



**PARLIAMENT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF  
SRI LANKA**

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**MUTUAL ASSISTANCE IN CIVIL AND  
COMMERCIAL MATTERS  
ACT, No. 39 OF 2000**

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[Certified on 3rd August, 2000]

*Printed on the Order of Government*

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*Mutual Assistance in Civil and Commercial  
Matters Act, No. 39 of 2000*

[Certified on 3rd August, 2000]

L.D.-O. 21/99.

AN ACT TO PROVIDE FOR THE RENDERING OF MUTUAL ASSISTANCE IN CIVIL AND COMMERCIAL MATTERS BETWEEN SRI LANKA AND OTHER COUNTRIES, AND TO GIVE EFFECT TO, THE HAGUE CONVENTION ON THE SERVICE ABROAD OF JUDICIAL AND EXTRA JUDICIAL DOCUMENTS IN CIVIL AND COMMERCIAL MATTERS, AND THE HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL AND COMMERCIAL MATTERS

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

1. This Act may be cited as the Mutual Assistance in Civil and Commercial Matters Act, No. 39 of 2000. Short Title.

PART I

GENERAL

2. The objects of this Act are to facilitate the provision of, and the obtaining by Sri Lanka of, assistance in civil and commercial matters, including – Objects of the Act.

(a) the service of judicial and extra judicial documents;

(b) the examination of witnesses and the obtaining of evidence, documents and other articles;

(c) the provision of documents and other records.

3. The Secretary to the Ministry of the Minister in charge of the subject of Justice shall be the Central Authority for the purposes of this Act (hereinafter referred to as “the Central Authority”). Central Authority.

PART II

SERVICE OF PROCESS ABROAD

Countries to  
which this Part of  
this Act applies.

4. The Minister may by Order published in the Gazette, declare that the provisions of this Part of this Act shall apply in respect of –

- (a) a country which is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters, signed on November 15, 1965; and
- (b) a country which has entered into an agreement with Sri Lanka, extending the application of the provisions of this Part of this Act, to that country.

Every country in respect of which an Order has been made under this section is hereinafter in this Part of this Act referred to as a “specified country”.

Requests for  
service of process.

5. (1) A request made to the Central Authority by the appropriate authority of a specified country requesting assistance for service of summons or other document in a proceeding relating to a civil or commercial matter arising in that country, shall be entertained by the Central Authority, if –

- (a) such request is made substantially in Form A of the Schedule to this Act ;
- (b) such request is accompanied by the summons or other document required to be served.

(2) A request made to the Central Authority under subsection (1), and the summons or other documents accompanying the request shall be in duplicate.

6. (1) Where the Central Authority receives from the appropriate authority of a specified country a request for assistance in the service of summons or other document on any person residing in Sri Lanka, the Central Authority may, subject to section 13, send such summons or document to the District Court within the jurisdiction of which such person is residing.

Request by a specified country for service of any summons or document in Sri Lanka.

(2) Where the appropriate authority has, in his request to the Central Authority, specified the mode of service, the Judge of the District Court to which such summons or document has been sent under subsection (1), shall cause such summons or document to be served, wherever practicable, in accordance with the mode specified in such request, unless such mode is inconsistent with the law of Sri Lanka. Where the mode of service specified in the request is inconsistent with the law of Sri Lanka, the Judge shall cause such summons or document to be served in accordance with the law of Sri Lanka.

(3) Where such summons or document is served on the person to whom the request relates, the judge shall transmit to the Central Authority a certificate substantially in Form B of the Schedule to this Act, setting out the mode, place and date of service and the person on whom the summons or document was served and shall, where available attach thereto, an acknowledgement signed by the person on whom it was served.

(4) If such summons or document cannot be duly served on the person to whom the request relates, the Judge of the District Court to which such summons or document was sent under subsection (1) shall, subject to subsection (5), return such summons or document to the Central Authority with a statement giving such information as the Court possesses as to the whereabouts of such person and unless the Central Authority is satisfied that such person is not residing in Sri Lanka, he shall deal with such summons or document under subsection (1). Where the Central Authority is satisfied that such person is not residing in Sri Lanka, he shall return

such summons or document to the appropriate authority in the specified country making the request together with a certificate substantially in Form B of the Schedule to this Act, setting out the reasons preventing service of such summons or document.

(5) If the Judge of the District Court to whom the summons or document is sent under subsection (1), is satisfied that such person is residing within the jurisdiction of another District Court in Sri Lanka, he shall send such summons or document to the Judge of that other Court and shall inform the Central Authority that he has done so.

(6) The Judge of the District Court to which the summons or document is sent under subsection (5) shall proceed as if it had been sent to such court under subsection (1). The Judge shall after it has been served on the person to whom the request relates, transmit to the Central Authority a certificate substantially in Form B of the Schedule to this Act, setting out the mode, date and place of service and the person on whom the summons or document was served and shall, where available, attach thereto, an acknowledgement signed by the person on whom it was served.

(7) The Central Authority shall on receipt of a certificate under subsection (3) or subsection (6), countersign the certificate and shall transmit the same to the appropriate authority of the specified country making the request.

Request by the  
Central Authority  
for service of  
summons in a  
specified country.

7. (1) The Central Authority may, in the case of a summons, notice or order issued to a person resident in a specified country by a court or tribunal in Sri Lanka in a proceeding relating to a civil or commercial matter, request the appropriate authority of such specified country for assistance in serving such summons, notice or order on such person in the specified country and may in such request, specify the mode of service of such summons, notice or order in so far as such mode is not inconsistent with the law of that specified country.

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(2) Where the appropriate authority of a specified country to whom a request has been made under subsection (1) informs the Central Authority that the summons, notice or order to which the request relates has been served on a person resident in such specified country and transmits a duly authenticated report of such service, the Central Authority shall cause such report to be sent to the court or tribunal issuing such summons, notice or order and such report shall be admissible in evidence in the proceeding to which the request relates, and the statements made therein shall be deemed to be correct unless the contrary is proved.

In this subsection, "duly authenticated" when used in relation to a report transmitted by the appropriate authority of a specified country means a report signed or countersigned by such appropriate authority.

8. Where the Central Authority has transmitted, under section 7, a summons in a proceeding relating to a civil or commercial matter to the appropriate authority of a specified country for service on a person resident in such specified country, and the court or tribunal issuing such summons has entered judgment against such person, in default of his appearance, such court or tribunal may, on application made by such person, not later than two years from the date of the judgment, entertain an appeal against such judgment if it is satisfied that such person –

Right of appeal.

- (a) had no knowledge of the summons in sufficient time to defend or no knowledge of the judgment in sufficient time to appeal, and
- (b) has a *prima facie* defence to the action on the merits,

notwithstanding the fact that the time for preferring an appeal against such judgment has lapsed.

In this section, "judgment" does not include a judgment relating to the status or capacity of a person.

PART III

ASSISTANCE IN RELATION TO TAKING OF EVIDENCE

Countries to  
which this Part of  
this Act applies.

9. The Minister may, by Order published in the Gazette, declare that the provisions of this Part of this Act shall apply in respect of –

- (a) any country which is a party to the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters signed on March 18, 1970 ; and
- (b) any country which has entered into an agreement with Sri Lanka, extending the application of the provisions of this Part of this Act to that country.

Every country in respect to which an Order has been made under this section is hereinafter in this Part of this Act referred to as a “specified country”.

Request by a  
specified country  
for evidence to be  
taken in Sri  
Lanka.

10. (1) Where the appropriate authority of a specified country makes a request to the Central Authority that –

- (a) evidence be taken in Sri Lanka ; or
- (b) any other judicial act be performed in Sri Lanka,

for the purposes of a proceeding relating to a civil or commercial matter arising in the specified country, the Central Authority may, subject to section 13, authorize, in writing, the taking of such evidence or the performance of such judicial act by such District Judge as may be specified in the authorization and the transmission of such evidence, or other material to the specified country.

(2) Every request made under subsection (1) by the appropriate authority of a specified country shall, as far as circumstances permit, specify –

- (a) the appropriate authority making the request;
- (b) the names and addresses of the parties to the proceeding and their representatives, if any;
- (c) the nature of the proceeding for which the evidence is required, giving all necessary information in regard thereto;
- (d) the evidence to be taken or other judicial act to be performed;

and where appropriate, the request shall specify, *inter alia* —

- (i) the names and addresses of the persons to be examined;
- (ii) the questions to be put to the persons to be examined or a statement of the subject matter about which they are to be examined;
- (iii) the documents or other property, real or personal, to be inspected;
- (iv) any requirement that the evidence is to be given on oath or affirmation, and any special form to be used;
- (v) any special mode or procedure to be followed unless such mode or procedure is inconsistent with the law of Sri Lanka or is impossible of compliance by reason of the practice and procedure in the courts of Sri Lanka or by reason of practical difficulties.

(3) Where the Central Authority authorises the taking of evidence or the performance of any other judicial act, by a District Judge, the District Judge shall take such evidence, or perform such judicial act, in accordance with the law of Sri Lanka :



Provided that where the appropriate authority of the specified country has in his request to the Central Authority specified a special procedure for the taking of such evidence or the performance of such judicial act, the District Judge shall follow such procedure, unless such procedure is inconsistent with the law of Sri Lanka or is impossible of compliance by reason of the practice and procedure of the courts in Sri Lanka or by reason of practical difficulties.

(4) Where the Central Authority authorizes the taking of evidence by a District Judge, the District Judge shall inform the appropriate authority in the specified country, of the date, time and place where the evidence will be taken, in order that the parties concerned and their representatives if any, may be present when such evidence is taken.

(5) The District Judge taking evidence or performing any other judicial act in pursuance of an authorization made under subsection (1) shall permit —

(a) any person to whom the proceeding in the specified country relates;

(b) the appropriate authority of the specified country,

to have legal representation when such evidence is taken, or such judicial act is performed, by such District Judge.

(6) A person who is required to give evidence before a District Judge for the purposes of a proceeding relating to a civil or commercial matter arising in a specified country may refuse to give such evidence if he is entitled to refuse to give such evidence —

(a) under the law of Sri Lanka; or

(b) under the law of the specified country and such privilege is specified in the request made to the Central Authority by the appropriate authority of

the specified country or is, at the request of the Central Authority or the District Judge as the case may be, otherwise confirmed to such Central Authority or such District Judge, as the case may be, by the appropriate authority of the specified country.

(7) The provisions of the Civil Procedure Code relating to the compelling of attendance of witnesses and the production of documents by witnesses shall apply in relation to a District Court which is authorized under subsection (1) to take evidence or perform any other judicial act.

(8) A District Judge authorized under subsection (1) to take any evidence or to perform any other judicial act shall take such evidence in writing and shall certify that such evidence was taken, or that such judicial act was performed, by such District Judge, and shall cause the evidence so taken and such certificate to be sent to the Central Authority.

(9) The Central Authority shall cause the evidence and certificate of the District Judge sent to him under subsection (8) to be transmitted to the appropriate authority of the specified country making the request.

11. (1) The Central Authority may, request the appropriate authority of a specified country to arrange for —

- (a) evidence to be taken in the specified country; or
- (b) any other judicial act to be performed in the specified country,

for the purposes of a proceeding in relation to a civil or commercial matter arising in Sri Lanka.

Request by  
Central Authority  
for evidence to be  
taken in and  
documents &c. to  
be produced in a  
specified country.

(2) Where the Central Authority receives, from the appropriate authority in a specified country, in response to a request made by him under subsection (1) —

- (a) any evidence taken in such specified country ; and
- (b) a certificate certifying the taking of such evidence, or the performance of a judicial act, in such specified country,

the Central Authority shall cause such evidence and certificate to be sent to the court or tribunal in which the proceeding to which the request relates is pending, and such evidence and certificate shall be admissible in such proceeding and the statements made in such certificate shall be deemed to be correct unless the contrary is proved.

#### PART IV

##### MISCELLANEOUS

Language of  
request.

12. (1) A request for the service of summons or other document or a request for the taking of evidence or the performance of any other judicial act shall be in one of the official languages of Sri Lanka or in the English language.

(2) Any document accompanying such a request in a language other than English shall have a translation thereof in English, which shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person duly authorised in Sri Lanka or the specified country.

Refusal of  
requests.

13. (1) The Central Authority shall refuse to execute a request made to him under Part II or Part III of this Act, if he considers that the execution of the request will be prejudicial to the sovereignty or security of Sri Lanka.

(2) The Central Authority shall refuse to execute a request made to him under Part III of this Act if he considers that the execution of the request does not fall within the functions of the judiciary.

(3) Where the Central Authority refuses to execute a request made to him under this Act he shall forthwith inform the appropriate authority of the specified country making the request, the reasons for the refusal.

14. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law, enabling the service in Sri Lanka, of any summons or other document issued by a court outside Sri Lanka in relation to a civil or commercial matter, or enabling the taking of evidence in Sri Lanka or the performance of any other judicial act in Sri Lanka, for the purposes of a proceeding in relation to a civil or commercial matter arising outside Sri Lanka.

Provisions of this Act, to be in addition to other law providing for service of summons &c.

15. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text to prevail in case of inconsistency.

16. In this Act, unless the context otherwise requires—

Interpretation.

“Country” shall be deemed to include the Hong Kong Administrative region of the People’s Republic of China;

“Judicial act” does not include the issue of a writ or other process for the enforcement or execution of an order or judgment or an order for provisional or protective measures.

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SCHEDULE

Form A

[Section 5]

REQUEST

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Identity and address  
of the applicant

Address of Central  
Authority

The undersigned applicant has the honour to transmit - in duplicate- the summons/documents listed below and, in conformity with section 6 of the above mentioned Act, requests prompt service of one copy thereof on the addressees,

*i. e.*

(Identity and address).....

(a) in accordance with the law of Sri Lanka\*

(b) in accordance with the following particular mode\*.....

(c) by delivery to the addressee, if he accepts it voluntarily\*

The authority is requested to return or to have returned to the applicant a copy of the summons/documents- and of the annexes - with a certificate as provided in section 6 of the above mentioned Act.

List of summons/documents

.....  
.....  
.....  
.....  
.....  
.....

.....  
\*Delete if inapplicable

Done at ..... the  
Signature and/or stamp.

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Form B

[Section 6(3)]

CERTIFICATE

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The undersigned authority has the honour to certify, in conformity with section 6(3) of the above mentioned Act that the summons/document has been served\*

the (date).....  
at (place, street, number) .....

in one of the following modes :-

- (a) in accordance with the law of Sri Lanka\*
- (b) in accordance with the following particular mode\*
- (c) by delivery to the addressee, who accepted it voluntarily\*

The summons/document referred to in the request have been delivered to -

(identity and description of person) .....  
.....  
relationship to the addressee (family, business or other).  
.....

The summons/document has not been served, by reason of the following facts\* :-

.....  
.....  
.....

The applicant is requested to pay or reimburse the expenses detailed in the attached statement\*

Annexes  
Summons/documents returned: .....

Done at....., the.....

Signature and/or stamp.

In appropriate cases, documents  
establishing the service.....  
.....  
.....

\*Delete if inapplicable

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