

**THE HAGUE SERVICE CONVENTION:
APPLICATION AND PROCEDURE IN THE PHILIPPINE
COURTS**

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The Hague Service Convention (The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters) was concluded on November 15, 1965. It is one of the Conventions in the Hague Conference on Private International Law (HCCH). The Philippines became a member of the HCCH on July 14, 2010. On March 4, 2020, the Republic of the Philippines deposited its Instruments of Accession to the Hague Service Convention, which took into effect on October 1, 2020. Consequently, the Supreme Court promulgated the *Guidelines In The Implementation Of The Hague Service Convention On The Service Abroad Of Judicial Documents In Civil And Commercial Matters (The Guidelines)*.² *The Guidelines* shall be interpreted with the end in view of expeditiously granting requests for transmission or service abroad of judicial documents.³ The Rules of Court, as amended shall have suppletory application.

The Hague Service Convention establishes a streamlined transmission of judicial and extrajudicial documents from one State Party to another; provides transnational litigants with methods for the service of documents abroad; simplifies and expedites the service of documents abroad; and guarantees that service will be brought to the notice of the recipient in sufficient time.⁴ Moreover, it seeks to establish a system which, to the extent possible, brings actual notice of the document to be served to the recipient in sufficient time; to simplify the method of transmission of these documents from the requesting State to the requested State; and to facilitate proof that service has been effective abroad, by means of certificates contained in a uniform model.⁵

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² Administrative Order No. 251-2020

³ Guidelines in the Implementation of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters

⁴ *Ibid.*

⁵ *Ibid.*, General Provisions I par. 4

Under the Guidelines, the Office of the Court Administrator (OCA) is designated as the Central Authority in the Philippines for judicial documents for purposes of Article 2 of the Hague Service Convention.⁶ The Central Authority refers to the receiving authority in charge of receiving requests for service from Requesting States and executing them or causing them to be executed.⁷ The Guidelines cover only judicial documents in civil or commercial matters.⁸ For extrajudicial documents, the Central Authority is the Integrated Bar of the Philippines, thus, not covered by the Guidelines.

The conditions for the application of the Hague Service Convention in the Philippines are: *first*, a document is to be transmitted from one State Party for service to another State Party; *second*, the address of the intended recipient in the receiving State Party is known; *third*, the document to be served is a judicial document; and *lastly*, the document to be served relates to a civil or commercial matter.⁹ The Convention shall not apply when the address of the person to be served is not known. It must be emphasized that the Convention applies only to State parties, which means those countries that had given their accession thereto.

Under Section 5, Rule 13 of the 2019 Amended Rules of Court, one of the modes for service of pleadings and other court submissions is that provided for in international conventions to which the Philippines is a party. Similarly, summons may be served through methods that are consistent with established international conventions to which the Philippines is a party.¹⁰ Hence, pursuant to the rules and in line with the Philippines' accession to the Hague Service Convention, service of summons, pleadings, and court submissions in cases pending before the Philippine courts may now be made abroad through the framework of the Convention.

Judicial documents are orders, resolutions, judgments, and other official documents issued by courts in relation to civil or commercial proceedings, as well as pleadings and other court submissions by parties to such civil or commercial proceedings.¹¹ While an extrajudicial document is any private or public document not directly connected with pending or terminated lawsuits before courts.¹² These shall include, but are not limited to, demands for

⁶ Per SC Resolution dated December 4, 2018

⁷ *supra* note 2, Definition of Terms, paragraph c

⁸ *Ibid.*, General Provisions I par. 1

⁹ Article 1, Hague Service Convention; *supra* note 2, General Provisions, paragraph I(2)

¹⁰ Section 9, Rule 14, 2019 Amended Rules of Court

¹¹ *supra* note 2, Definition of Terms, paragraph f

¹² *Ibid.*, paragraph g

payment, notices to quit in connection with leaseholds, and protests in connection with bills of exchange.

Service, on the other hand, refers to the transmission and formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action, provided that it shall not be interpreted to comprise substantive rules relating to the actual service process, nor shall it determine the conditions or formalities of the service.¹³

The Central Authority (OCA) may decline the request if it does not comply with the provisions of the Hague Service Convention; or when compliance with the request would infringe upon its sovereignty or security.¹⁴

Procedure for Requests for Extraterritorial Service of Judicial Documents from the Philippines to other State Parties (Outbound Requests for Service)¹⁵

There must be a motion for leave of court of a party in a civil or commercial proceeding pending before a Philippine court, which shall be accompanied, in duplicate, of the following:¹⁶

- a) A copy of the Model Form, including the Request, Certificate, Summary of documents to be Served, and Warning;
- b) The original documents to be served or certified true copies thereof, including all annexes;
- c) Certified translations of the Model Form and all accompanying documents, where necessary;
- d) An undertaking to pay in full any fees associated with the service of the documents; and
- e) Any other requirements of the Requested State, taking into account its reservations, declarations and notifications, which may be found in the HCCH website.

The court shall determine whether extraterritorial service is necessary under the Hague Service Convention in accordance with Rules 13 or 14 of the

¹³ Ibid., paragraph b

¹⁴ Article 13, Hague Service Convention

¹⁵ supra note 2, paragraph II

¹⁶ Ibid., paragraph II (1)

2019 Amended Rules of Court. If the court finds that extraterritorial service under the Hague Service Convention is warranted, it shall issue an Order granting extraterritorial service. The Order shall include a directive to the requesting party to procure and submit a prepaid courier pouch which shall be used for transmission of documents from the court to the Central Authority of the Requested State.¹⁷

The Model Form¹⁸ is the form annexed to the Hague Service Convention consisting of three parts, namely:

- 1) Request for service, which is sent to the Central Authority of the Requested State seeking assistance in the service of documents,
- 2) Certificate which confirms whether or not the documents have been served, and
- 3) Summary of the Document to be Served, which is delivered to the addressee and preceded by a Warning relating to the legal nature, purpose and effects of the document to be served.

The Judge, the Justice, or the Clerk of Court, as forwarding authorities, shall accomplish and sign the Request using the Model Form, check the completeness of the documents, and ensure compliance with the requirements of the Hague Service Convention and that of the Requested State. “Forwarding Authority” refers to the authority or judicial officer of the Requesting State competent to forward the request for service. All Justices and Clerks of Court of collegiate courts and Judges of lower courts are designated as Forwarding Authorities in the Philippines. “Competent Authority” refers to the authority in Article 6, Hague Service Convention, in addition to the Central Authority, designated to complete the Certificate in accordance with the Model Form. Moreover, all judges are designated as Competent Authorities under Article 6 of the Hague Service Convention in the Philippines.

The party, in accordance with his undertaking, shall settle the fees and costs for the service and submit the required proof of payment to the clerk of court. Any assessment after the execution, including any deficiency assessment, shall still be paid by the party at the appropriate time.¹⁹ Proof of payment of the costs and fees shall be immediately sent to the clerk of court where the case is pending. Failure to settle the fees in full, whenever necessary, shall be a ground

¹⁷ Ibid., paragraph II (2)

¹⁸ supra note 2, Definition of Terms, paragraph h

¹⁹ supra note 2, paragraph II (Section 3)

for direct contempt of court, in addition to any other sanction that the judge may impose in accordance with the Rules of Court, as amended.

Once all requirements are submitted by the party requesting the extraterritorial service through the Hague Service Convention, the court shall coordinate with the Central Authority of the Requested State and transmit the following:²⁰

- 1) The Order granting the extraterritorial service;
- 2) The filled-out Request and Summary of Document to be Served with Warning;
- 3) The blank Certificate (to be completed by the Central Authority of the Requested State);
- 4) The documents sought to be served; and
- 5) Certified translations of the Model Form and all accompanying documents, where necessary.

The court shall also furnish the OCA with a copy of the request and update the latter on the status of its request.

The Central Authority of the Requested State shall then process the request and attempt service in accordance with its domestic laws. It shall thereafter provide formal confirmation whether the service was successful or unsuccessful, using the Certificate annexed to the Hague Service Convention.²¹ The completed Certificate shall then be transmitted back to the requesting court, and shall form part of the records of the case.

Requests for Extraterritorial Service of Judicial Documents in the Philippines from other State Parties (Inbound Requests for Service)²²

All inbound requests for service of judicial documents originating from other state parties shall be referred to the OCA as the Central Authority. The following are the requirements:²³

- 1) The documents sought to be served are judicial;

²⁰ Ibid., paragraph II (4)

²¹ Ibid., paragraph II (7)

²² Ibid. paragraph III

²³ Ibid. paragraph III (2)

- 2) The Request conforms to the Model Form;
- 3) The document sought to be served is attached to the Request;
- 4) The Request and its attachments are accomplished/translated in English or Filipino;
- 5) The Request and its attachment/s are filed in duplicate; and
- 6) The address of the intended recipient is indicated with sufficient specificity. As much as practicable, it shall include the house number, building, street name, barangay, municipality/city, province, and zip code. Post office boxes shall not be allowed.

All requests must be accompanied by payment of US\$100 for costs of service for each recipient to be served. For multiple recipients residing in the same address, only one fee shall be paid.²⁴ The Forwarding Authority of the Requesting State from which the documents originated shall transmit the request, together with all the documents, including proof of payment, to the OCA through electronic transmission (email) or physical transmission (via registered mail or courier services).²⁵

Upon evaluation of the OCA, if the request fails to comply with the requirements, or there are objections for the execution of the request, the OCA shall inform the Forwarding Authority, specifying the objection/s therefor. If the objections are resolved, the processing of the request shall proceed. Otherwise, the request shall be denied, and all documents relating thereto shall be returned to the Forwarding Authority, along with a notice of objection or denial, stating the reasons therefor.²⁶

When the request is sufficient in form, the OCA shall forward the request to the court having jurisdiction over the area where the intended recipient resides. Requests via email shall be transmitted to the official email accounts of the court concerned. The Executive Judge in multiple-sala courts, or the Presiding Judge in single sala courts, shall immediately assign a sheriff, process server, or any other competent personnel to serve the document in accordance with the Rules of Court.²⁷

The officer assigned to serve the document shall execute a return on the service in accordance with the Rules of Court and submit the same to the judge

²⁴ Ibid. paragraph III (3)

²⁵ Ibid. paragraph III (4)

²⁶ Ibid. paragraph III (5)

²⁷ Ibid. paragraph III (6 & 7)

of the court who directed the service of the document within five days from service. The return shall state the following:²⁸

- 1) the document and attachment/s have been served;
- 2) the method, the place and the date of service; and
- 3) The person to whom the document was delivered.
- 4) If the document was not delivered successfully, the return shall state the reasons which prevented the successful service.
- 5) The officer shall deliver to the court the unserved document, so that it may later be returned to the Forwarding Authority.

As soon as the return on the service is submitted, whether service is successful or not, the judge shall immediately accomplish and sign the Certificate following the Model Form. In cases of unsuccessful service, the documents sought to be served shall be attached to the Certificate.

Within 30 calendar days from receipt of the request, the judge shall transmit the duly-accomplished Certificate and the Return of Service to the Forwarding Authority of the Requesting State. These shall be accompanied by a copy of the documents served, in cases of successful service, or the original documents, in cases of unsuccessful service. The judge shall furnish the OCA with a copy of all the documents transmitted for monitoring purposes. Should the compliance exceed thirty (30) calendar days, the judge shall also submit an explanation to the OCA for the delay. Expenses that may be incurred in the service of judicial documents for inbound requests shall be advanced by the concerned judge subject to the reimbursement from the Service Convention Fund.

Declaration of default

Article 15 of the Hague Service Convention provides for the protection of the defendant to a judgment by default. Where a writ of summons or equivalent document had to be transmitted abroad and the defendant has not appeared, judgment shall be stayed until two conditions are established:

- 1) Valid service or actual delivery; and

²⁸ Ibid. paragraph III (8)

- 2) Service or delivery was effected in sufficient time to enable the defendant to defend.

When a default judgment has been entered, Article 16 of the Hague Service Convention allows a judge to relieve the defendant from the effects of the expiration of the time for appeal. It applies when the writ of summons or equivalent document had to be transmitted abroad, the defendant has not appeared, and judgment has been entered.

Art. 16 of the Hague Service Convention requires the fulfillment of two conditions for the relief from judgment by default, as follows:

- 1) The defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
- 2) The defendant has disclosed a *prima facie* defense to the action on the merits.

The application should also be filed within a reasonable time from knowledge of the judgment. This, notwithstanding, the 3rd paragraph of Art. 16 provides that a Contracting State may declare that “the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.” However, the Philippines has not given any declaration to that effect.

With the Philippines’ accession to the Hague Service Convention, service of summons, pleadings and other court submissions abroad is now simplified and expeditious. The Convention facilitates the service of judicial documents to litigants who are outside the territorial jurisdiction of the Philippine courts, as it provides another mode sanctioned by the 2019 Amended Rules of Court, consequently precluding delay in civil proceedings involving transnational litigants.