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Serving Documents Overseas: A Quick Guide

Serving documents outside the jurisdiction requires added due diligence and careful research. After all, improper foreign service could result in the document being dismissed with prejudice in the foreign jurisdiction. In extreme circumstances, the sovereignty of the foreign state may be violated, resulting in that state initiating a formal diplomatic note of protest. Thus, this article provides a practical guide for serving documents between countries where the Hague Service Convention applies.

A. The Hague Service Convention (The Convention)

I. About the Convention

The Convention is a multilateral treaty on international judicial assistance. It reconciles the differing service practices of most civil and common law countries

by providing procedures and service methods to transmit both judicial and extrajudicial documents for service in other member states.

Before considering the Convention, consider the following questions:

- **Are you and the party you wish to serve in a state that is a party to the Convention?** The full list of countries is available on the “Service” section of the Hague Conference on Private International Law’s website. If this is the case, then the Convention applies.
- **Is your matter limited to “civil or commercial matters?”** Article 1 of the Convention provides it only applies “in civil or commercial matters.” As a measure of best practice, we recommend using the receiving state’s understanding of this phrase.

II. Complying with the Service Convention

Generally speaking, where it applies, the Convention requires applicants to lodge an application requesting Foreign Service, consisting of:

1. A Letter of Request,
2. A Summary of Documents to be Served;

3. A blank Certificate of Service (the “Service” section of The Hague Conference on Private International Law’s website contains a template, though each country may have particular templates); and
4. Two copies of all the documents to be served, alongside certified translations, where necessary.

We recommend the following steps:

- **Step One – Prepare a Letter of Request:** Most jurisdictions provide a Model Form for the Letter of Request; otherwise, one can be found at the Hague Conference’s official website. A proper Letter of Request contains several elements, as detailed below.
 - a. **“Central Authority.”** Under the Convention, all contracting states must assign a Central Authority that accepts incoming requests for service. These details are available under each State’s “Practical Information” page of the Hague Conference website. The Letter of Request should be addressed to the receiving state’s Central Authority or relevant additional authority (if permitted by that state), called the

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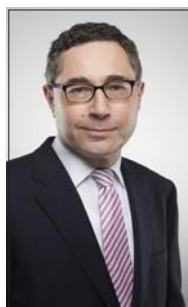
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Receiving Authority. Additionally, the identity and address of your state's Central Authority should be included, called the Forwarding Authority Requesting Service. The letter of request should not contain yours or your client's contact details.

b. Language. The Letter of Request must be filled out in English, French or one of the official languages of the receiving state.

c. Name and Address. The Convention also requires the name and address of the party to be served to be known and written in the Letter of Request.

d. Method of Service. Several service options are available, as follows:

- **Option One – in accordance with subparagraph (a) of the first paragraph of Article 5 of the Service Convention.** This option is ideal if the documents are to be served by a method prescribed by the internal law of the requested country (formal service). However, note that costs may be incurred if a judicial officer or a person competent under the receiving country's laws (e.g. a process server) are employed to effect service.
- **Option Two – in accordance with subparagraph (b) of the first paragraph of Article 5 of the Service Convention.** This option should be selected if the documents are to be served by a particular method proposed by the applicant. As the onus is on the applicant to explain that particular method, the specific method must be clearly described in as much detail as possible, including what costs are likely to be incurred.
- **Option Three – in accordance with the second paragraph of Article 5 of the Service Convention.** This option is best suited for scenarios where the addressee is likely to voluntarily accept the judicial document (informal delivery. Documents being served under Option 3 may not need to be translated.

e. List of Documents. These documents must include the documents to be served (and their translations if necessary), the certificate of service, and the summary of the documents to be served.

- **Step Two – Prepare Necessary Translations:** Translation requirements ultimately vary between states (information which can be found online on the receiving State's "Practical Information" page from the Hague Conference website). Otherwise, assume all documents must be filled out either in English or French.
- **Step Three - Certificate of Service:** Although the "Service" section of the Hague Conference website contains a template of this certificate, most states have particular requirements and templates. What is consistent across all states is the requirement for the Certificate to be blank, as it can only be filled in upon service to the receiving state.
- **Step Four – Summary of Documents to be Served:** This document must distinguish between judicial and extrajudicial documents, with as much detail as possible being provided about each document.
- **Step Five - Additional Considerations:** Ensure that all other requirements are met. For instance:
 - a. Two copies of all documents to be served are usually needed in your application. However, depending on your state, three copies may be provided. For any avoidance of doubt, consult the "Practical Information" page on the Hague Conference website of both your State and the receiving state.
 - b. Check whether your state requires an undertaking that you or your client will be liable for all costs in making this request, as some states require this of the applicant.
- **Step Six – Receive Leave:** As your state's Central Authority is the one that serves as the Forwarding Authority for your application (that is, they are the ones to process your request and forward it

to the Receiving Authority), some states require you to receive leave domestically before they refer your application to the Forwarding Authority. For instance, Australian applicants must first receive leave from their Supreme Court before the registrar refers the application to the Forwarding Authority. Refer to your state's relevant legislation for this process.

Once this is done, and assuming the Forwarding Authority is satisfied with the application, the application is transmitted to the receiving state's Central Authority, additional authority, or other authority. That foreign authority processes the request and attempts service in accordance with their domestic laws, before providing formal confirmation on the service's outcome.

B. Alternatives

Should the forwarding or receiving state not be a party to the Service Convention, alternative methods of foreign service may include:

1. **Bilateral Treaties:** Depending on your state, you might be able to lodge an application for a request for service under a bilateral treaty. In those instances, the steps may be similar, but check the details.
2. **Diplomatic Channels:** Should your state and the would-be receiving state neither be party to the Service Convention nor parties under the same bilateral treaty, a foreign authority might accept judicial documents for service via diplomatic channels. However, significant time for delays should be allowed for this option, as service through such channels may face challenge from receiving states who may see the incoming document as an impeachment of their state's sovereignty. In other instances, service may be restricted to citizens of your state only. Therefore, we consider this particular alternative a last resort. Also, you need to see whether the courts in your state are empowered to recognize service in this manner.

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