

Liability of Government of India in respect of contracts relating to commercial activities abroad of Indian public sector undertakings-Immunity from jurisdiction of foreign courts-insertion of a clause in such contracts regarding. (DPE O.M. No. 16(10)/90-



CHAPTER XII MISCELLANEOUS

10. DPE/Guidelines/XII/10 Liability of Government of India in respect of contracts relating to commercial activities abroad of Indian public sector undertakings — Immunity from jurisdiction of foreign courts — insertion of a clause in such contracts regarding.

The undersigned is directed to state that a few cases have come to notice in which Indian Public Sector Undertakings (PSUs) have been sued in courts of USA and other countries where Government of India have been dragged into litigation. The most recent case of this nature is the civil suit filed by M/s Woodstock Energy Inc. Texas against Minerals and Metals Trading Corporation of India Ltd. (MMTC). Government of India has been dragged into the litigation on the ground that the PSUs like MMTC are alter egos' of the Government of India and there exist a principal—Agent relationship.

2. To avoid recurrence of such cases in future, various remedial measures have been considered by the M/o Commerce in consultation with the M/o External Affairs, M/o Law and the Attorneys in USA. As a result of protracted deliberations, it has been suggested that the following clauses should be incorporated by PSUs while entering into contracts with USA/other foreign companies:

"It is expressly understood and agreed by and between (the corporation) and ----- (the Indian PSU) that ----- (the Indian PSU) is entering into this agreement solely on its own behalf and not on behalf of any other person or entity. In particular, it is expressly understood and agreed that the Government of India is not a party to this agreement and has no liabilities, obligations or rights hereunder. It is expressly understood and agreed that ----- (the Indian PSU) is an independent legal entity with power and authority to enter into contracts solely in its own behalf under the applicable Laws of India and general principles of Contract Law. The (company) expressly agrees, acknowledges and understands that ----- (the Indian PSU) is not an agent, representative or delegate of the Government of India. It is further understood and agreed that the Government of India is not and shall not be liable for any acts, omissions, commissions, breaches or other wrongs arising out of the contract. Accordingly, (corporation) hereby expressly waives, releases and foregoes any and all actions or claims, including cross claims, impleader claims or counter claims against the Government of India arising out of this contract and convenients not to sue the Government of India as to any manner, claim, cause of action or thing whatsoever arising of or under this agreement".

3. All the administrative Ministries/Departments concerned with Public Sector Undertakings are, therefore, requested to bring the foregoing to the notice of PSUs under their administrative control and advise them to adopt the clause mentioned in para 2 above mutatis-mutandis in entering into contracts with American/foreign companies. It would be relevant to mention here that incorporation of the above clause will not provide an impeachable guarantee against Government of India or any

other Public Sector Undertaking than the one contracting with the U.S. Company. However, this clause may enable Government of India or their PSU concerned to at least make out an agreeable case to the effect that US Company had waived its right to sue the Government of India and other PSUs, which are not parties to the contract.

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