

A PRIMER ON SERVICE OF PROCESS ABROAD

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I. INTRODUCTION: THE HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

Any attempt to effect service of process in a foreign state must take into consideration both the legal system of the requesting state and the legal state of the requested state. The Hague Conference, and the resulting Hague Service Convention, attempts to bridge the differences between the two systems.

The Hague Conference on Private International Law (Hague Conference) is an intergovernmental organization established “to work for the progressive unification of the rules of private international law” first convened in 1893.

The principal method used to achieve this purpose involves the negotiation and drafting of multilateral treaties, which are often referred to as “Hague Conventions.”

There are sixty-two Member States to the Hague Conference.

To date, sessions of the Hague Conference have resulted in at least thirty-two “Hague Conventions.”

This presentation addresses the fourteenth of the Hague Conventions: the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the Hague Service Convention).

II. THE HAGUE SERVICE CONVENTION.

There are forty-eight contracting states to the Hague Service Convention. Not all contracting states are member states and not all member states are contracting states.

One of the primary purposes of the Hague Service Convention is to establish, simplify, and expedite methods through which litigants can achieve service of process abroad.

III. SERVICE OF PROCESS PURSUANT TO THE HAGUE SERVICE CONVENTION.

If judgment enforcement is to be sought abroad, both the law of the forum state and that of the state where enforcement is to take place must be satisfied.

For service of process in contracting states, satisfying both state’s laws can be achieved by compliance with the Hague Service Convention.

The Hague Service Convention establishes specific procedures to be followed in accomplishing service of process. Its purpose is to give notice, not grant jurisdiction. Personal jurisdiction must be established according to long-arm statute or federal statute.

A. Use of Central Authorities

Pursuant to the terms of the Hague Service Convention, each contracting state must designate a “Central Authority” to receive requests for service from other contracting states.

Use of the receiving state’s Central Authority is an assured method for securing valid service.

1. **Central Authorities.**

A litigant may serve process upon a citizen of one of the contracting states by submitting a request to the foreign state’s designated Central Authority.

2. **Procedure For Requesting, Obtaining, And Effecting Service:**

a. Step 1: complete the following standardized forms, printed in English or French:

- (1) Request for Service Abroad and
- (2) Summary of Documents to be served
- (3) Reference to U.S. statutory authority to serve the document should be included prominently on the request form

b. Step 2: transmit the following documents, in duplicate (one original and one copy) directly to the foreign state’s Central Authority:

- (1) The completed forms;
- (2) The documents to be served; and
- (3) Any appropriate translation of the documents to be served.

c. Step 3: after receiving a proper request for service, the receiving state’s Central Authority then serves the documents upon the designated recipient.

Most states take from **thirty to ninety days** to effect service—the Hague Service Convention does not impose an obligatory time frame.

Practice tip: Be aware of state laws regarding time periods for effecting service. In 1994 Wisconsin appellate decision affirmed dismissal of complaint by trial court for failure to effect timely service within 60 days.

d. Step 4: when service is complete, the Central Authority returns a Certificate of Service to the requesting party.

Transmitting documents to Central Authority does not mean service has been achieved—Central Authority has to serve defendant to complete service.

When service is successful, this Certificate constitutes proof of service.

Using a state’s Central Authority is not necessarily the only method by which service in a foreign state may be accomplished. Other methods are often still available in some states.

B. Alternative Methods of Service.

The Hague Service Convention also authorizes service of process via the following methods when there has been no objection by the receiving state:

1. Voluntary Acceptance Of Service. (Article 5)

The Hague Service Convention does not interfere with service of process upon an individual who accepts service voluntarily.

2. Service By The Sending State’s Diplomatic Or Consular Channels. (Article 9)

A contracting state may use its own diplomatic or consular agents to serve foreign defendants.

A contracting state may also use its diplomatic or consular agents to forward documents to designated authorities in the receiving state who, in turn, serve process on the appropriate parties.

3. Service By Postal Channels Or By The Receiving State’s Judicial Officers, Officials, or Other Competent Persons. (Article 10A Through C)

In some circumstances, in the absence of objection by the receiving state, parties may transmit judicial documents via the postal channels or through judicial officers, officials, or other competent persons (e.g., process servers) in the receiving state.

Service by international registered mail may generally be used to effect service in have not objected to this means of service.

“Send” (10A) versus “service” (10B-C)

Bankston—service does not equal sending by mail. Sending of subsequent documents after service via Central Authority is permitted.

Ackerman/Mommsen—poor drafting send equals service; that is, service by mail is authorized under Article 10A.

Note: Article 19 allows alternative method of transmission of service of process to the extent the internal laws of a contracting state to the Convention allows method of transmission other than the ones prescribed by the Convention. Query: Should transmission via e-mail be permitted.

Do not use personal service by attorneys—can lead to counter-suits, such as malicious trespass or criminal indictment as in the case of an SEC staff counsel who tried to serve an administrative subpoena in France.

4. Collateral agreements between states.

Contracting states may enter into independent side agreements as to methods of service other than those provided for in the Convention.

C. Limits on Application of the Service Convention.

The Hague Service Convention does not apply in the following circumstances:

1. When The Address Of The Person To Be Served Is Unknown, Incomplete, Or Incorrect.

A Central Authority may refuse to effectuate service if there is any discrepancy between the name used in the Request for Service and the official name of the addressee.

The party seeking service should always use the exact name of the person or party to be served.

2. Criminal Matters Excluded.

The Hague Service Convention does not apply in criminal cases.

3. When Resorting To Convention Is Unnecessary.

The terms of the Hague Service Convention indicate that the Convention applies only “where there is occasion to transmit a judicial or extrajudicial document for service abroad.”

If service can be achieved within U.S. borders, the “occasion to transmit” does not arise.

IV. STATE OBJECTION TO PARTICULAR METHODS OF SERVICE.

A. Effect of Objections.

The terms of the Hague Service Convention allow a contracting state to “object” to certain methods of transmission of service.

Official objection to a method of service vitiates service of process in the objected-to manner. Absence of official objection does not mean receiving state will deem service valid—means it did not consider such service an infringement; i.e., Japan, Article 10A, sending process by mail.

Where a contracting state formally objects to all non-Convention methods of service of foreign documents in its territory, service through that state’s Central Authority is the exclusive method available to secure valid service in that state.

B. Specific Objections: When Not To Use A Particular Method Of Service.

1. Postal Channels (Mail).

The following states object to service via postal channels. Service by registered mail should not be used in these states:

Argentina,	Poland,
Bulgaria,	San Marino,
China,	Slovak Republic
Czech Republic,	(Slovakia),
Egypt,	Korea,
Germany,	Sri Lanka,
Greece,	Switzerland,
Latvia,	Turkey,
Lithuania,	Ukraine,
Mexico,	Venezuela.
Norway,	

Although Japan has not declared “formal objection” to service by mail, service in this manner is also not recommended in Japan.

Japan objected to the much more formal modes of service by Japanese officials available in Article 10B and C.

The U.K. has not objected to Article 10 and permits service by international registered mail.

2. Objections To Use Of Service Through The Receiving State's Judicial Officers Or Officials.

a. General Objection

The following states object to service through the judicial officers, officials, or other competent persons (e.g., process servers) in the receiving state:

Argentina,
Japan,
Ireland,
Botswana,
Bulgaria,
China,
Czech Republic,
Slovakia,
Greece,

Korea,
Lithuania,
Mexico,
Norway,
Poland,
Ukraine,
Sweden,
Switzerland,
San Marino.

b. Limited objection

In a few states, service through the receiving state's judicial officers, officials, or other competent persons (e.g., process servers) is valid only when the service is made by the sending state's judicial officers, officials, or other competent persons (e.g., process servers). These states are:

Sri Lanka,
Pakistan,
Denmark

These three states only refuse to recognize service upon in-state judicial authorities when made by unauthorized or unofficial out-of-state parties or persons.

3. Objections To Use Of The Sending State's Diplomatic Or Consular Channels. (Article 8)

The following states have objected to the use of the receiving state's diplomatic or consular agents as a means of effecting service on foreign defendants:

Czech Republic,
Egypt,
Greece,
Korea,
Lithuania,
Luxembourg,
Mexico,
Norway,

Poland,
Slovakia.
Pakistan,
Ukraine,
Switzerland,
San Marino,
Germany.

4. When The Central Authority Is The Exclusive Method Of Permissible Service.

In some states, use of the state Central Authority may be the exclusive method through which valid service of process can be ensured.

Service by mail, consular, or diplomatic channels is **not valid** in the following states:

Germany,
Egypt,
Norway,
Poland,
San Marino,

Switzerland,
Czech Republic,
Greece,
Korea,
Lithuania.

C. **Note on Translation.**

Some contracting states require translation of the documents to be served; i.e., Summons and Complaint.

If one uses the Central Authority for service, the documents (Summons and Complaint only) must be translated into the official language of the country. Remaining documents may be in English or French.

Translation of the Request for Service form, although not required, may expedite service in some states.

V. SERVICE IN NON-CONTRACTING STATES

A. **Personal Service:**

Prior to attempting personal service in a non-contracting state, it may be prudent to consult local foreign counsel on this point.

Information as to retaining counsel in a foreign state is available through the U.S. State Department and can also be obtained from the U.S. Embassy offices in that state.

B. **Letters Rogatory:**

Letter from U.S. court to court in foreign country asking for assistance.

Latin America—inter-American convention on letters rogatory.

Involvement procedure—issued under seal—signed by judge—clerk certifies that the judge is the judge and the judge certifies that the clerk is the clerk—documents need to be authenticated by numerous handling agencies.

Requires translation.

VI. CONCLUSION

Questions pertaining to the validity of service of process should be addressed and resolved early in the litigation process.

By following prescribed procedures under the Hague Service Convention, seeking the assistance of governmental authorities when appropriate, and consulting local counsel when necessary, potential problems pertaining to service abroad should be avoidable.

VII. PRACTICE HINTS

- A. **Plan ahead.** Do the documents need to be translated? Consider having the Complaint and Summons translated prior to filing to allow faster delivery to Central Authorities who can then make service.
- B. **Consider using foreign local counsel.** Counsel in the foreign jurisdiction will know the ins and outs of the domestic service rules.
- C. **Know the local U.S. Marshal's Office number and headquarters in case you have any questions.** U.S. Marshal service (202) 307-9110.
- D. **Consider serving a U.S. subsidiary or local employee.** Volkswagen AG v. Schlunk holds that if state law provides that service on domestic subsidiary is service on foreign parent corporation through means of agency, then service on foreign parent through domestic subsidiary is proper.
- E. **Consider whether the president or other officer of a domestic subsidiary is an officer or director of the foreign parent.** Service on the officer or director of the foreign corporation while temporarily in the forum state, be he in transit or otherwise, is good service.
- F. **If a federal question is the basis for the cause of action, look at the statute giving rise to the cause of action.** Sometimes the statute will govern service. Examples: Clayton Act, Securities Acts of 1933 and 1934, Patent Act.
- G. **Consider using a corporation that specializes in service abroad on foreign entities, such as APS International, Limited.**
- H. **If all else fails, read the Articles of the Convention.**