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August 4, 2017

Service of Judicial Documents on the United States Government Pursuant to the Inter-American Convention

The United States Department of Justice's Office of International Judicial Assistance ("OIIA") serves as the Central Authority pursuant to the Additional Protocol to the Inter-American Convention on Letters Rogatory ("Inter-American Convention"), to which the United States is a signatory for purposes of legal service of documents. OIIA also serves as the Central Authority pursuant to the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. In addition, OIIA handles service requests received from non-Convention States through diplomatic channels. Unlike service requests directed at private individuals or companies located in the United States, which are executed through OIIA's private contractor, requests for service on the United States Government, which includes its departments, agencies, or instrumentalities, should be sent directly to OIIA. There is no fee for service requests designated for the United States Government. Requests for service on the United States Government should be mailed to OIIA at Office of International Judicial Assistance, U.S. Department of Justice, Benjamin Franklin Station, P.O. Box 14360, Washington, DC 20044.

This document will focus on the process pursuant to the Inter-American Convention but similar guidelines apply for requests received pursuant to the Hague Service Convention.¹

As noted, OIIA is the U.S. Central Authority for the Inter-American Convention. *See* Inter-American Convention, art. 2. The U.S. Central Authority receives and executes requests for service on the U.S. Government, but the Central Authority is not the legal representative or agent of the U.S. Government. Therefore, pursuant to Article 4 of the Inter-American Convention, receipt of a request for service from a foreign court by the U.S. Central Authority is not effective service.² Service is only complete upon receipt of the documents by the appropriate U.S. Government office or agency. Please allow sufficient time for the U.S. Central Authority to serve the appropriate U.S. Government office or agency.

Service on the U.S. Government is only proper when transmitted through diplomatic channels or through Article 4 of the Inter-American Convention by delivery to the U.S. Central Authority. While the United States does not object to service by postal channels for private

¹ *See* Guidance Memo on the Hague Service Convention here: <https://www.justice.gov/civil/service-requests>.

² Additional Protocol to the Inter-American Convention on Letters Rogatory art. 4, S. Treaty Doc. No. 98-27, 58 Fed. Reg. 31,132 (1988) ("The Central Authority in the State of destination shall transmit the letter rogatory to the appropriate judicial or administrative authority for processing in accordance with applicable local law.").

individuals or companies, service on the U.S. Government cannot be effected through postal channels.

Below is an outline of what is required for a proper request for service on the U.S. Government pursuant to the Inter-American Convention. A request must be provided in triplicate, with the complaint or pleading translated into English. *See* Inter-American Convention, art. 3. A completed Mandatory Form (<https://www.justice.gov/civil/page/file/914416/download>) must accompany the request, and also be furnished in triplicate and in English.³ *See* Inter-American Convention, art. 3. Please utilize the most recent version of the Mandatory Form and type in the information. The Mandatory Form must include the full mailing address of the Requesting Authority (i.e., the foreign court). The only proper defendant is the United States of America as departments, agencies, or instrumentalities of the U.S. Government have no legal personality in a foreign state separate from that of the U.S. Government and cannot be sued independently. The documents to be served must include sufficient information about the case, usually in the form of the initial complaint, statement of claim, or similar document in the original language and with English language translations. *See* Inter-American Convention, art. 3. The copies should bear the seal of the judicial or adjudicatory authority that issued the request.

In addition, based on customary international law, the U.S. Government must be afforded 60 days from the date of receipt of service of the documents until the first response, scheduled appearance, and/or hearing date in the foreign state. Given that service is not effective upon delivery of the documents to the U.S. Central Authority, ample time needs to be given for the U.S. Central Authority to serve the appropriate U.S. Government office or agency, which must then be afforded 60 days from the date of receipt of service of the documents until the first response, scheduled appearance, and/or hearing date. For example, if a country's domestic law requires a written response within two weeks of effective service, that requirement must be affirmatively waived in the court documents, affording the U.S. Government the full 60 days from the date of service before a response is due. If a country's domestic law requires a written response to be submitted to the court 10 days before the scheduled hearing date, the hearing date must account for this requirement while still affording the U.S. Government 60 days from the date of service before the written response is due.

Upon evaluating a request for these requirements, the U.S. Central Authority will issue a certificate of acceptance or rejection which will be mailed to the Requesting Authority. Service is only effective and the appropriate notice given if the U.S. Central Authority issues a certificate of acceptance. Service is effective on the date indicated on the acceptance certificate. In cases where the U.S. Central Authority issues a certificate of rejection, service is deemed defective, the U.S. Government is not a party to the litigation, will not file a response or appear at the hearing, and will not recognize the validity of any judgment that might be rendered against the United States of America.

³ INTER-AMERICAN MANDATORY FORM (FORM A, FORM B, AND FORM C), <https://www.justice.gov/civil/page/file/914416/download> (last visited June 12, 2017).