

The Office of International Judicial Assistance (OIJA), acting through its contractor Process Forwarding International (PFI), also known as ABC Legal, plays a very limited role with regard to requests for service of documents coming from the United States to be served upon persons or entities in foreign countries. Below we summarize some of the options, but it is the sole responsibility of parties within the United States to make all arrangements for the service of documents outside of the United States.

I. SERVICE ABROAD BY A CENTRAL AUTHORITY UNDER THE HAGUE SERVICE CONVENTION

The Hague Convention on Service Abroad of Judicial or Extrajudicial Documents (Hague Service Convention) entered into force in the United States in 1969. It provides for effective, expeditious, and inexpensive service of American judicial documents in civil or commercial cases on individuals, companies, or foreign governments and their instrumentalities abroad, to the extent the foreign government permits service under the Convention. It does NOT apply to documents relating to criminal cases.

Under United States law, attorneys representing parties in courts within the United States are competent authorities to prepare and submit requests for service going to foreign Central Authorities. See Rule 4 of the Federal Rules of Civil Procedure (FRCP); Holloway v. Arkansas, 435 U.S. 475 (1978); see also Charleston Aluminum, LLC v. Ulbrinox S. De R.L. de S.V., No. 3:12-2389-MBS, 2013 WL 152895 (D.S.C. Jan. 15, 2013); Coombs v. Iorio, No. CIV-06-060-SPS, 2008 WL 4104529 (E.D. Okla. Aug. 28, 2008); Marschauser v. Travelers Indemnity Co., 145 F.R.D. 605, 607 (S.D. Fla.1992).

A party desiring to serve judicial documents relating to a state or federal proceeding under The Hague Service Convention should take the following steps.

1. Determine whether the country in which service is to be made is a party to the Convention. For a listing of all countries that are parties to the Hague Service Convention see: http://www.hcch.net/index_en.php?act=conventions.status&cid=17. The Convention is, as noted, only available for documents to be served in civil or commercial cases.
2. Read the Convention. Its text is short and clear, and will provide answers to the questions which are most frequently asked concerning the procedures to be followed. The full text of the Hague Service Convention can be found at http://www.hcch.net/index_en.php?act=conventions.text&cid=17.
3. Obtain a copy of the Hague request form that must accompany a service request pursuant to Article 3 of the Convention. See http://www.hcch.net/index_en.php?act=text.display&tid=47.

A. Instructions For Completing The Request Form

The “Request” Page:

- (a) “Identity and address of the applicant:” Enter the name and address of the applicant (or requesting authority) who will be forwarding the request to the foreign Central Authority for execution. As noted above, typically under United States law, the applicant will be the attorney for the party making the service. Other competent requesting authorities under United States law include persons authorized to serve a summons and complaint under the rules of procedure of the state or federal court where the case is pending. Please note that under the Federal Rules of Civil Procedure and most state court rules a *pro se* party is not permitted to serve a summons and complaint. Accordingly, a *pro se* party is NOT a competent requesting authority for purposes of a request for service under the Hague Service Convention. In such cases, the clerk of the court or other appropriate official who is authorized to serve the complaint domestically should prepare and submit the request for service.
- (b) “Address of receiving authority:” Enter the name and address of the Central Authority for the country where the person or entity to be served resides. The names and current mailing address for the foreign Central Authorities can be found at:
http://www.hcch.net/index_en.php?act=conventions.authorities&cid=17.
- (c) Enter the full name and address of the person or entity to be served in the blanks left for the addressee. If available, the date of birth of a person to be served should be included.
- (d) Check box to indicate the method of service which is sought. Check “a” if service is to be made in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention, which provides for service in accordance with the internal law of the receiving authority. Check “b” if a particular method service is requested (not otherwise incompatible with the internal law of the receiving authority), as permitted by sub-paragraph (b) of the first paragraph of article 5 of the Convention. Under box “c,” the foreign Central Authority may process a service request under the second paragraph of Article 5 (i.e., service by “delivery to an addressee who accepts it voluntarily”) where no translation accompanies the request.¹ However, effective service under this method

¹ Since most countries view service of process in terms of providing effective notice, and since notice will not be effective where the person served cannot understand the documents because they are written in a foreign language, we strongly recommend the documents to be served be accompanied by translations, unless it is known that the recipient is familiar with the English language. At the very least, the documents to be served should be accompanied by a translated summary of their contents so the recipient

will depend upon voluntary acceptance of the documents by the person to be served - a method rarely, if ever, used in this country but frequently resorted to by courts in civil law countries.

- (e) In the space provided, list all of the documents which are attached to the form and all of the documents that are to be served.
- (d) The applicant should sign and date the Request Page. It is strongly urged the applicant include at the bottom of the Request page a citation to the particular federal or state rule of civil procedure evidencing the applicant's authority to forward the request for service.

The "Certificate" page: LEAVE BLANK – This page will be completed by the receiving country's Central Authority.

The "Warning" page: This page is recommended but not required.

The "Summary Of The Document To Be Served" page:

- (a) Enter the appropriate information on the "Summary" portion of the Form. The applicant is the requesting authority.
- (b) When service is sought in a non-English speaking country under the first full paragraph of Article 5 (i. e., service "by a method prescribed by its internal law for the service of documents in domestic actions" or "by a particular method requested by the applicant"), the Central Authority of the foreign country may require that the English-language documents be accompanied by a translation into the language of that country. Consult the declarations of the ratifying countries under the Convention.

B. Execution Under The Hague Service Convention

- (a) The completed form (in duplicate) together with duplicate copies of the documents to be served (and any necessary translations) - the completed "Request" Form on top - should be directly mailed to the Central Authority in the foreign country. No transmittal letter or other formality is necessary.
- (b) Unless otherwise specified by the receiving country's Central Authority, it is not necessary that payment accompany the request. Under Article 12 of the Convention, the services performed by the Central Authority are free. However, the applicant may be billed for expenses incurred by the foreign judicial official or other competent person to effect service utilized by the Central Authority or for costs which may result from the use of a

is placed on notice concerning such essential elements as the origin and nature of the documents and the time limits for entering an appearance or making a reply.

particular method of service requested. Article 12. The Central Authority will inform the applicant of any charges involved, and will specify the manner of payment. It is important that the applicant pay such bills promptly. The United States, for example, utilizes a private process server to execute incoming Hague service requests. As permitted by Article 12, that contractor charges a fee that must be paid by the foreign applicant or requesting authority.

- (c) After service has been made by the Central Authority in the foreign country, one copy of the documents served and the executed “Certificate” will be returned to applicant. It is prima facie evidence of proper service. Northrup King Co. v. Compania Productora Semillas Algodoneras, 51 F.3d 1383 (8th Cir. 1995).
- (d) The Convention does not prescribe the time within which service is to be made. (In its capacity as Central Authority for the United States, the OIJA requires PFI to execute foreign service requests within six weeks.) Experience teaches that the processing of foreign service requests varies considerably from country to country; follow-up or status inquiries should be sent directly to the Central Authority in the foreign country only if no response is received within a reasonable period of time (45 to 60 days).

II. SERVICE ABROAD UNDER THE INTER-AMERICAN CONVENTION

Although more limited in its geographic scope, the Additional Protocol to the Inter-American Convention on Letters Rogatory (“Additional Protocol”), like the Hague Service Convention, provides for effective, expeditious, and inexpensive service of American judicial documents in civil or commercial cases. It does NOT apply to documents relating to criminal cases.

As with the Hague Service Convention, anyone competent to serve under FRCP 4 is a competent authority for purposes of the Additional Protocol. In contrast to the Hague Service Convention, however, a Request for service under the Additional Protocol must bear the signature and seal of the court where the United States action is pending and of the United States Central Authority, acting through its contractor PFI.

A party desiring to serve judicial documents relating to a state or federal proceeding under Additional Protocol should take the following steps.

1. Determine whether the country in which service is to be made is a party to the Convention. See <http://www.oas.org/juridico/english/sigs/b-36.html>
2. Read the Convention. The full text of the Additional Protocol can be found at <http://www.oas.org/juridico/english/treaties/b-46.html>.

3. Obtain a copy of the Inter-American request form that must accompany a service request pursuant to that Convention. The form is entitled Form USM-272. See <http://www.hagueservice.net/forms/USM-272-frm.pdf>.

A. Instructions For Completing The Form USM-272

The Form USM-272 is fairly self-explanatory. Here, we merely summarize the requirements. It is incumbent upon the requesting party to properly complete the Form.

Form A:

- (a) Enter the name and address of the requesting judicial or other adjudicatory authority (requesting authority) forwarding the request to the foreign central authority for execution in Box 1. The Additional Protocol requires the Form bear the seal and signature of the requesting judicial or other adjudicatory authority in the United States. The clerk of the judicial or other adjudicatory authority where the action is pending must place their seal and signature on the form where it reads “Signature and stamp of the judicial or other adjudicatory authority of the state of origin” on page 2.
- (b) Enter the parties and United States docket number in Box 2, and the name and address of the “Central Authority” for the country where the person or entity to be served resides in Box 4. Designated Central Authorities can be found on <http://www.oas.org/juridico/english/sigs/b-46.html>.
- (c) Box 3 relates to the OIJA, through PFI, as the United States Central Authority for service-related matters. PFI will execute the signature/stamp of Central Authority of the “State of Origin,” as required on page 2.
- (d) Enter the name and address of the requesting party in Box 5 and of counsel in Box 6. As discussed above, typically the attorney for the party making the service is competent to place the request. Other competent authorities under United States law include anyone authorized to serve a summons and complaint under the rules of procedure of the state or federal court where the case is pending.
- (e) Enter the full name and address of the person or entity to be served in the blanks left for the addressee on page 2. In the space provided under B on page 2, list all of the documents which are attached to the form and all of the documents that are to be served. Note, the Additional Protocol requires submission in triplicate of Form 272 and the documents to be served and requires translation of documents to be served.
- (f) Indicate on page 2 the method of service which is sought.

Form B:

Enter the appropriate information concerning the person or entity to be served, the nature of documents being served, and any time limits for entering an appearance or making a reply.

Form C – the Certificate of Execution:

- (a) LEAVE BLANK – This page will be completed by the receiving country’s Central Authority.

B. Execution Under The Inter-American Convention

- (a) The completed forms in triplicate, together with triplicate copies of the documents to be served and translations, should be delivered by the party to PFI, which will date and sign/stamp the Form in the bottom right-hand corner of page 2.
- (b) The Request – with the completed “Request” form on top – is sent by PFI to the Central Authority in the foreign country.
- (c) Consult the foreign country’s Central Authority to determine whether payment to that Central Authority should be included.
- (d) After service has been made by the Central Authority in the foreign country, one copy of the documents served and the executed “Certificate” will be returned. Service request under the Additional Protocol may take from six months to a year to execute.

III. SERVICE IN COUNTRIES WITH WHICH THE UNITED STATES HAS NO TREATY ARRANGEMENT

- (a) Absent a treaty, service abroad must be made in accordance with domestic law regulating extraterritorial service, and in a manner which will comport with the laws of the foreign country in which the document is to be served. A note of caution is in order here: service of judicial documents is regarded in civil law countries as the performance of a judicial sovereign function, and the laws of some countries make it an offense for foreign officials to perform, without express permission from the local government, such judicial sovereign functions within their territories. In such states, service might be authorized using a privately-engaged person in the receiving state. American litigants may wish to consult with local foreign counsel to ensure service is properly effectuated without violating state sovereignty. Alternatively, service by means of a Letter of Request may be the best option, though such mechanisms are not the most expedient.

- (b) Under our federal system, we have both federal courts and state courts, each with their own rules. Service in a foreign country in actions pending in Federal courts is governed by FRCP 4(f), which provides various methods of service:
1. In the manner prescribed by the foreign country for service in that country in an action in any of its courts of general jurisdiction (FRCP 4(f)(2)(A));
 2. As directed by the foreign authority in response to a Letter of Request (FRCP 4(f)(2)(B));
 3. Unless prohibited by the laws of the foreign country,
 - a. By personal delivery abroad (FRCP 4(f)(2)(C)(i));
 - b. By any form of mail, requiring a signed receipt to be addressed and dispatched by the clerk of the court to the party to be served (FRCP 4(f)(2)(C)(ii)); or
 4. As directed by order of the court (FRCP 4(f)(3)).
- (c) The decision as to which method of service should be employed will depend on the circumstances of each case and the laws of the foreign country. Where permitted by foreign law, service by international registered mail with a return receipt undoubtedly offers the least expensive and most expeditious method of serving judicial documents abroad. As noted above, however, many civil law countries regard service, including service by mail, a judicial sovereign function and thus may consider service by mail an infringement upon their sovereignty.² Additionally, service by mail may prove unsatisfactory because of the addressee's negligent or deliberate failure to return the receipt. If service by mail cannot be accomplished, service may be attempted by personal delivery (e.g., by a foreign attorney or a private process server), provided the law of the country of execution permits it; otherwise a Letter of Request, which will be generally honored abroad on the basis of comity and international courtesy, should be issued. Note, some countries require an authentication of the seal of the United States court to satisfy their courts of the authenticity of a foreign Letter of Request.
- (d) Service of process abroad on behalf of litigants in this country is not a function of United States diplomatic or consular missions. Under existing regulations, Foreign Service Officers are specifically prohibited from serving legal process except when expressly authorized to do so by the

² For example, service by registered mail should not be used in the following countries which have objected to the method described in Article 10(a) of the Hague Service Convention: Argentina; Bulgaria; the People's Republic of China; Croatia; the Czech Republic; Egypt; Germany; Greece; Hungary; Iceland; India; Japan; the Republic of Korea; Kuwait; Lithuania; the Former Yugoslav Republic of Macedonia; Mexico; Norway; Poland; the Russian Federation; San Marino; Serbia; Seychelles; Slovakia; Sri Lanka; Switzerland; Turkey; Ukraine; and Venezuela.

Department of State. See 22 C.F.R. § 92.85. American Foreign Service Officers stationed abroad may however furnish to courts and litigants information available concerning local procedures for serving process, lists of local attorneys, etc.