TREATY BETWEEN

MONGOLIA

AND

THE REPUBLIC OF INDIA

ON

LEGAL ASSISTANCE AND LEGAL RELATIONS

CONCERNING CIVIL AND COMMERCIAL MATTERS

Mongolia and the Republic of India ;

Attaching importance to the development of cooperation in the field of legal assistance in civil and commercial matters;

Have agreed as follows:

PART I
GENERAL PROVISIONS

Article 1
Legal Protection

1. Citizens of one Contracting Party shall enjoy in the territory of the other Contracting Party the same legal protection in respect of their person and property as do the citizens of the other Contracting Party, to the extent permitted by their laws.

2. The above shall also apply to legal persons established in accordance with the law of either Contracting Party.

3. Citizens of one Contracting Party shall be entitled to free and unimpeded access to the courts or other authorities of the other Contracting Party having competence in civil and commercial matters, on the same terms and conditions as its own citizens.

Article 2
Rights, Duties & Facilities

Citizens of one Contracting Party shall have the same rights and corresponding duties and facilities in the proceedings of a court of the other Contracting Party to the same extent as the citizens of that Contracting Party.

Article 3
Mode of Communication

In providing legal assistance the authorities of the Contracting Parties shall communicate with each other through the Ministry of Justice of Mongolia and the Ministry of Law, Justice & Company Affairs, Government of India.

PART II
LEGAL ASSISTANCE AND LEGAL RELATIONS CONCERNING CIVIL AND COMMERCIAL MATTERS

Article 4
Scope of Legal Assistance

The proceedings of the legal assistance in civil matters, including service and dispatch of documents or processes, transfer of documents for the cases, the taking of evidence from the litigants, witnesses, experts and other persons, seizure of the objects to execute the requests, enforcement of the judgments, decrees and arbitration awards as well as any other action for providing legal assistance, shall be instituted according to the respective laws of the Requested Party.

Article 5
Form of Request for Legal Assistance

1. A request for legal assistance shall be in writing and shall contain the following:

1) the designation of the requesting authority;
2) the designation of the requested authority;
3) the specification of the case in relation to which legal assistance is requested;
4) names and surnames of persons, relating to the request, information of their citizenship, occupation and permanent or temporary residence. In case of legal persons, their names and addresses;
5) Names and addresses of the representatives of persons relating to the request;

6) If necessary, particulars to be ascertained, and a list of necessary documents and other evidence.

Article 6
Execution

1. In executing the request for legal assistance the requested authority shall apply its national laws. However upon request of the requesting authority it may apply procedural rules of the requesting Contracting Party as far as they are not in conflict with its national laws.

2. If the requested authority is not competent to execute the request it shall forward the request to the competent authority and shall inform the requesting authority accordingly.

3. In case of receipt of an appropriate request the requested authority shall notify the requesting authority, parties interested in, or their representatives, of the place and time of execution of the request.

4. The requested authority shall forward documents to the requesting authority after execution of the request. In case legal assistance could not be provided as requested it shall return the request and notify the reasons for inability to execute it.

Article 7
Service of Documents or Processes

1. The requested authority shall effect service of documents or processes in accordance with its own procedures. When the documents or Processes are not drawn up in the language of the requested Contracting Party or are not accompanied by a translation, they may be served on the addressee if he is willing to accept them.

2. A request for service shall contain the exact address of the addressee and the title of the document or processes to be served.

Article 8
Proof of Service of Documents or Processes

The service of documents or processes shall be proved in accordance with the rules in force in the territory of the requested Contracting Party. The time and place of service as well as the person on whom the document or process was served shall be indicated in a Certificate of Service.

Article 9
Service of Documents and Issue of Interrogatories to Citizens through Diplomatic Missions or Consular Offices

The contracting Parties shall be entitled to effect service of documents and issue interrogatories to their own citizens through their diplomatic missions or consular offices. No compulsion shall be applied in connection with such service.

Article 10
Summons served upon Witness or Expert Abroad

1. If in course of the preliminary examination or the judicial proceedings in the territory of one Contracting Party there is a need for the personal appearance of a witness or an expert, staying in the territory of the other Contracting party, the request to serve summons shall be addressed to the corresponding authority of that Party.

2. A summon may not contain any penalties connected with failure of the summoned person to appear.

3. A witness or expert of whatever citizenship, who in response to a summon, has voluntarily appeared before the corresponding authority of the other Party shall not be prosecuted for a criminal or an administrative offence in the territory of that Party nor detained or punished for an offence committed by him before he enters the territory of the Requesting Party.

4. A witness or expert shall be deprived of this immunity if he fails to leave the territory of the requesting Contracting Party within 15 days after being informed by the authority which notified him that his presence is no longer necessary. Such period shall not include any period of time during which the witness or expert was unable to leave the territory of the requesting Contracting Party for reasons beyond his control.

5. Witnesses and experts who have come to the territory of the other Contracting Party upon request shall have the right to be reimbursed by the requesting authority their travel expenses and costs connected with their stay abroad. Experts shall also be entitled to remuneration for making an examination.

6. The request shall contain the information on reimbursements which the requested persons are entitled to; the requesting Contracting Party shall provide against their statement an advance payment to cover the corresponding expenses.

7. The Contracting Parties shall render all necessary assistance to each other for taking evidence of a witness through duly constituted Commission or person designated by the competent authority or, as the case may be, on the basis of interrogatories, questionnaire or otherwise, which may be admitted as evidence in accordance with the laws of the respective Contracting Party.

Article 11
Recognition of Documents

1. Documents issued or certified in the prescribed forms and sealed with an official seal of the competent court or official person (a full-time translator, expert etc.) in the territory of one Contracting Party shall not require any form of authentication in the territory of the other Contracting Party.

2. Documents considered as public in the territory of one of the Contracting Parties shall have the evidentiary force of public documents also in the territory of the other Contracting Party.

Article 12
Costs of Legal Assistance

1. The requested Contracting Party shall not apply for the reimbursement of legal assistance costs. The Contracting Parties themselves shall cover all costs connected with legal assistance provided in their territory.

2 .The requested authority shall notify the requesting authority of the amount of expenses. If the requesting authority recovers those expenses from the person liable to reimburse them the recovered amounts shall go to the account of the Contracting Party recovering them.

Article 13
Dispatching of Certificates of Civil Status and Other Documents

Contracting Parties shall undertake to dispatch to each other upon request, by diplomatic channels, without translation and free of charge documents of identification, if any, and other documents (of education, occupation etc.) concerning personal rights and property interests of citizens of the other Contracting Party.

Article 14
Refusal of Legal Assistance

Legal assistance shall not be provided if its provision might be prejudicial to the sovereignty or security of the requested Contracting Party or in conflict with its laws.

Article 15
Exemption from Payment of Legal Fees

Citizens of one Contracting Party shall be exempt in the territory of the other Contracting Party from payment of legal fees under the same conditions and to the same extent as citizens of that Contracting Party.

Article 16
Issuance of Documents on Personal, Marital and Property Status

1. A document relating to personal, marital and property status necessary to receive permission for exemption from payment of legal fees shall be issued by a competent authority of the Contracting Party in the territory of which the declarant resides or stays.

2. If the declarant does not reside or stay in the territories of the Contracting Parties the document issued or certified by a diplomatic mission or consular office of his State is sufficient.

3. A court passing order for exemption from payment of legal fees may request the authority which issued the document to furnish additional information.

Article 17
Court Competence

1. Unless otherwise provided for by this Treaty and subject to the laws of the respective Contracting Party, courts of each Contracting Party have competence to give judgments on civil and commercial matters if the defendant resides in its territory. As far as claims to legal persons are concerned they have that competence in case such legal persons have any subordinate office or carry on business for gain in the territory of this party.

2. Exclusive competence of courts may not be changed by the agreement of litigants except in case of arbitration.

3. If proceedings are instituted between the same parties on the same matter and on the same ground in both Contracting Parties' courts which are competent in accordance with this Treaty, the court in which the proceedings are instituted later shall not proceed with the matter.

Article 18
Legal capacity and capability

1. The capability of a natural person shall be determined by the laws of the Contracting Party whose citizen that person is.

2. The legal capacity of a legal person shall be determined according to the law of the Contracting Party, in whose territory it was incorporated.

Article 19
Recognition as a missing person, dead person and establishment of the fact of death

1. Cases concerning recognition as a missing person, dead person and establishment of the fact of death shall be within the competence of the authorities of the Contracting Party whose citizen that person was at the moment when he according to the last information was alive.

2. Authorities of one Contracting Party may recognize a citizen of the other Contracting Party as a missing person or dead person and may establish the fact of his death at the request of persons who reside in its territory if their rights and interests are based on the laws of this Contracting Party.

3. In cases provided for by paragraphs 1 and 2 of this Article authorities of the contracting Parties shall apply their own laws.

Property Legal Relation
Article 20
Ownership

1. The ownership of immovable property is determined by the law of the Contracting Party in whose territory such property is located.

2. The ownership of means of transport, which require registration with authorities, is to be determined by the laws of the Contracting Party in whose territory the registering authority is located.

3. Acquisition, alienation or termination of ownership or other right to property is determined by the law of the Party in whose territory the property was located at the moment when an act or other circumstances, serving as a basis for such rights occurred. The acquisition and termination of ownership or other rights to property, which is the subject of transaction, is to be determined by the law of the place where the transaction occurred, unless otherwise provided for by an Agreement between the Parties.

Article 21
Form of Transaction

1. In case of movable property, the law of the Contracting Party where transaction was made, shall be applicable.

2. In case of immovable property, the law of the Contracting Party in whose territory property is located, shall be applicable.

Article 22
Damages

1. The obligations to compensate damage, except those provided for by treaties and resulting from other lawful acts, are determined by the law of the Contracting Party in whose territory such an act or other circumstance serving as a basis for demanding damages took place.

2. If a person causing harm and the aggrieved person are citizens of the same Contracting Party the law of the Contracting Party in whose court the application is submitted shall be applied.

3. The cases mentioned in paragraphs 1 and 2 of the present Article shall be subject to the competence of a court of the Contracting Party in whose territory such an act or other circumstance which served as a basis for demanding damages took place. An aggrieved person may also bring an action in a court of the Contracting Party in whose territory the defendant resides.

Article 23
Representations of Citizens by Consular officials

A diplomatic mission or consular office of one Contracting Party may represent interests of citizens of that Party in respect of succession issues before authorities of the other Contracting Party with due authorization, if those citizens, because of their absence or other valid reasons, are not able to defend their rights and interests in time and have failed to designate a representative.

Article 24
Transfer of personal effects

If a citizen of one Contracting Party dies during travel in the territory of the other Contracting Party where he did not have permanent residence, his personal effects

shall be immediately transferred to a diplomatic mission or consular office of the Contracting Party of which the deceased was a citizen.

PART III
RECOGNITION AND ENFORCEMENT OF JUDGMENTS

Article 25
Recognition and Enforcement of Judgments on Civil and Commercial matters and Damages awarded in Criminal cases

The Contracting Parties shall mutually recognize and enforce effective judgments of judicial authorities on civil and commercial matters as well as orders awarding damages in Criminal cases.

In the territory of the Contracting Parties judgments of the guardianship and trusteeship authorities, registrar's offices and other authorities on civil matters, which do not require enforcement due to their nature shall be equally recognized without special proceedings.

Article 26
Consideration of Applications for Granting Authorisation for Enforcement of Judgments

1. Consideration of applications for granting authorization for enforcement shall fall under the jurisdiction of the courts of the Contracting Party in whose territory the judgment is to be enforced.

2. Application for granting an authorization for enforcement shall be submitted to the competent court. Requirements for submission of the application shall be specified by the law of the Contracting Party in whose territory the judgment is to be enforced.

3. Application shall be accompanied by its certified translation into the language of the Contracting Party to which the application is addressed.

Article 27
Documentation for Authorisation for Enforcement

Application for granting authorization for enforcement must be accompanied by:

1) a certified copy of the judgment, given by the court, together with an official document stating that the judgment/decree is enforceable, if it is not clear from the text of the judgment itself.

2) Certified translation of the documents referred to in paragraphs 1 of this Article.

Article 28
Procedure for Enforcement of Judgments

The procedure for enforcement of judgments shall be regulated by the law of the Contracting Party in whose territory the judgment is to be enforced.

Article 29
Costs

Legal costs relating to enforcement shall be regulated by the law of the Contracting Party in which territory the judgment is to be enforced.

Article 30
Scope of Judgment

The provisions of Articles 25-29 of this Treaty relating to judgments shall also apply to amicable settlements or consent decrees approved by a court, and arbitration award.

Article 31
Export of Objects and Transfers of Money

The provisions of this Treaty relating to the enforcement of judgments shall not affect the law of the Contracting Parties on transfers of money and export of objects acquired as a result of the enforcement.

Article 32
Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.

PART IV
FINAL PROVISIONS

Article 33

1. This Treaty is subject to ratification and shall enter into force on the 30th day after the exchange of the instruments of ratification.

2. This Treaty shall remain in force until either of the Contracting Parties terminates it by sending a notice to that effect to the other Contracting Party, and if such notice is given, the Treaty shall cease to have effect six months after the receipt of the notice.

3. Done in triplicate at New Delhi this the 3rd day of January, 2001 in, Mongolian, Hindi and English languages each text being equally authentic.

4. In case of any interpretational difference, the English text shall prevail.

FOR MONGOLIA

FOR THE REPUBLIC OF INDIA

