

# Paradigm

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# International Service of Process under the Hague Convention

Late on Friday afternoon, one of your oldest clients calls your office. Your client explains that his Dutch customer has refused to pay more than \$1 million that it owes to your client for the manufacture and sale of certain solar panels that it purchased from your client.

You immediately ask yourself, “How do we sue someone in the Netherlands?” You know this will not be as simple as sending a process server to someone’s place of business with a copy of the complaint. But it is not dramatically more difficult either.

The most relevant international agreement for service of process outside the United States is the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters (the “Hague Convention”). The Hague Convention is a multilateral treaty designed to simplify the methods for serving process internationally. Its aim is to ensure that defendants sued in foreign countries receive timely notice of suit. Many

business clients and practitioners are unaware of the Convention’s nuances, including the methods of service that the Hague Convention affords. Possible approaches to service under the Hague Convention are listed below. It is important to note, however, that the Hague Convention permits countries to opt out of one or more forms of service. You should consult the State Department’s website to confirm that the subject jurisdiction has not opted out of the particular method of service that you are considering.

## Service by Central Authority

Service of your summons is effected by foreign government officials, often the police. All courts in signatory countries regard this form of service as sufficient. Thus, any judgment your client might obtain is fully enforceable. Some countries permit only this type of service of foreign process. You must use proper forms, and all documents, including the summons and the complaint, must be translated into the local language.

To initiate service, obtain a Request for Service Abroad (form USM 94) from the U. S. Marshal’s Service’s website. You are permitted to complete the form as the requesting authority. The completed form, two copies of the papers for service, and translations of all papers are sent to the central authority for the country in question. Be cognizant of translation issues, as you might have to provide the documents in multiple languages. You should consult local counsel in your foreign jurisdiction for guidance. Primerus firms can work together in such cases. Be sure to visit the Primerus website to determine which Primerus firm is located in the jurisdiction where you need to effect service.

The Hague Convention provides for service of process in a manner typically used by the recipient country in domestic actions, which you can select with input from your foreign counsel. You can avoid collateral challenges by selecting a form of service that satisfies



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both the foreign and domestic courts.

The State Department advises that the Request for Service Abroad should prominently display its own authority, namely Rule 4(c) of the Federal Rules of Civil Procedure and, for state court actions, both Rule 4(c) and the local rule or statute. The U.S. Marshal's Service and the State Department can supply you with publications for further information.

### **International Registered or Certified Mail**

Not all signatories to the Hague Convention permit service by mail within their territory. But the mail process is exceedingly simple. Some practitioners, however, have always been nervous about this procedure. If the defendant challenges service, you will be left only to argue that the signature on the green return slip belongs to the defendant or its representative. If the signature on the slip is later denied, any resulting judgment will be subject to attack. Attempting to sustain that judgment could turn out to be a far more expensive and time-consuming task than using another form of service at the outset would have been.

### **Letters Rogatory**

This form of service involves a formal request by your local court addressed to a court in the foreign jurisdiction for issuance of process. Service of the foreign summons is then accomplished by foreign personnel. This procedure is sufficient regarding later enforcement of an American judgment because the summons is issued by the court in the foreign jurisdiction, which has personal jurisdiction over the defendant. It is, however, a complex and time-consuming process. The advantage of the letters rogatory procedure lies in the enforceability of the American judgment in the country where service of process was issued.

This procedure begins in your local court, where you petition for issuance of letters rogatory. Be sure to hire local counsel in the foreign jurisdiction, who can help ensure that your work is acceptable to the foreign court. All the



material must be translated into the language of the destination court. You will incur considerable expense in obtaining good translations, working with foreign local counsel, and paying filing and service fees. Delays are common. This process should be used only when there is no other form of service permitted by the foreign jurisdiction.

Information on procedures involved with letters rogatory and with compliance with the Hague Convention generally is available from the Department of State. Procedures for contacting the attention of the foreign court also vary among countries. You should contact the nearest consulate or embassy of the destination country to learn local requirements.

### **Service in Person by Agent**

Not all signatories permit service in person by an agent within their jurisdiction. With the cooperation of foreign counsel, service can be accomplished face to face, as in the United States. This procedure is a little more complex, however, in that you, working with your foreign counsel, must provide instructions in the foreign language. Paperwork too must be provided in the local language, unless the defendant voluntarily accepts service. The agent serving the process should provide you with a notarized affidavit confirming service.

### **Waiver of Service**

One may simply ask the foreign defendant to waive formal service. This method is extremely efficient when the defendant cooperates. You can use a belt-and-suspenders approach by asking the defendant to execute the waiver in the presence of a United States consular official abroad.

### **Service by Publication**

This is a procedure that involves mailing a notice to a last-known address, which is a step in the process open to factual dispute. All the usual concerns about publication apply, as do questions of proving that the use of such service was appropriate under the circumstances and done correctly.

After you explain all of the service options to your client and the costs and benefits of each, you jointly decide that while service by mail would be the least expensive, it is open to too many potential contingencies. While service by the central authority in the Netherlands will be more expensive, your client may avoid a challenge to the American judgment, especially because it involves meaningful sums of money and needs to be safeguarded against collateral attack. **P**