

OBTAINING EVIDENCE

Evidence may be obtained in India in two ways: by the [letters rogatory process](#) or under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The convention codifies the taking of evidence on notice and commission and the compulsion of evidence pursuant to a letter of request. Under the convention, a judicial authority in the United States sends a letter of request to the appropriate Indian Central Authority in accordance with the convention. For criminal cases (letters rogatory), that authority is the Ministry of Home Affairs (I S - II Div: Legal Cell, 9th floor, Lok Nayak Bhawan, Khan Market, New Delhi; http://mha.nic.in/uniquepage.asp?Id_Pk=567). For civil cases (Hague Convention), that authority is the Ministry of Law and Justice (Dept of Legal Affairs, 4th floor, A-Wing, Shastri Bhavan, New Delhi; <http://lawmin.nic.in/Legal.htm>).

Letters Rogatory

Letters rogatory are the customary method of obtaining judicial assistance from abroad in the absence of a treaty or executive agreement for criminal cases. Essentially, courts in one country use these documents to request the performance of an act to the judiciary of a foreign country which, if done without the sanction of the foreign court, could constitute a violation of that country's sovereignty. Some types of letters include serving of a summons, subpoena, or other legal notice, or the execution of a civil judgment. These requests must be signed by a judge and transmitted via the Department of Justice, Office of International Affairs (DOJ/OIA) (<http://www.justice.gov/criminal/about/oia.html>) to the Ministry of Home Affairs.

Service of Process

For serving process in India, you must contact the appropriate the Ministry of Law and Justice. The [Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters](#) guides this process between the U.S. and India, and requests for service of process on persons or entities located in India should utilize the [USM-94 form](#) and be sent to the Ministry of Law and Justice.

Voluntary Depositions

For obtaining a voluntary deposition in India, you must contact the Ministry of Law and Justice. The [Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters](#) guides this process between the U.S. and India, and requests for voluntary depositions from persons in India should utilize the Hague [Model Letter of Request](#) and be sent to the Ministry of Law and Justice. With prior authorization, members of the requesting party Contracting Party may be present at the execution of a letter of request. The Republic of India will not execute Letters of Request issued in pursuance of Article 23 of the Convention for the purpose of obtaining pre-trial discovery of documents, which requires a person to produce any documents other than particular documents specified in the Letter of Request, which are likely to be in his possession, custody, or power.

Supporting Services and Fee Structure

The U.S. Embassy, Consulate General, and Consular Agency do not have trained legal stenographers, typists, or interpreters available. Additionally, a heavy workload and small staff make it impossible for consular staff members to serve in these capacities. Therefore, the party requiring the deposition may want to provide their own.

The following is the list of supporting services and associated fees for obtaining evidence/

- Scheduling, arranging appointments for depositions, including depositions by video teleconference (per daily appointment) = **US\$1,283.00**
- Attending or taking depositions, or executing commissions to take testimony (per hour or part thereof) = **US\$309.00/hour**
- Swearing in witnesses for telephone deposition = **US\$231.00**
- Supervising telephone (per hour plus expenses) = **US\$231.00**
- Providing seal and certification of depositions = **US\$415.00**
- Expense for mailing original deposition = **US\$55.00**
- Photocopying or otherwise duplicating a document = **US\$1.00/copy** of each page for a maximum of 75 pages
- Certifying under official seal that a copy or extract made from a private document is a true copy = **US\$50.00**
- **Exemptions:** Fees will *NOT* be charged when the service is performed:
 - At the direct request of any Federal Government agency, any State or local government, the District of Columbia, or any of the territories or possessions of the United States (unless significant time required and/or expenses would be incurred).
 - Executing commissions take testimony in connection with foreign documents for use in criminal cases when the commission is accompanied by an order of Federal court on behalf of an indigent party.

Please note: The information in this circular relating to the legal requirements of a specific foreign country is provided for general information only. Questions involving interpretation of specific foreign laws should be addressed to foreign counsel.