguay  
Venezuela  
Yugoslavia\*

\*From British Subjects only.

†In shipping matters only.

*Note.*—It should be noted that process to compel the attendance of witnesses will not be issued by the local courts.