

Guidelines/SoP on the conclusion of International Treaties in India

CONTENTS:

Particulars	Page Number
A. International Practice	2
• Different Nomenclatures used by States in their practice	3
B. Indian Practice	5
C. Role of MEA (L & T Division)	5
D. Treaty making formalities	5
(i) Drafting and Negotiation	5
(ii) Approvals	6
(iii) Full Powers	8
(iv) Ratification	8
(v) Accession	9
(vi) Credentials	10
(vii) Amendment of a Treaty	10
(viii) Review of Treaties	10
E. Guidelines/SoP concerning the conclusion of Twinning Agreements with the Provincial Governments of Foreign Countries	10
F. Guidelines/SoP concerning the Twinning Arrangement between the Cities	12
G. Indian Treaty Database Section (Maintained by the Legal and Treaties Division)	12
ANNEX - I Checklist - for the purpose of concluding bilateral Treaties	13
ANNEX - II Structure/Format of an Agreement (MoU)	15

The guidelines/SoP and practice concerning negotiation and conclusion of international treaties and related aspects thereto are set out below:

A. International Practice:

Under international law, the law and practices pertaining to treaties is governed by the Vienna Convention on the Law of Treaties, 1969. Although, India is not a Party to the Convention, it follows its provisions in practice. The Convention codifies the law, practice including norms concerning the international treaty making. The Vienna Convention refers to '**treaty**' in its generic sense and defines as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

Thus, the term 'treaty' covers all forms of international instruments, namely, treaty, convention, agreement, memorandum of understanding, , protocol, etc., irrespective of nomenclature, all negotiated and concluded international instruments create legal rights and obligations between the parties.

The parties to a treaty may agree for its entry into force either on the date of signature, or may make entry into force subject to ratification. In the former scenario, the treaty will become effective immediately on signing. Where, however, entry into force of a treaty is subject to ratification, signing would only reflect the intent of the country concerned to be bound to its provisions, and will have the binding effect only on ratification.

The "treaties" assume a variety of form and style, but they are all governed by the law of treaties, which is part of customary international law. Different nomenclatures used in the international relations are: Agreement, Convention, Protocol, Memorandum of Understanding, Memorandum of Cooperation, Memorandum of Association, Charter, Covenant, Pact, Statute. There are less formal agreements sometimes through "exchange of notes" "letter of intents", or "exchange of letters."

Different Nomenclatures used by States in their practice:

- **Treaty:** Used for formal agreements between States, subject matter and provisions of which are governed by international law. A 'treaty' is a formally concluded and ratified agreement between States. The term is used generically to

refer to instruments binding at international law, concluded between international entities (States or organizations). Under the Vienna Conventions on the Law of Treaties, a treaty must be (1) a binding instrument, which means that the contracting parties intended to create legal rights and duties; (2) concluded by states or international organizations with treaty-making power; (3) governed by international law and (4) in writing¹. Treaties may be bilateral (two parties) or multilateral (between several parties) and are usually binding only on the parties thereto.

- **Convention:** Usually used for multilateral agreements. This generic term is synonymous with that of “treaty”. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually the instruments negotiated under the auspices of an international organization are entitled conventions².
- **Agreement:** Formal and legally binding arrangements with a defined scope and fewer parties. Agreements are the instrument by which states and other subjects of international law, such as certain international organizations, regulate matters of concern to them. Agreements are more often used in the bilateral contexts. Again, the “agreement” is also synonymous of “treaty”.
- **Protocol:** Usually an ancillary agreement to the existing instrument.
- **Declaration:** The term ‘declaration’ is normally used for bilateral or multilateral instruments which by nature are declaratory and not legally binding. For instance, human rights declaration.
- **Memorandum of Understanding (MoU):** A less formal agreement, usually of an administrative or technical in nature. MoU is used where the subject matter is not essentially governed by the international law. MoUs are preferred where the matter being essentially technical or administrative in nature which may change frequently according to suitability of the Parties. For e.g. in the fields of education, technology, cultural cooperation, sports, youth affairs, etc.

As per the practice of many of the countries around the world (for e.g. the

¹ UNICEF Document on the Convention on the Rights of the Child

² <https://www.britannica.com/topic/international-agreement>

US), the key difference between MoUs and treaties is whether or not there is an intention to create legally binding obligations. However, Indian practice does not fully subscribe to this idea wherein the nature of the instrument is determined based on its contents and not on the basis of its title.

- **Memorandum of Cooperation (MoC):** A less formal agreement, usually of an administrative or technical nature of limited duration. MoCs could be concluded under the umbrella of a certain framework agreement. It is synonymous of MoU.

- **Memorandum of Association (MoA):** Akin to MoU and MoC, these are less formal arrangements designed for starting cooperative activities and exchanges. MoAs could be concluded under the umbrella of certain framework agreement.

- **Letter of Intent/Statement of Intent:** The letter of intent (LoI) is a non-binding statement that acknowledges parties' intent to explore the possibility of collaboration and cooperation in the relevant areas contained therein. Letters of intent are appropriate when a new project/undertaking is being initiated, and the specific areas of formal cooperation between parties are yet to be identified and negotiated. The letter of intent can serve as a gesture and the willingness to discuss the possibilities and opportunities to establish cooperation in certain areas. On the identification of specific areas and reaching the stage of preparedness and maturity, the parties may negotiate and conclude formal treaty

- **Exchange of Notes/Letters:** It is a method of concluding an agreement in situations where due to time constraint or emergency, States do not have enough time to negotiate a formal agreement. This method may also be used for amending/terminating an existing instrument through diplomatic channel.

Notes may also be exchanged to extend the validity of a treaty. The exchange of notes and correspondences related thereto is conducted through the diplomatic channels.

Therefore, the choice of the nomenclature depends upon the negotiating States. The determination of status of an international instrument as an international treaty in terms of Vienna Convention on Law of Treaties depends on

the contents thereof and the factor whether or not that instrument is governed by international law.

B. Indian Practice:

According to the Indian Constitutional scheme, making of international treaties is an executive act. A Treaty is concluded with the approval of the Union Cabinet. It is not placed before the Parliament for discussion and approval. However, where the performance of treaty obligations entail alteration of the existing domestic law or requires new enactment, it would accordingly require legislative action.

C. Role of MEA (L & T Division):

The Legal and Treaties Division of MEA renders legal opinion on all international law issues to the Government as a whole. It scrutinizes international instruments for consistency with international law and with India's international rights and obligations. The Division forms part of Indian delegations, in the capacity as legal advisers, in international conferences, and in bilateral negotiations locally and abroad. The Division participates in the drafting of Indian legislation giving effect to the provisions of a treaty in India including amendments thereof, when required, for implementing the treaty obligations. On conclusion, treaties are forwarded to the Legal and Treaties Division for depository functions and safekeeping.

D. Treaty making formalities:

(i) Drafting and Negotiation:

The Ministry of External Affairs is overall in-charge of international treaty making activities. The administrative Ministry is the nodal agency for preparation of drafts, consultations and negotiations.

Multilateral treaties are mostly negotiated in international conferences. In the case of bilateral treaties, concerned administrative Ministry, on preparation of draft text of the treaty, in consultation with other stake holders, submits the same with the approval of the Minister concerned to the Ministry of External Affairs (Legal and Treaties Division) for vetting before it is sent to the other country for

consideration, through diplomatic channels.

To the extent possible, modern means of communication including emails, video conferencing, teleconference should be used by the stakeholders to negotiate bilateral treaties except, security related matters.

(ii) Approvals:

After the text of the Treaty has been negotiated and finalized, the administrative Ministry processes for necessary approvals of the Minister concerned and thereafter the External Affairs Minister's approval is obtained. The administrative ministry then moves Cabinet Note for its approval.

According to the Second Schedule to the Government of India (Transaction of Business) Rules, 1961, the approval of the Cabinet is imperative for all treaties (which include conventions, agreements, MoUs, MoCs, MoAs & protocols etc.,) to be signed with any foreign agency/country³. These instructions are also applicable to all subordinate/attached offices including Statutory bodies and authorities of Ministries/Departments and the various Commissions under the Constitution⁴, except in the following cases:

(a). Cultural Agreements and Agreements on Science and Technology not impacting the national security or our relations with other countries which are duly approved by the Minister-in-Charge of the Department concerned and the Minister of External Affairs and where requisite inter-Ministerial consultations in terms of rule 4 have been carried out may only be circulated to the Cabinet for information;

³ Refer para 2(ii) of the Cabinet Secretariat's O.M. No.1/48/6/2015-Cab, dated 3 June 2015; O.M. No. 1/48/6/2015-Cab, dated 24 April 2015; O.M. No. 1/50/3/2014-Cab., dated 9 February 2014.

⁴ Refer para 2(iii) of the Cabinet Secretariat's O.M. No.1/48/6/2015-Cab, dated 3 June 2015;

(b). Such *foreign Aid Agreements and Commercial Agreements*, which are duly approved by the Minister-in-charge of the concerned Department and as are within the broad frame-work already approved by the Cabinet need not be formally placed before the Cabinet.

In case of any doubt as to whether approval of Cabinet is required for concluding a particular agreement/MoU, the matter may be referred by the Administrative Ministry to the Cabinet Secretariat for a decision. Proposal for obtaining the Cabinet approval should be sent to the Cabinet Secretariat well in advance obviating the need for rushing such proposals at the last moment⁵. However, the Ministries/Departments may submit the proposal under Rule 12 of the Government of India (Transaction of Business) Rules, 1961 **only** if there is an extreme urgency or unforeseen contingency. Cabinet Notes seeking approval for signing of MoUs are to be prepared sufficiently in advance of the proposed visit so as to preclude the need to seek approval under Rule 12⁶. If MoUs requiring prior Approval of the Cabinet are signed after obtaining approval under Rule 12, they are required to be submitted for *ex post facto* approval of the Cabinet or for information as the case may be, within **one month** of the signing of such MoU. In case of any delay, the Note should detail the specific reason(s) and justification(s) in submitting the Note before the Cabinet after the prescribed time period⁷.

The Ministries/Departments using the title of the instrument as MoU, it must provide the rationale for the same while sending to the Cabinet. Ministries/Departments should also enclose a list and status of existing MoUs while seeking approval of a new MoU⁸.

⁵ Cabinet Secretary's D.O. No. 1/13/4/2017-Cab., dated 22 November 2007; D.O. No.1/3/2/2012-Cab., dated 23 November 2012.

⁶ Cabinet Secretary's D.O. No. 1/48/6/2015-Cab., dated 24 June 2015

⁷ Cabinet Secretary's D.O. No. 1/48/6/2015-Cab., dated 14 August 2015

⁸ Cabinet Secretariat's O.M. No. 1/48/6/2015-Cab., dated 3 June 2015; Cabinet Secretariat's O.M. No. 1/50/3/2014-Cab., dated 9 February 2015.

After obtaining the necessary approvals, as indicated above, the text of treaty/agreement may formally be signed and concluded with foreign governments. For the purpose of signing, the concerned administrative Ministry, in consultation with the MEA, designates a person to sign the treaty representing the Government of India.

(iii) Full Powers:

The person designated for signing the treaty would require Full Powers from the President of India authorizing him to sign. The Concerned administrative Ministry provides the name, title, position, etc. of the person designated to be named in the Instrument of Full Powers, along with the finalized text of the treaty, Cabinet Note and the Cabinet approval to the Legal and Treaties Division, which prepares and processes the Instrument of Full Powers for favour of the signature of the President.

It may however be noted that the Head of the State, Head of Government and Minister for Foreign Affairs, do not require Full Powers to sign or authenticate a treaty, by virtue of their office and functions. Thus, based on the international law and practice, the President, Prime Minister and the External Affairs Minister of India do not require Full Powers.

Ambassadors or High Commissioners may initial treaties with the country to which they are accredited. They would however require Full Powers if designated to sign the treaty formally.

Full Powers are not required when a treaty is signed in the presence of the President or the Prime Minister of India.

(iv) Ratification:

Where a treaty does not provide for its entry into force upon its signature only, and makes it subject to ratification, the treaty requires ratification. Multilateral Treaties are, however, always subject to ratification. The treaty is ratified by obtaining the Instrument of Ratification under the signature and seal of the President of India.

In order to ensure that India is in a position to efficiently discharge all

obligations emanating from the treaties/agreements, ratification/accession should be undertaken only after the relevant domestic laws have been amended, or the enabling legislation has been enacted in cases where there are no domestic laws on the subject. Therefore, proposal for entering into such treaties/agreements should specifically state that such ratification or accession will be made only **after** amending the relevant domestic laws, or enacting appropriate legislations⁹.

The Concerned administrative Ministry submits the Cabinet Note, Cabinet approval and three clean copies of the signed treaty in Hindi (where signed in Hindi) and in English languages. The instrument of ratification is prepared by the Legal and Treaties Division of MEA and processed for favour of signature of the President.

In case of a bilateral treaty, it becomes effective on the exchange of instruments of ratification or through notification, as the case may be, which will be effected through diplomatic channels.

In case of a multilateral treaty, the instrument of ratification is to be deposited with the depository to the treaty. The States may agree to a specific number of ratifications required for its entry into force.

(v) Accession:

Accession is the procedure for becoming a party to a treaty where a country has not signed the treaty during the period it was open for signature. In such a situation, a country accedes to the treaty without having signed it. Most of the multilateral treaties provide for accession, through which States may become Parties to such treaty.

The Concerned administrative Ministry is required to submit the Cabinet Note, Cabinet approval and three clean copies of the treaty to L&T Division. The instrument of accession is prepared by the Legal and Treaties Division of MEA and processed for favour of signature of the President. It is then deposited with the depository of the Treaty.

⁹ Cabinet Secretariat's O.M. No. 1/13/2/2010-Cab., dated 23 August 2011

(vi) Credentials:

Credentials confer the authority to participate in negotiations as representatives of the Government of India, and to initial the treaty at the conclusion of negotiations. The purpose of initialing is to confirm the status of the text of the treaty negotiated. The credentials where required, are obtained by the concerned Territorial Division of MEA.

(vii) Amendment of a Treaty:

Normally, treaties contain provisions in their final clauses stipulating procedure for their amendment. The parties may agree for amendment of the treaty at any time by mutual written consent of the parties. A state party may, at any time, propose an amendment, which, on negotiations, may be approved or rejected in whole or in part by the parties. The parties may agree for the entry into force of an amendment either through the same procedure as applicable for the entry into force of the treaty or a different one.

(viii). Review of Treaties:

Most of the bilateral Agreements/MoUs contain a clause for the periodical review of the activities undertaken under the Agreements/MoU. Besides, the Concerned Ministries shall review their treaties from time to time and shall send a report at the end of each year to the concerned Territorial Division of MEA apprising about the implementation activities undertaken, and the status of the treaty i.e. whether its validity is continuing or has expired. If expired whether it is to be renewed or there is no necessity of renewal.

E. Guidelines/SoP concerning the conclusion of Twinning Agreements with the Provincial Governments of Foreign Countries:

Ministry of External Affairs has considered the emerging trend of State Governments/agencies in entering into Agreements with the provincial Governments of other Countries for promoting/enhancing cooperation in investments, industry, commerce, culture, health, tourism and other areas and is of the view that such proposals should be considered on a case-by-case basis by the concerned Administrative Ministry, taking into account the nature, scope and

overall usefulness of the understanding being entered into.

The Policy of twinning may include the following elements:

- i) Twinning may be considered where they could lead to expansion of investment, trade, technological, culture, tourism, educational and other cooperation to the benefit of India.
- ii) Proposals for twinning of bordering States with their counterparts in neighboring countries involving issues relating to policies and security will normally not be agreed to.
- iii) A broad plan of cooperation with details of cooperative activities will be submitted by the State interested in entering into twinning arrangements with the province of a foreign State along with the financial resources available for carrying out such activities.
- iv) The process for completing agreements between States/Provinces need to be carefully examined by the concerned Ministry with other stakeholders before sending for MEA's approval, including vetting by the MEA (Legal and Treaties Division).
- v) The Ministry of External Affairs must be kept informed of all treaties/Agreements/MoUs related actions, such as signature, and entry into force, action plan, and review status. The copy of all concluded Agreements/MoUs should be sent to the Ministry of External Affairs (L&T Division) for information and record purpose.
- vi) There should be a review of the twinning arrangements annually. The Concerned State Government will send a report at the end of each year to the concerned Territorial Division of MEA and concerned administrative Ministry about the implementation of arrangements and their status i.e. whether its validity is continuing or has expired. If expired whether renewed or there was no necessity of renewal. In case any activity has negative or adverse implications on our national interest or bilateral relations, it shall be immediately discontinued. Twinning may be allowed only with a limited number of foreign provinces.
- vii) These instructions are applicable to all subordinate/attached offices including statutory bodies and authorities of Ministries/Departments of the State

Government and the various Commissions under its authority.

F. Guidelines/SoP concerning the Twinning Arrangement between the Cities:

Ministry of Urban Development (MoUD), Government of India is the nodal Ministry at the central level for the Scheme Twinning Arrangements between the Indian Cities and that of foreign countries.

In case of proposal for arrangement with a foreign city, the State Government concerned should follow the guidelines issued by the MoUD. After it is agreed to twin a foreign city with an Indian city, an agreement may be reached on specific objectives of twinning within the broad framework of objectivities.

After scrutiny of the proposal submitted by the State Government, the MoUD shall seek the concurrence from Ministry of External Affairs (political and legal angle) before finalizing the said arrangement.

G. Indian Treaty Database Section (Legal and Treaties Division):

The Treaty Section in the Office of the Legal and Treaties Division is the official custodian of all international treaties to which India is a party. Other Administrative Ministries deposit all original treaties and certified copies of multilateral treaties as well as any necessary communiqué/documents concerning the status and implementation of international treaties with the MEA (Legal and Treaties Division) for custodial purposes. As soon as treaties are signed, the concerned Ministries/Departments or Divisions of the MEA are required to send their soft copies (both in Hindi and English), which are not classified/confidential in nature¹⁰, to the Legal and Treaties Division for the purpose of uploading them into the Indian Treaty Database at MEA website (**www.mea.gov.in/Treaty.htm**).

ANNEX- I

Checklist to be followed for the purpose of concluding bilateral Treaties:

1. The Ministry of External Affairs & concerned Administrative Ministry hold

¹⁰ As per the Government of India policy, classified/confidential treaties are exempted from posting/uploading on the Indian Treaty database. Ref: Cabinet Secretariat's Communiqué I.D.No. 141/1/11/2016-TS, dated 03-01-2018).

- consultation about the desirability of a Treaty with a particular country;
2. The Administrative Ministry moves the proposal/Draft through MEA to the country concerned for consideration;
 3. Administrative Ministry, in consultation with stakeholders, prepares a draft;
 4. The Administrative Ministry make sure that the text of the treaty is seen and vetted by the MEA (Legal and Treaties Division) before proposing to the foreign country concerned for consideration;
 5. The composition of the Indian delegation for negotiating treaties should include representatives of MEA to ensure proper advice on international legal issues and policy;
 6. In case of bilateral negotiations, all correspondence regarding the scheduling of negotiations, composition of delegations, dates of signing, exchange of ratification instruments etc. should be forwarded through the Ministry of External Affairs;
 7. Views/opinion on the treaty's consistency with **domestic law** must be obtained from the Department of Legal Affairs, Ministry of Law and Justice;
 8. Cabinet Notes proposing for seeking Cabinet approval for signing and ratification/accession of treaties must be sent to the Ministry of External Affairs for approval/concurrence from the political and legal angles;
 9. Full Powers from the President of India authorizing the person named to sign a treaty on behalf of the Government of India should be obtained;
 10. Requests for obtaining Instruments of Full Powers, Ratification and Accession must be sent to the MEA along with the required documentation/approvals;
 11. Requests for credentials for participation in international conferences should be obtained through the UNES Division of the Ministry of External Affairs;
 12. The Ministry of External Affairs must be kept informed of all treaty actions, such as signature, ratification and entry into force. The original instrument of all treaties should be sent to the Ministry of External Affairs (L&T Division) which is the custodian of all treaties of Govt. of India for record purpose.

[Should any clarification be required on the above guidelines, it could be sought from **Joint Secretary (L&T), Ministry of External Affairs** [Tel: 49015269; Fax: 49016643; **email**: jslegal@mea.gov.in]

ANNEX- II

STRUCTURE/FORMAT OF AN AGREEMENT (MOU):

Drafting of Treaties:

As all elements of international agreements need to be agreed by the respective parties. The drafting style will also depend on the agreement between the parties. The guidelines on drafting are therefore indicative although not necessarily always attainable.

An Agreement/MoU needs to be in the below format:

A. Title & Parties

B. Preamble/Recitals

- I. Article - I: Definitions**
- II. Article - II: Objectives**
- III. Article - III: Areas of Cooperation**
- IV. Article - IV: Forms of Cooperation**
- V. Article - V: Central Authority**
- VI. Article - VI: Implementation & Joint Working Group**
- VII. Article - VII: Financial Arrangement**
- VIII. Article - VIII: Protection of Intellectual Property Rights**
- IX. Article - IX: Protection of Confidential Information**
- X. Article - X: Revision & Amendment**
- XI. Article - XI: Settlement of Disputes**
- XII. Article - XII:: Entry into Force, Duration, Renewal & Termination**

C. Concluding Paragraph

D. Signature Clause

The Parties:

Treaties are concluded between governments/departments. The Indian side is cited as *“the Government of the Republic of India”*.

Sequencing of articles:

If an article on “Definitions” is required, this should be placed at the very beginning of the Treaty just after the Preamble. Definitions should be listed in alphabetical order.

If an article on the “Objective” or “Purpose” is included, it should be

included after the article on Definitions. Substantive clauses follow the definitions. Standard articles on Settlement of Disputes, Amendment and the final clauses on Entry into Force and Duration and Termination follow the text of the Treaty.

Preamble/Recitals:

An international Treaty usually has a preamble that is not intended to constitute substantive provisions or create legal obligations. However, preamble works as a window through which the substance of treaty provisions and intent of negotiating parties is peeped into. The contents and the size of preamble depends on subject and nature of the treaty.

Preamble sets out the background and context of the Treaty and is used as an aid to the interpretation of the Treaty.

Example:

RECALLING that an Agreement was entered into on 19 September 1969 between the Government of the Republic of India and the Government of the _____ concerning the establishment and operation of a _____ scheme, for the _____ (purpose) for use within the territories of India and other countries;

RECOGNISING that conditions have changed considerably since the conclusion of the said Agreement, which consequently no longer reflects the realities of the situation in the region;

DESIRING THEREFORE to enter into a bilateral Agreement which will take account of the changed conditions prevailing in the region;

HAVE AGREED AS FOLLOWS:

Or

“WHEREAS the Government of the Republic of India and the Government of the _____ (hereinafter individually referred to as the “Party or Contracting State or Participant” and jointly referred to as the “Parties or Contracting States or Participants”); are desirous to consolidate and strengthen their friendly ties and reciprocal understanding; and

WHEREAS the Parties are conscious of the desirability of promoting, to the

greatest possible extent the mutual knowledge, experience and understanding of their respective human and developmental needs in the field of _____, by means of friendly cooperation between them;

Have reached the following understanding:

Headings and numbering:

It is always helpful if headings/subtitles are provided for each Article.

The substantive provisions are divided into Articles, Sub-Articles, Paragraphs and Sub-Paragraphs. Articles are numbered either in Arabic or capital Roman numbers.

Sub-articles are numbered in Arabic numbers, paragraphs in alphabetic letters and sub-paragraphs in small Roman numbers. Capital letters are used and the Article and Subtitle are centered. e.g.

ARTICLE 4

or

ARTICLE IV

AREAS OF COOPERATION

Areas of Cooperation

Considering the requirement, the Parties may list out the areas of cooperation.

Each Party will endeavor to take necessary steps to encourage and promote cooperation in the following areas and/of forms:

- a.*
- b.*
- c.*

Forms of Cooperation

In which forms the cooperative activities are proposed to be carried out can be listed under this heading.

Specific activities in the areas of cooperation listed in Article I may include cooperation in Research and development, Training, Visit of delegates and experts etc.

In case MoU contemplates exchange of resource persons, experts or students as a form of cooperation, eligibility/process for selection of such participants as well as the frequency of such programmes should be included in the MoU.

Action Plan, Objectives & Deliverables

The action plan is a dynamic strategy for meeting the requirements of the MOU drawn by the Administrative Ministry. Action plan contains the list of deliverables, scope and areas of cooperation contemplated under the framework of an MoU. Therefore, MoUs should spell out specific objectives to be achieved by comprehending all the activities to be included in the MoU. Scope and areas of cooperation should be clearly mentioned.

These activities are to be listed item-wise based upon the object to be achieved under the MoU and the intention of the Parties thereto.

Central Authorities

The Agreement/MoU should identify the Central Authorities respectively, who are the nodal points for contacts to each of the Parties under the Agreement/MoU. The Central Authority is responsible for implementation of the schemes of the treaty including receiving, sending, examining the requests.

The Parties shall designate the following authorities as Central Authorities to implement the provisions of the Agreement/MoU.

Implementation/Review

Implementation of the provisions of an Agreement/MoU vests with the mechanism created under the MoU. It is preferable for the Administrative

Ministries to have a periodic review of the activities undertaken under the MoU. Therefore, an institutional set up, within the framework of an Agreement/MoU may be set-up.

“Within the framework of this Agreement/MoU, in order to exchange views and draw a road map for enhancing cooperation, both sides may constitute a Joint Working Group (JWG). JWG is composed of equal number of the representatives from each side. Such a Joint Working Group may conduct periodical meetings and reviews, preferably bi-annually, in the respective countries alternately”.

or

“The Parties shall hold working level meeting in order to implement the purpose of the Agreement/MoU effectively, and the details of such meetings will be decided by the Working level meeting”.

Financial Arrangement

Financial modalities to carryout the activities mentioned in the MoU need to be set out under this paragraph. This may include joint sharing of expenses; travel expenses arrangement and so on.

Protection of Intellectual Property Rights

If any research activity or productive activities giving rise to intellectual property rights, the ownership and utilization of the same may be provided here. This clause needs to be cleared by the Department of Industrial Policy & Promotion (DIPP)

Protection of Confidential Information

If any confidential information, trade secrets are exchanged, a clause to protect them from disclosure may be included.

All information and documents to be exchanged pursuant of the MoU will be kept confidential by the Parties and will be used subject to such terms as each Party may specify. The Parties will not share such information with third Parties or use the information for purposes other than that specified, without the prior written consent of the other Party.

Settlement of Disputes

If any difference arises between the Parties while carrying out the activities under the MoU, it shall never be referred to international adjudication. Unless it is in commercial in nature, arbitration should also be avoided.

“Any dispute between the Parties arising out of the interpretation or implementation of this Agreement shall be settled amicably through consultation or negotiation between the Parties to the dispute.”

Amendment

An Agreement/MoU usually would have a provision for amendment like:

“This Agreement may be amended at any time by mutual written consent of the Parties through an Exchange of Notes between the Parties through the diplomatic channel.”

Entry into force

“This Agreement shall enter into force on the date of its signature thereof by the Parties.”

Or

This Agreement shall be subject to ratification.

Or

This Agreement shall come into force after the completion of the internal legal procedures necessary for the entry into force of the Agreement.

Or

“The Parties shall notify each other in writing when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. This Agreement shall enter into force on the date of the last written notification.”

The situations where the Agreement/MoU is not entering into force on signature, and is subject to ratification or completion of constitutional legal procedure etc., would require ratification.

It frequently happens that the other party will require an entry into force

clause that requires notification of the completion of the constitutional procedures. This is acceptable. However, the Administrative Ministry should note that the selection of this wording would require an additional administrative step, namely that a Diplomatic Note must be sent. In these cases, the concerned administrative ministry should request the relevant Territorial Division of the Ministry of External Affairs send such a Note.

Where ratification or accession is to be expressively provided for, the correct format must be used in consultation with Legal and Treaties Division.

Duration and Termination

“This Agreement shall remain in force for a period of years. Thereafter, it may be renewed automatically for further successive periods of years at a time”

or

“The Agreement shall continue for a term of three years. Thereafter, it will be renewed for further periods by mutual written consent of the Parties” unless terminated by either Party by giving months written notice in advance to the other Party of its intention to terminate this Agreement through diplomatic channels.

A Party terminating this Agreement shall remain bound to contractual relationships to which it is a party and to its obligations there under, until they are fulfilled.

Or

“This Agreement shall enter into force on the date of signature and remain in force for an indefinite period unless terminated by either Party giving months written notice in advance of its intention to terminate the Agreement through the diplomatic channel.

“Termination of this Agreement shall not affect any programmes undertaken prior to the termination of this Agreement, unless otherwise agreed upon by the Parties.”

Or

“The termination of this Agreement shall not affect the completion of any unfulfilled obligation at the moment of its termination, unless otherwise agreed by the Parties.”

Renewal Clause:

Renewal clause is to be included based on the requirement of the Administrative Ministry and the wish of the Indian counterparts, keeping in mind the utility and diplomatic relationships. Renewal could be either (i) for a specific period or (ii) for an indefinite duration.

It may be suggested not to have automatic renewal clauses resulting in the indefinite application of the provisions of an Agreement unless it is required from the point view of functional requirement or diplomatic sensitivity. If at all renewal clause is required, it is suggested to be term specific.

“After the initial term, this Agreement/ MoU may be renewed for a further term of.... years”.

Or

“This Agreement/ MoU may be renewed for further term(s) as agreed by the Parties in writing”.

Or

“After the initial term, the Agreement/ MoU shall be automatically renewed for an equal term until it is terminated by either of the Parties”.

Concluding and Signature Clauses

“IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Treaty

Done at _____ on _____ day of _____ 20-- in two originals, each in the Hindi, _____ and the English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

Or

Signed/Done at _____ on _____ day of _____ 20-- in two originals in the English language.

*FOR THE GOVERNMENT OF
THE REPUBLIC OF INDIA*

*FOR THE GOVERNMENT OF THE
_____*

Name:

Name:

Designation:

Designation:
