

CHAPTER 10

Commissions and Letters of Request

Part A GENERAL INSTRUCTIONS

1. Reference to C.P.C.—The general law as to Commissions and Letters of Request is contained in Sections 75 to 78 and Order XXVI of the Code of Civil Procedure, and the Forms to be used are Nos. 7 or 8 of Appendix H of Schedule 1.

2. Fees of Commissioner—Applications for the issue of Commissions should be made as early as possible. Notice of any such application should be given to the other side. If the Application is granted, the Court should fix a sum for the expenses of the Commission, which should, ordinarily provide a reasonable fee to the Commissioner. If, at any time, the sum so fixed is found to be insufficient, it may, for special reasons, be increased by the Court. When the Commission is executed to the satisfaction of the Court, the full sum fixed should be paid to the Commissioner; but where the commission is not executed at all or not fully or satisfactorily executed or the work done turns out to be less than was expected, it will be in the discretion of the Court to direct a less amount to be paid, or to make any other order in the matter which it thinks just and proper in the circumstances.

3. Commission for local inquiry and accounts—Whenever it becomes necessary in the course of a suit to appoint a Commissioner to make a local inquiry or to examine accounts (*see* Order XXVI) the Judicial officer who makes the order for such appointment should write the order with his own hand, and specify therein:

(a) the precise matter of the inquiry:

(b) the reason why the evidence bearing on that matter could not reasonably have been taken in the usual way at the trial in Court. A Court cannot issue a Commission merely to save itself the time and trouble of examining witnesses.

4. Functions of Commissioner—The Commissioner's duties should be strictly limited by the order to such matters as taking accounts and depositions of witnesses, inspecting the land or other subject of dispute, and reporting to the Court, either by means of a map or plan, or in writing, or both, the existing physical features of the subject inspected, its boundaries and situation relative to other objects, and so on, as the case may be. The functions of the Commissioner are thus limited to procuring evidence and information, for the purpose of the trial; and this evidence, including the maps, reports and record of evidence, made by the

Commissioner, must be adduced in open Court before the parties, and placed on records like all other evidence. The Court has no power to depute to the Commissioner the final determination of any issue between the parties. The Court can take into consideration the report of the Commissioner, but must itself decide the issue.

5. Commissioner for partition of property—Under Order XXVI, Rules 13 and 14, a Commission for the partition of immovable property may be issued to such person or persons as the Court thinks fit. The wishes of the parties in the matter should also be taken into consideration.

6. Execution of Commission in Madras—Commissions for execution in the Presidency Town of Madras should be addressed either to the Registrar, Court of Small Causes, Madras, or to the City Civil Judge, Madras.

Part B APPOINTMENT OF COMMISSIONERS

1. Instructions for the guidance of Courts—Instructions contained in this Chapter are administrative and are not to be regarded as binding the discretion of Civil Courts in making appointments of Commissioners.

2. (i) *Panel of Commissioners for recording evidence*—Ordinarily a panel of not more than four persons including a lady lawyer, if available, shall be appointed by the High Court in each district as Commissioners for recording evidence. Such Commissioners should ordinarily be younger members of the Bar but not men in large practice and retired Civil Judicial Officers.

(ii) *District Judge to forward all applications with his recommendations to the High Court*—All vacancies which arise for appointment of such Commissioners shall be circulated by the District Judge to the members of the Bar and all applications received shall be forwarded by him in original to the High Court with his recommendations, duly supported by reasons for recommending a particular person.

(iii) *Term for such appointment*—Commissioners for recording evidence will normally be appointed to the panel for a period of three years or until further orders, whichever may be earlier. The term may be renewed for a further period of three years, but after six years there will normally be no reappointment.

3. Official Receivers to be appointed to the panel *ex-officio*—Official Receivers, should be appointed *ex-officio* to the panel on the understanding that the appointment is until further or until the end of the period of appointment as Official Receiver, whichever may be earlier.

4. Measure to prevent delay in the return of Commissions—A consolidated list of Commissioners with their addresses shall be prepared in the High Court annually and copies of the list sent to the District Judges for supply to all Courts. It is believed that by sending commissions direct to Commissioners time would be saved. In order to ensure punctuality of the return of the Commissions, only a part of the fee should be paid in advance and the balance

should be paid when the Commission is returned by the Commissioner within the period fixed by the Court.

5. Court Readers or other Ministerial Officers should never be appointed to make local investigations, such as finding out the market value of the property, etc. Such Commissions should be issued wherever possible to retired Revenue Officers or professional men, such as engineers, contractors, auctioneers and accountants. Legal Practitioners are not excluded from appointment as local investigation commissioners, but the best man for the particular commission in question should be appointed Revenue Officers in service such as Tehsildars and Naib-Tehsildars should not, as a rule, be appointed when retired officers suitable for the work are available. The wishes of the parties in regard to the appointment of a particular individual as Commissioner for local investigations should be taken into consideration while making such appointments.

6. Selection of Commissioner to examine accounts—Commissioners to examine accounts should be selected from men competent in the particular form of accounts. It is absolutely futile to issue Commissions in a particular form of account to a person who is unable even to read the script in which those accounts are written.

7. Selection of Commissioners—Great care should be exercised by the Courts in selecting persons for appointment as Commissioners for the purpose of making local inquiries; and District Judges should exercise strict supervision over the action of subordinate Courts in this respect. The habitual employment of the same person should not be encouraged. The issue of Commissions to petition-writers, and persons who hang about the Courts should not be permitted.

Part C

RECIPROCAL ARRANGEMENTS WITH JAMMU AND KASHMIR STATE FOR EXECUTION OF COMMISSION AND LETTERS OF REQUEST FOR EXAMINATION OF WITNESSES

1. References—Subject to such conditions and limitations as may be prescribed, the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of Courts situate in any part of India to which the provisions of the said Code do not extend. [Section 78, Clause (a) of the Code].

2. Whether Jammu and Kashmir State is a part of India—The State of Jammu and Kashmir is a part of India (*Vide*, Article 1 of the Constitution of India) to which the provisions of the Code do not extend. [Section 1(3) of the Code, as amended by Act II of 1951]. In this connection it may also be pointed out that the definition of ‘India’ given in Section 2(7B), as inserted in the Code by Act II of 1951, does not apply to Section 78 of the Code. Section 78, therefore, makes provisions for the execution and return of commissions for examination of witnesses, issued by Civil Courts in Jammu and Kashmir State by the Civil Courts in those parts of India where the Code extends.

3. Reciprocal arrangements with Jammu & Kashmir State—Arrangements exist under which commissions or interrogatories can be issued by Civil Courts in India to Civil Courts in Jammu and Kashmir and *vice versa*. Such commissions are to be and should be exchanged through the District Judge concerned of the two administrations. [High Court of Jammu and Kashmir letter No. 6053, dated the 6th January, 1956, and Punjab High Court endorsement No. 1227-Genl/X.B. 10(c), dated 30th January, 1956, to all District and Sessions Judges in Punjab and District and Sessions Judge, Delhi].

4. Certain rules of the High Court of Jammu & Kashmir—Certain Rules and Orders of the Jammu and Kashmir High Court are reproduced below for the information of the Civil Courts in Punjab:

“172. *Persons to whom commission for examination of witness shall be addressed*—Ordinarily a commission for the examination of a witness, wherever he may reside, shall be addressed to the pleader, but such commission may, if it appears desirable, be addressed to a Court.

174. *Remuneration of Pleaders for executing commission*—For the remuneration of a pleader to whom a commission to examine witnesses is issued, the Court should require the party applying to pay a fee ordinarily not exceeding five rupees for the first witness, and two rupees eight annas for each subsequent witness to be examined if the Court be that of a Munsiff; or not exceeding ten rupees for the first witness and five rupees for each subsequent witness in the case of any higher Court. If payment of higher fees than the above be required, the reasons shall be recorded by the Judge with his own hand.

175. The Commission together with the amount of the fee, should be sent to the Court in which the Commissioner is a practising pleader, and the commission should be immediately delivered to him (unless he refuses to act). If the witness or witnesses are examined, so that the Commissioner can make a return¹ within the time limited on his returning the commission duly executed the fee should be paid over to him otherwise the commission, together with such evidence as may have been taken, shall be returned to the Court from which it originally issued and such Court may by order allow such fee as it thinks reasonable to the Commissioner for the work done.

177. A Court receiving a commission for the examination of a witness shall not return such commission unexecuted until the expiry of one month from the date on which the commission was received and otherwise than with a letter in English or Urdu explaining the reason why the commission has not been executed.

178. *When a letter of request to be issued*—Order XXVI, Rule 5, of the Code of Civil Procedure lays down that a Court may issue a letter of request if it is satisfied that the evidence of a person residing at any place not within ¹(India) is necessary.

179. *Letters of request under Section 77 of Civil Procedure Code*—When a Court issues a letter of request under Section 77 of the Code of Civil Procedure, to examine a witness or witnesses residing at any place outside ¹(India), it shall send therewith a list of the questions to be asked the witness or witnesses and a translation of the letter of request and of questions into English and

where possible into the language of the Court to which the letter of request is sent. In cases where both the parties are to be represented at the examination the Court may, if so desired by the parties ask in the letter of request that the agents of the parties, be permitted to put such further questions in examination and cross examination as they may be advised. The party on whose application the letter of request is issued shall give an undertaking to be responsible for the expenses incurred in its execution. Nothing in this rule prohibits a Court issuing a commission from enlarging from time to time the period within which the return may be made.”

5. Letters of request—In view of Section 77 of our Code the Courts may, in lieu of issuing a commission, issue a letter of request to examine a witness at any place ‘not within India’. For the purposes of this section the definition of ‘India’ in Section 2(7B) of the Code would hold good and Jammu and Kashmir would be a place ‘not within India.’

6. List of Civil Courts in Jammu & Kashmir State—Following is a list of Civil Courts in the two provinces of Jammu and Kashmir which also indicates the limits of their territorial jurisdiction:

Jammu Province

1. District Judge, Jammu Jammu excluding Tehsil Samba, R.S. Pura and Akhnoor.
2. Munsiff, Ranbir Singh Pura Tehsil R.S. Pura.
3. Munsiff, Samba Tehsil Samba.
4. Munsiff, Akhnoor Tehsil Akhnoor.
5. Sub-Judge, Udampur Udampur District excluding Ramnagar and Reasi Tehsils.
6. Sub-Judge, Reasi Reasi.
7. Sub-Judge, Ramnagar Ramnagar.
8. Sub-Judge, Bhaderwah Doda District excluding Kishtwar and Ramban.
9. Munsiff, Kishtwar Kishtwar.
10. Munsiff, Ramban Ramban.
11. Sub-Judge, Poonch Poonch District excluding Rajouri.
12. Sub-Judge, Rajouri Rajouri.
13. Sub-Judge, Kathua Kathua District.

Kashmir Province

14. District Judge, Srinagar Srinagar District.
15. Sub-Judge, Anantnag Anantnag District and excluding Shopian and Pulwama Tehsils.
16. Munsiff, Shopian Shopian and Phulwama Tehsils.
17. Sub-Judge, Baramulla Baramulla District excluding Sopore and Handwara.
18. Munsiff, Sopore Sopore.
19. Munsiff, Handwara Handwara.
20. Deputy Commissioner, Leh Ladakh District.

Part D

COMMISSIONS AND LETTERS OF REQUEST FOR THE EXAMINATION OF WITNESSES IN FOREIGN COUNTRIES

1. Letters of request if preferable—There are two methods of obtaining evidence in a 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.

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. Commission for England—Whenever a Court issues a Commission of 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.

3. Commission to British Consular Officer—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 Commissioner or Examiner to take evidence in any case unless and until the permission of the Foreign Officer 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 Officer and in the case of which it is unnecessary to apply for permission to the Foreign Officer are given in the Schedule to this part of the Chapter.

4. Forms—Commissions should be issued in Form 7 Appendix H.P.C. 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.

5. Special Procedure—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

8. Addresses—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.

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

10. 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. Instructions filling in form. Form 8 in Appendix H should be carefully read and properly filled in after making necessary alterations, *e.g.*,

(a) Where *viva voce* 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. When proper address is not known—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).

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

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

15. Mode of preparation—The Letters 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 Letters of Request or be followed immediately by an Index of such documents. The first documents 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 Letters 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

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

17. To be issued only when absolutely necessary—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.

18. Fixing of dates—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. Fees and how to remit them—The table below shows the approximate cost required for the execution of Letters of Request and Commission, etc., in various foreign countries.

<i>Mission</i>		<i>Deposit Required Rs.</i>
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	.....	060
Indo-China	.....	400
Canberra (Tanmania)	.....	100
Canberra (South Australia)	.....	500
Canberra (Victoria)	.....	100
Canberra (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 latter 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.

20. Channel of transmission—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 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.

22. Translation—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.

23. Documents should be typed—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.

24. Signature and seal—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.

25. Addresses of witnesses—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.

26. Preparation of the writ of commission—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.

27. Translation—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. Approximate² charges for translations into certain foreign languages are given as under:

	Per folio of 72 words.
French	1/6d.
German	
Spanish	
Portugues	
Italian	
Dutch	2/3d.

Scandinavian	
Russian	3d.
Polish	4/6d.
Czechoslovak	
Hungarian	
Romanian	
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 documents 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. Procedure when parties are to be represented at examination—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.

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

29. Preparation of writ—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.

30. Signing, etc., of interrogatories—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.

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

32. (i) Binding of the papers—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.

(ii) *Arrangement of the papers*—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 reinterrogatories. 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.

33. Responsibility of the Presiding Officer for correct preparation—The preparation of the Letter of Request or Commission must not be left to clerks. The Presiding Officer of the issuing Court will primarily be hold 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.

34. Authority to engage a lawyer to execute writ—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. Points of examination of witnesses should be specified—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.

SCHEDULE
(Vide Paragraph 3, Chapter 10-D).

List of Foreign Countries in which British Consular Officer may take evidence, if tendered voluntarily

Argentine Republic

Bolivia

Brazil

Bulgaria

Columbia

Costa Rica

Cuba

Czechoslovakia

Denmark

Danzig

Equador

Estonia

Finland

France

Greece

Gautemala

Honduras

³Hungry

Italy (except Trieste) Lithuania

Mexico

Netherlands

Nicaragua

Norway

Peru

Poland

Portugal

Salvador

Spain

Sweden

United States

Uruguay

Venezuela

⁴Yugoslavia

Part E

SPECIAL PROCEDURE IN REGARD TO PARTICULAR FOREIGN COUNTRIES

Pakistan [and Bangla Desh]⁵

1. Commissions or Letters of Request can be addressed by Courts in India to the following Courts in Pakistan.

I. Provinces of Sind and Baluchistan

Sind

Registrar, Chief Court of Sind, Karachi.

District Judge, Hyderabad.

District Judge, Sukkur.

District Judge, Larkana.

District Judge, Nawabshah.

District Judge, Thar Parkar, Mirpurkhas.

Baluchistan

Baluchistan—1 Court of District Judge, Baluchistan, Quetta.

Baluchistan States Union—(2) Court of the Wazir-i-Azam, Baluchistan State Union.

II. Provinces of East Bengal

District Judges of the following places:

1. Barisal. 8. Mymensingh.
2. Chittagong. 9. Noakhali.
3. Dacca. 10. Rajshahi.
4. Faridpur. 11. Rangpur.
5. Jessore. 12. Sylhet.
6. Pabna-Kushtia (Pabna). 13. Tippera (Comilla).
7. Dinajpur Bogra (Dinajpur). 14. Khulna.

All Sub-Judges' Courts at the following places.

1. Barisal. 9. Bogra.
2. Chittagong. 10. Mymensingh.

3. Dacca. 11. Noakhali.
4. Faridpur 12. Rajshahi.
5. Jessore. 13. Rangpur.
6. Dinajpur. 14. Sylhet.
7. Khushtia. 15. Comilla (Tippera).
8. Pabna. 16. Khulna.

All Munsif's Courts at the following places.

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| 1. Barisal Sadar. | 19. Gopalganj. |
| 2. Perojpur. | 20. Madaripur. |
| 3. Bhola. | 21. Chikandi. |
| 4. Patuakhali. | 22. Jessore Sadar. |
| 5. Chittagong Sadar. | 23. Narail. |
| 6. Satkania. | 24. Magura. |
| 7. Patiya. | 25. Jhenidah. |
| 8. North Roazan. | 26. Pabha Sadar. |
| 9. South Roazan. | 27. Serajganj. |
| 10. Fatikchari. | 28. Kushtia. |
| 11. Cox's Bazar. | 29. Choudanga. |
| 12. Dacca Sadar. | 30. Dinajpur Sadar |
| 13. Narayanganj. | 31. Thakurgaon. |
| 14. Munshiganj. | 32. Rachagarh. |

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| 15. Manikganj. | 33. Bogra. |
| 16. Faridpur Sadar. | 34. Mymensingh Sadar. |
| 17. Coalonda. | 35. Netrokona. |
| 18. Bhanga. | 36. Iswarganj. |
| 37. Kishoreganj. | 52. Rangpur Sadar. |
| 38. Sherpur. | 53. Kurigram. |
| 39. Tangail. | 54. Nilphamari. |
| 40. Jamalpur. | 55. Gaibandha. |
| 41. Bajitpur. | 56. Sylhet Sadar. |
| 42. Durgapur. | 57. Habiganj. |
| 43. Noakhali Sadar. | 58. Maulvi Bazar. |
| 44. Feni. | 59. Sunamganj. |
| 45. Lakshmipur. | 60. Comila Sadar. |
| 46. Hativa. | 61. Brahman Barial. |
| 47. Sandwin. | 62. Chandpur. |
| 48. Rajshahi Sadar. | 63. Nabinagar. |
| 49. Natore. | 64. Khulna Sadar. |
| 50. Noagaon. | 65. Ragerhat. |
| 51. Nawabganj. | 66. Satkhira. |

III. Province of Punjab (P)

Courts Judges to whom a Commission

or a Letter of Request can be

issued

1. District Court, Lahore 1. District Judge, Lahore Sheikhupura.
 2. District Court, Sialkot. 2. District Judge, Sialkot.
 3. District Court, Gujranwala 3. District Judge, Gujranwala and Gujrat.
 4. District Court, Shahpur 4. District Judge, Shahpur at Sargodha.
 5. District Court, Jehlum. 5. District Judge, Jehlum
 6. District Court, Rawalpindi. 6. District Judge, Rawalpindi.
 7. District Court, Attock. 7. District Judge, Attock
 8. District Court, Mianwali. 8. District Judge, Mianwali
 9. District Court, Montgomery. 9. District Judge, Montgomery.
 10. District Court, Lyallpur, 10. District Judge, Lyallpur. Jhang.
 11. District Court, Multan 11. District Judge, Multan. Muzaffargarh.
 12. District Court, Dera Ghazi 12. District Judge, Dera Ghazi Khan. Khan.
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IV. North West Frontier Province

Court Officers to whom a Commission and Letters of Request may be addressed

1. Judicial Commissioner's 1. Registrar, Judicial Court, Commissioner's N.W.F.P. Peshawar. Court, N.W.F.P. Peshawar.
 2. District Court, Peshawar. 2. District Judge, Peshawar.
 3. District Court, Hazara 3. District Judge, Hazara (Abbottabad). (Abottabad).
 4. District Court, Dera Ismail 4. District Judge, Dera Ismail Khan. Khan.
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V. Khairpur State and Baluchistan State Union

1. Khairpur State. The Court of the District Judge, Khairpur.
2. Baluchistan States Union. (i) Wazir-i-Azam, Baluchistan State Union.

- (ii) The Court of Revenue Commissioner, Baluchistan State Union.
- (iii) The Court of Deputy Commissioner, Kalkat District.
- (iv) The Court of Deputy Commissioner, Melran District, Turbat.
- (v) The Court of Deputy Commissioner, Lasbela, District Karachi, and
- (vi) The Court of Deputy Commissioner, Kharan.

VI. Frontier Regions and States

I. Mohammand Agency,—

- (i) The Court of the Political Agent, Mohammand:

II. Malakand. Agency,—

- (i) The Court of Political Agent, Dir, Swat and Chitra, Malakand.
- (ii) The Court of the Additional Political Agent, Chitra.
- (iii) The Court of the Assistant Political Officer, Malakand Agency, Chakdara.

III. Khyber Agency,—

- (i) The Court of the Political Agent, Khyber.
- (ii) The Court of the Assistant Political Officer, Khyber.

IV. Kurram Agency,—

- (i) The Court of the Political Agent, Kurram.
- (ii) The Court of the Assistant Political Officer, Kurram.

V. North Waziristan Agency,—

- (i) The Court of the Political Agent, North Waziristan.
- (ii) The Court of the Assistant Political Agent, North Waziristan.
- (iii) The Court of the Assistant Political Officer, North Waziristan.

VI. South Waziristan Agency,—

(i) The Court of the Political Agent, South Waziristan.

(ii) The Court of the Assistant Political Officer, South Waziristan.

VII. Bahawalpur State

(1) High Court of Judicature at Bahdadul Jadid.

(2) District and Sessions Judge, of Rahimyar Khan and Bahawalpur.

2. Letters of Request issued by Civil Courts and in India for the examination of witnesses, residing in Pakistan are often returned by the Government of Pakistan for the rectification of some defect or other in their preparation. The return of the documents for that purpose for the issue of fresh documents instead naturally results in unnecessary delay, apart from causing avoidable work all round. The Courts in India issuing the Letters of Request should, therefore, take all necessary care for the correct preparation of these processes intended for execution in Pakistan. Before transmitting these documents to the High Court, the District Judges should see that the following requirements are satisfied by the documents:

(i) Letters of Request should be issued under Rule 5 of Order XXVI in the First Schedule to the Code of Civil Procedure, 1908. Commissions should be issued under Rule 4 of the said order.

(ii) The letter of Request should be drawn up in accordance with Form 8, Appendix H in the First Schedule to the Code of Civil Procedure, 1908. The writ of Commission should be drawn up in accordance with Form 7 in the said Appendix RR, 5,11. Chapter 10.F.

(iii) The date for the return of the Letter of Request, if at all specified should be sufficiently long. Preferably, no such date should be specified in order to avoid the need for extension of the date by the issuing Court from time to time.

(iv) The separate Letters of Request or Writ of Commission for examination of witnesses should be drawn up when witnesses reside in different districts.

(v) The Letter of Request or the Writ of Commission should be in the name of the Court issuing it and the title of the suit in which it is issued.

(vi) The full and correct addresses of the witnesses should be given in the Letter of Request or the Writ of Commission.

(vii) The Letter of Request, interrogatories, Cross-interrogatories and other accompanying documents should be drawn up in duplicate and signed and sealed by the Presiding Officer of the Court.

(viii) All the documents and enclosures should be signed and sealed by the Presiding Officer of the Court.

(ix) The interrogatories and cross-interrogatories should also be signed by the parties and their counsel.

(x) Letters of Request and other accompanying documents should be sewn together in a parchment paper-cover down the left hand side the ends of the silk, tape or thread with which they are sewn being brought out to the front cover and the ends appropriately sealed.

3. An initial deposit of Rs. 200 may be considered sufficient in ordinary cases and should be sent along with the Commission or Letter of Request by a Bank draft as directed in Rule 19, Chapter 10-F.

4. Diplomatic channels laid down in Rule 20, Chapter 10-F, should be strictly followed.

Canada

It should be remembered that in Canada or other countries where there is federation, the Supreme Court of the federation does not execute letter of Request. Such Letters should be addressed to the President and Judges of the Supreme Court of the Province in which the person who is to be examined resides. The parties should be asked to deposit a sum of Rs. 750 as the approximate cost of execution of such commissions or Letters of Request, subject to adjustment later on. Rules 19 and 20 of Chapter 10-F govern the transmission of such documents and fees.

Aden

Aden is now a foreign country. The language of Aden Courts is English. A commission fee of Rs. 60 may be considered sufficient in ordinary cases.

British East Africa

A British possession would now be a foreign country and the diplomatic channels laid down in Rule 20, Chapter 10-F should be followed.

Japan

Reciprocal arrangements have been made between India and Japan for the execution of Letters of Request as well as for the service of legal processes. These documents should be forwarded through the High Court and the State Government to the Government of India who will forward them to the proper authority. So far as letters of request are concerned, adequate sums not less than Rs. 200 for the expenses must be recovered from the parties and sent by bank draft (as laid down in Rule 19, Chapter 10-F), alongwith the covering letter which should state the amount sent. A translation of all documents in Japanese should be sent with the papers. The documents should be drawn up separately for each of the Japanese Courts in whose jurisdiction witness resides and detailed particulars as to name, nationality and residence of witnesses should be given.

Note—Attention is invited to the instructions contained in letter No. D-7921-CJK 430, dated the 21st December, 1949, from the Government of India, Ministry of External Affairs, which has

been endorsed to all District and Sessions Judges in the Punjab and Delhi with High Court endorsement No. 897-Genl/XIXF. 10, dated the 4th February, 1950. In view of the instruction contained in that letter, an official of the Indian Liaison Mission with Consular powers is deputed to administer oaths to and obtain evidence from Japanese witnesses, in legal matters utilising, if necessary, the services of a Translator Interpreter in an appropriate answer. It is essential to furnish the mission with (i) a detailed history of the whole case, and how each one of the witnesses cited would be concerned with the case, etc.; (ii) copies of the relevant of the documentary evidence pertaining to the case; (iii) detailed instructions as to the points in respect of which evidence should be obtained and recorded, what specific questions should be put to the witnesses, what shall be the exact nature of the cross-examination and re-examination required, etc. If possible drafts of all the points to be covered and the questions to be asked should be supplied.

Thailand

(1) Two methods are recognised—(i) Letter of Request should be addressed to the High Court of the Justice, Bangkok (or other Court having jurisdiction), for the moral taking of evidence on commission. They have to be sent through the medium of His Majesty's Legation of Consulate-General and the Thai Foreign Officer and, other methods are recorded as irregular. (ii) It is optional with the British Consular Officer in Thailand to accept Letters of Request and to execute commission by informal hearing of evidence at His Majesty's Consulate-General. The consent of the British Consular Officer (to undertaking this duty) may be presumed.

(2) When, therefore, it is desired to issue a Letter of Request for the examination of a witness in Thailand, it would be desirable to issue, in addition to a Letter of Request addressed to the Thai Court, an alternative letter addressed to His Britannic Majesty's Consul-General at Bangkok requesting him or such other British Consular Officer as may be appointed by him to summon the said witness and so on as in Form 7 of Appendix H, of the Code of Civil Procedure, with the omission of the expression "Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application." The Consul-General would then decide whether to move the Thai Courts to execute the Letter of Request or to arrange himself for the execution of the alternative letter. Prompt return of the testimony might be secured by adopting the second method. This is specially recommended when it is desirable to take the evidence in English and the witnesses are all British subjects and can be called to make their depositions at His Majesty's Consulate-General without the necessity of issuing subpoenas. A commission fee of Rs. 200 should in ordinary cases be remitted by a bank draft as laid down in Rule 19, Chapter 10-F. Both the Letters of Request addressed to the High Court of Judicature, Bangkok, and the alternative Letter of Request should be forwarded through the High Court and the State Government to the Government of India who will forward them to His Majesty's Consul-General at Bangkok.

(3) The first method is, however, essential when for special reasons the records of a formally constituted Court is desired, or when the issue of summons to, or service of documents on, persons who are not British subjects is involved, as such summons and documents can legally be served only through the medium of the Thai Court. It should be borne in mind that the Court language being Thai, in ordinary circumstances the Courts there only receive requests in the Thai

language. It is, therefore, advisable that the letter and interrogatories should be accompanied by a translation in Thai although at present there are English Advisers in some of the Thai Courts.

(4) The documents should be drawn up in a proper form, and if not typewritten, should be written in ink. They should be written in English and should be easily legible. Full translation in English should accompany all vernacular documents forming enclosures.

(5) In conformity with the requirements of the Thai Ministry of Justice relative to the Service in Thailand of writs of summonses issued by foreign Courts what is required is not the original writ or copy thereof, but a notice or certificate that the writ has been issued.

Netherland East Indies

Full translations in English should accompany all vernacular documents. The documents should be sent through the High Courts and the State Government to the Government of India who will forward them to the proper authority. The State Government except those of Bombay and Bengal have authorised the Consul-General at Batavia to incur the expenses of having the desposition in Dutch, translated into English before their transmission to India in the case of the Letters of Request issued by Courts in their respective jurisdiction and executed Courts in the Netherlands East Indies, and to recover the cost from those State Governments. As regards Letters of Request emanating from Court in Bombay unless a specific request is made no English translation is made of such depositions. No translation is made in the case of Letters of Request issued by a Court subordinate to the High Court at Calcutta.

Iran

Documents intended for execution in Persia (Iran), should be addressed to the Imperial Iranian Ministry of Justice and forwarded through the High Court and the State Government to the Government of India alongwith the necessary list of interrogatories for transmission to His Majesty's Minister, Teheran. They should be accompanied by translations into Persian of the Letters of Request or interrogatories fees according to the scale specified below:

Fee 104—For making or verifying a translation of a document for every 100 words or fraction, thereof exclusive of fees for certificate (*see* No. 149) annas $7/6$ plus 25 per cent annas $9/6$.

Fee 49—For granting any certificate not otherwise provided for, if not exceeding 100 words, exclusive of fee for drawing (No. 99) annas 10 plus 25 per cent=annas $12/6$.

These fees will be transmitted to the British Legation, Teheran, where the necessary translation will have to be made before they are forwarded to the Iranian Government. The last known address of the person concerned should be clearly indicated in English.

Nepal

Processes for service on persons in Nepal should be sent by the Indian Courts direct to the Nepalese Courts specified in the Schedule annexed to the Home Department Notification No. F-576/24, in Judicial, dated the 15th August, 1925.

United States of America

Evidence is only to be obtained by means of commission addressed in each to the appropriate British Consular Officer. They are to be addressed to His Majesty's Consul-General at New York so far as his Consular district consisting of the State of New York, Connecticut, and the Northern half of New Jersey is concerned. As regards witnesses residing elsewhere in the United States of America, if the Court issuing the commission is unable to ascertain which Consular Officer in the State where the witness resides commission should be addressed to the British Consular Officer for the State concerned. A list of these officers is annexed. In such cases the Government of India are required to forward the commission to the British Consul-General at New York, requesting him to transmit it to the Consular Officer having jurisdiction. If in any case it is desired to take the evidence of witnesses who reside both within and outside the particular Consular district, the commission should be made out substantially in the following terms:

“To His Majesty's Consul (or Consul-General) at.....or his Deputy with power to appoint any other person or persons whom he may deem fit to take the evidence on interrogatories which accompany this commission and *viva voca* of such witness to be examined at.....and/or at.....”.

For this service the British Consular Officers maintain a scale of fees. A bank draft for Rs. 700 should accompany the papers, as an approximate cost for execution of commissions, subject to adjustment later on (*see* Rule 19, Chapter 19-F). Such commissions should be forwarded through the High Court and the State Government to the Government of India who will transmit them to the British Consular Officer concerned.

Federated Malaya States

A. With a view to eliminate needless work and avoidable delay the Government of India have decided that Letters of Request and Commissions and other judicial, documents may be routed direct from a High Court in India to a High Court in Malaya and that diplomatic channels followed in the case of other Foreign countries should not be insisted upon.

B. A sum of Rs. 200 may be considered as an adequate deposit in ordinary case and should be remitted direct by bank draft drawn in favour of the executing Court along with the other papers (Rule 19, Chapter, 10-F).

Iraq

Indian Courts are free to send processes for service to the Iraqi Ministry of the Justice direct. Such documents should be accompanied by an English translation. If, for any particular reason, which should be stated in each case—it is considered necessary to transmit the documents to the Iraqi authorities through His Majesty's Embassy at Baghdad, they should be sent through the State Government to the Government of India who will forward them under cover of a despatch to the Embassy.

United States—

Baltimore (Maryland) Consul

Vice-Consul

Norfolk (Virginia) Do

Boston (Massachusetts) Consul General

Vice-Consul

Pro-Consul

Chicago (Illinois) Consul General

Vice-Consul

Detriot (Michigan) Consul

Pro-Consul

Cincinnati (Ohio) Vice-Consul

Cleveland (Ohio) Do

Gavelston (Texas) Consul

Vice-Consul

Dellas (Texas) Do

Houston (Texas) Do

Laredo (Texas) Do

Honolulu (Hawali) Consul

Los Angeles (California) Consul

Vice-Consul Vice Consul

Pro-Consul

Douglas (Arisona) Vice-Consul

Manila (Philippine Islands) Consul

Vice-Consul

Cebu Vice-Consul

Davao Do

Iloilo Do

Legaspi Do

Zamboanga Do

New Orleans (Louisiana) Consul-General

Vice-Consul

Jacksonville (Florida) Consul (P)

Pro-Consul

Miami (Florida) Vice-Consul

New York (New York) Consul-General

Consul

Vice-Consul

Pro-Consul

Philadelphia (Pennsylvania) Consul-General

Vice-Consul

Pittsburgh (Pennsylvania) Consul

Vice-Consul

San Juan (Puerto Rico) Do

Ponce Do

St. Louis (Missouri) Do

St. Thomas and Ste. Croix, Virgin
Islands (West Indies) Consul
Fredericksted Vice-Consul
San Francisco (California) Consul-General
Consul
Vice-Consul
Pro-Consul
Savannah (Georgia) Consul
Vice-Consul
Atlanta Consul
Seattle (Washington) Vice-Consul

Part F
LETTERS OF REQUEST AND COMMISSIONS ISSUED BY
FOREIGN COURTS

Attention is drawn to Act II of 1951 by which a new Section 78 has been substituted in the Code. This Section and Rules 19 to 22 of Order XXVI govern the Procedure for execution in India of Commissions and Letters of Request received from foreign countries.

1. As substituted by Act No. 2 of 1951 for the word 'state'.
2. *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.
3. From British Subjects only.
4. From British Subjects only.
5. Due to formation of Bangla Desh.