

authorized by the courts of the state of origin — usually by commission or by appointment as an examiner to take evidence abroad;

METHOD II: Taking of evidence by the courts of the state of execution, pursuant to letters of request;

METHOD III: Taking of evidence by an examiner appointed and authorized by the courts of the state of execution, pursuant to letters of request.

If it is intended to have evidence in a particular state taken by a Commissioner or by appointment of a Special Examiner (Method I), the Department of External Affairs should be consulted to ascertain whether this procedure is authorized in that state. Normally its use is confined to cases where the witness is willing to testify voluntarily. It is an effective method for use when it is desired that the witness should be examined and cross-examined by legal representatives of the parties. In states where the taking of evidence by any person appointed by the courts of the state of origin is not permitted by the domestic law, the procedure of Letters of Request must be used.

In principle, letters of request (Method II) can normally be used in nearly every state of the world. The letters are addressed to the "competent authorities" of the state of execution rather than to a named court. The Department of External Affairs then ensures that the documents are transmitted by its Embassy to the proper tribunal in the state of execution. The documents should be transmitted with at least one extra copy thereof, together with an undertaking to pay costs to the Department of External Affairs. If the parties are represented by legal agents in the state of execution, their names and addresses should also be provided. Where they are not so represented, the documents should be accompanied by complete interrogatories and cross-interrogatories. The authorities in the state of execution exercise compulsory powers and the testimony may be subject to local perjury laws. It may be difficult to ensure that evidence taken by this method will be taken in accordance with the procedural rules of a particular province. It may also involve considerable delay. Thus, the use of this method is confined to cases where a witness may need to be compelled to testify.

Method III combines the advantages of the first and second procedures. If it is available, and if there is doubt as to the willingness of the witness to testify, it should be adopted.