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Re: Attorneys as Competent Forwarding Authorities under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters Pursuant to U.S. Law

The Office of International Judicial Assistance (OIJA) serves as the United States Central Authority pursuant to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention" or "Convention"). OIJA provides this guidance regarding attorneys acting as competent forwarding authorities under U.S. law.

As is well-established, it is the law of the Requesting State that determines the competence of forwarding authorities. Conclusions and Recommendations of the Special Commission, ¶ 86 (July 2024), *available at* https://assets.hcch.net/docs/6aef5b3a-a02c-408f-8277-8c995d56f255.pdf. *See also* Explanatory Report, Hague Conference on Private Int'l Law, *Actes et documents de la Dixième session (1964)*, Tome III, *Judicial cooperation*, at 368 (The Hague, Imprimerie Nationale 1965) [hereinafter "Explanatory Report"] ("En ce qui concerne les avocats il appartient à la *lex magistrus* de préciser s'ils ont la possibilité de s'addresser directement à l'Autorité centrale."). Indeed, the Practical Handbook on the Operation of the Service Convention specifies that the "Requested State does not play a role in determining the competence of the forwarding authority in the Requesting State and cannot apply its own domestic rules to verify this." Hague Conference on Private Int'l Law, *Practical Handbook on the Operation of the Service Convention* ¶ 190, at 126 (5th ed. 2025).

Article 3 of the Convention sets forth minimal standards for forwarding authorities. These forwarding authorities must meet just two criteria. First, a forwarding authority must be an "authority" or "judicial officer." Convention, art. 3. Second, such authority or judicial officer must be "competent under the law of the State in which the documents originate." *Id.* Attorneys in the United States meet both of these criteria.

First, licensed attorneys are unquestionably "judicial officers" in the United States. For more than a century, the United States Supreme Court has recognized that attorneys admitted to practice law are "officers of the court" and their duties "relate almost exclusively to proceedings of a judicial nature." *Ex parte Garland*, 71 U.S. 333, 378-79 (1866) (internal quotation marks and citations omitted). An attorney licensed to practice in the United States is a "member of the bar" and enjoys a "kind of monopoly granted only to lawyers." *In re Snyder*, 472 U.S. 634, 644 (1985). Upon admission, an attorney becomes "an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *Theard v. United States*, 354 U.S. 278, 281 (1957) (internal quotation marks and citations omitted). In this capacity, U.S. attorneys

commonly undertake actions that may be reserved exclusively to the judiciary in other jurisdictions. *E.g.*, *id.* ("[A]s an officer of the court, a lawyer can cause persons to drop their private affairs and be called as witnesses in court, and for depositions and other pretrial processes that . . . may be conducted outside courtrooms.").

Second, lawyers are among those competent to serve judicial documents in civil or commercial matters. This competence may emanate from local rules governing civil procedure in the courts of the various states and territories comprising the United States. It is also authorized by federal law. Specifically, Rule 4(c)(2) of the United States Federal Rules of Civil Procedure permits "[a]ny person who is at least 18 years old and not a party" to serve a summons and complaint, the documents most commonly transmitted abroad for service in connection with U.S. civil or commercial court proceedings.

Attorneys licensed to practice in the United States thus play a role similar to that of English solicitors, who at the time of the negotiations of the Convention were recognized as (1) authorities or judicial officers and (2) competent to serve judicial documents under the law of the Great Britain. Procès-Verbale No. 4, Hague Conference on Private Int'l Law, *Actes et documents de la Dixième session (1964)*, Tome III, *Judicial cooperation*, at 188 (The Hague, Imprimerie Nationale 1965); Explanatory Report at 368 ("Il est bien entendu que le solicitor anglais est inclus dans l'expression autorité ou officier ministériel compétents. Il pourra donc s'adresser à l'Autorité centrale de l'Etat requis.").

Likewise, any attorney licensed to practice in the United States is (1) a "judicial officer" and (2) competent to forward requests for service of judicial documents to Central Authorities pursuant to Article 3 so long as he or she is not also a party to the underlying dispute. This competence does not depend on the attorney's relationship to the parties, including whether the attorney represents any party in the judicial action in which the documents originate. Nor does the attorney's inherent competence require a commission or other specific authorization from the judge issuing the documents to be served due to the attorney's own powers as an officer of the court.

Under U.S. law, additional persons and entities within the United States competent to transmit service requests abroad pursuant to Article 3 include any court official and any other person or entity, such as process servers, authorized by the rules of the adjudicating court. OIJA plays no role in the transmission of requests sent to foreign Central Authorities under Article 3.

Additional questions or concerns may be directed to the U.S. Central Authority by emailing OIJA@usdoj.gov.