INTERNATIONAL SERVICE OF PROCESS

A Guide for Judges

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Introduction

Like any other civil legal proceedings, transnational commercial disputes must begin with proper notice. In these cases, foreign and treaty procedural rules, as well as those of the United States, govern service of process. When possible, these sources of law are applied with deference to principles of international comity—"the accommodation of other countries' jurisdictional interests in return for reciprocal treatment over the long run."[1] Comity principles are especially valuable when considering cross-border service, because many countries view circumvention of their service rules as a violation of their sovereignty. Historically, countries have interposed diplomatic protests, enacted blocking statutes, and limited the recognition of judgments obtained in the United States when U.S. litigants failed to follow the countries' civil procedure rules. The adoption of treaties such as the Hague Service Convention[2] and the Inter-American Convention on Letters Rogatory[3] has helped ensure more efficient and consistent practice, but lengthy delays and other complications still occur. There also remain important potential conflicts between U.S. and foreign legal approaches to service of process, particularly when it comes to using new technologies and enforcing contractual provisions that address service.

This guide provides an overview of available methods for service of process on foreign defendants, focusing on the issues most likely to require

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1. Maggie Gardner, *Parochial Procedure*, 69 Stan. L. Rev. 941, 949 (2017).

2. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *opened for signature* Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 [hereinafter Hague Service Convention].

3. Inter-American Convention on Letters Rogatory, *opened for signature* Jan. 1, 1975, S. Treaty Doc. No. 27 (1984), 1438 U.N.T.S. 287 [hereinafter IASC] and the Additional Protocol to the Inter-American Convention on Letters Rogatory, May 8, 1979, S. Treaty Doc. No. 98-27 (1988), 1438 U.N.T.S. 332 [hereinafter Additional Protocol] [collectively, IACAP]. Requests from a U.S. court to a foreign court seeking international judicial assistance, such as assistance acquiring evidence or completing service, are traditionally called *letters rogatory*.

judicial intervention. Part I addresses how service may be conducted under Federal Rule of Civil Procedure 4(f) when no treaty applies. Although Rule 4(f) addresses individuals, Rule 4(h)(2), which deals with corporations, adopts almost all forms of service under Rule 4(f). The one exception is that a corporation, partnership, or other unincorporated association may not be served via personal delivery as provided in Rule 4(f)(2)(C)(i). For brevity, often only the 4(f) section will be referenced throughout this guide. Parts II and III discuss two relevant treaties, the Hague Service Convention and the Inter-American Convention on Letters Rogatory (Inter-American Service Convention or IASC) and Additional Protocol (collectively, IACAP), and how these treaties interact with Rule 4(f).

When No International Agreement Applies

Rule 4(f)(2)

Federal Rule of Civil Procedure 4(f)(1) incorporates the Hague Service Convention and the IACAP treaty procedures into the Federal Rules. If no internationally agreed-upon means apply, service may be conducted under Rule 4(f)(2) or 4(f)(3). Rule 4(f)(2) provides that

> if there is no internationally agreed means, or if an international agreement allows but does not specify other means, [service may be affected] by a method that is reasonably calculated to give notice:
>
> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
>
> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
>
> (C) unless prohibited by the foreign country's law, by:
>
> (i) delivering a copy of the summons and of the complaint to the individual personally; or
>
> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt.

Rule 4(f)(3)

U.S. courts may also allow service under Federal Rule of Civil Procedure 4(f)(3) "by other means not prohibited by international agreement, as the court orders." Requests for substituted service within the United States—for example, on defendants' counsel—are common under this provision.[4] A wide variety of service methods also fall within the rule's ambit; these notably include email and social media.

Unlike that of Rule 4(f)(2), the text of Rule 4(f)(3) does not explicitly prohibit service that conflicts with a foreign country's laws, only service that conflicts with an international agreement. Consequently, courts have disagreed on whether service ordered under Rule 4(f)(3) may proceed in violation of a foreign country's laws if it comports with forum law requirements for notice. For example, in *Rio Properties, Inc. v. Rio International Interlink*, the Ninth Circuit stated that "as long as [it is] court-directed and not prohibited by an international agreement, service of process ordered under Rule 4(f)(3) may be accomplished *in contravention* of the laws of the foreign country."[5] But in *Prewitt Enterprises, Inc. v. Organization of Petroleum Exporting Countries*,[6] the Eleventh Circuit held that service was improper because it violated the foreign state's internal laws.

In recent years, scholars have raised concerns about the use of email service in contravention of a foreign country's laws; because electronic service is so fraught in Hague Service Convention signatory countries, this issue is discussed in more detail in part II. Courts often require plaintiffs to explain why other methods of service are unavailable or why substitute or alternative service is appropriate. These circumstances include when a plaintiff is unable to locate the defendant's address despite the plaintiff's best efforts,

4. *See, e.g.*, Compañía de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V., 970 F.3d 1269, 1276 (10th Cir. 2020) (permitting substitute service on counsel after service through Central Authority failed due to difficulty serving defendant corporation at its address).

5. 284 F.3d 1007, 1014 (9th Cir. 2002) (emphasis added).

6. 353 F.3d 916, 925–28 (11th Cir. 2003).

when a defendant has been purposely avoiding service, or when other methods would prove futile.[7]

The Hague Service Convention

Overview and Purpose

The United States has liberal rules for who may effect service of process and how it may be accomplished, whereas civil-law jurisdictions have long viewed service of process as a sovereign or juridical function—"an exercise of governmental power," as one scholar notes.[8] The friction between these perspectives on service, coupled with an increasing number of transnational cases, prompted the Hague Conference on Private International Law to adopt the Hague Service Convention in 1965. The United States acceded to the Convention in 1967. As of this writing, seventy-five countries are contracting parties to the Hague Service Convention. The Hague Conference on Private International Law's website lists all current signatories, as well as any reservations, objections, or preferences these countries have stated.[9]

7. *See, e.g.*, Tiffany (NJ), LLC v. Cheaptiffanyau.com, Case No.: 13-60033-CV-DIMITROULEAS/SNOW, 2013 WL 12092100, at *1 (S.D. Fla. May 17, 2013) (allowing service by email because defendant's physical address was unknown); Braverman Kaskey, P.C. v. Toidze, Civil Action No. 09–3470, 2013 WL 6095679 (E.D. Pa. Nov. 19, 2013) (same); *In re* GLG Life Tech Corp. Sec. Litig., 287 F.R.D. 262, 267 (S.D.N.Y. 2012) (authorizing alternative methods of service when defendant had been evading attempts at service); AMTO, LLC v. Bedford Asset Mgmt., LLC, No. 14–CV–9913, 2015 WL 3457452, at *4 (S.D.N.Y. June 1, 2015) (authorizing alternative service by email because Russia suspended judicial cooperation with the United States); Arista Records LLC v. Media Servs. LLC, No. 06 Civ. 15319(NRB), 2008 WL 563470, at *2 (S.D.N.Y. Feb. 25, 2008) ("[T]he Central Authority of the Russian Federation denies all requests for service of process originating from the United States.").

8. Samuel P. Baumgartner, *Understanding the Obstacles to the Recognition and Enforcement of U.S. Judgments Abroad*, 45 N.Y.U. J. Int'l L. & Pol. 965, 971 (2013).

9. Hague Conference on Private International Law, Status Table, https://www.hcch.net/en/instruments/conventions/status-table/?cid=17 [hereinafter Status Table].

Scope

Federal Rule of Civil Procedure 4(f)(1) codifies service under the Hague Service Convention. **The Hague Service Convention applies only**

1. to civil or commercial matters
2. involving signatory countries
3. when a defendant's address is known[10] and
4. when the service documents must be transmitted abroad.[11]

In *Volkswagenwerk Aktiengesellschaft v. Schlunk*,[12] the U.S. Supreme Court provided the test for whether service documents must be transmitted abroad. Among Hague Service Convention signatories, when the forum state's law requires judicial documents to be transmitted abroad, compliance with the Hague Service Convention is mandatory.[13] But if the law of the forum allows plaintiffs to serve defendants domestically, such as through registered

10. *See* Hague Service Convention, *supra* note 2, at art. 1. A defendant's address is "unknown" if a plaintiff cannot ascertain it after making a reasonably diligent effort to do so. *Compare* Abercrombie & Fitch Trading Co. v. 2cheapbuy.com, et al., Case No. 14–60250–CIV–ROSENBAUM, 2014 WL 11706443 (S.D. Fla. Mar. 5, 2014) (finding service by email appropriate because valid address unknown after use of private investigators) *and* United States v. Real Property Known as 200 Acres of Land Near Farm to Market Road 2686, Rio Grande City, Tex., Civil Action No. 2:11–CV–00368, 2012 WL 6738677 (S.D. Tex. Dec. 31, 2012) (finding Hague Service Convention does not apply because defendant's address in Mexico was unknown despite plaintiff's efforts at locating and serving defendant with notice through a Mutual Legal Assistance Treaty request, international mail, email, serving defendant's counsel, and more) *with* Indagro, S.A. v. Nilva, Civil Action No. 07–cv–03742 (SDW)(MCA), 2014 WL 1515587 (D.N.J. Apr. 17, 2014) (holding the Hague Service Convention applied because, although defendant was not a resident or domiciliary of France, his temporary French address could be "known" and plaintiff did not exercise reasonable diligence in attempting to discover it).

11. *See* Hague Service Convention, *supra* note 2, at art. 1.

12. 486 U.S. 694 (1988).

13. *Id.* at 705 ("[C]ompliance with the Convention is mandatory in all cases to which it applies."); Water Splash, Inc. v. Menon, 137 S. Ct. 1504, 1507 (2017) ("[T]he Hague Service Convention specifies certain approved methods of service and 'pre-empts inconsistent methods of service' wherever it applies." (citing *Schlunk*, 486 U.S. at 699)).

agents or others authorized to accept service, plaintiffs do not need to follow the Hague Service Convention's procedures.[14]

Foreign defendants may waive service under Federal Rule of Civil Procedure 4(d). Parties may agree in advance—for example, through a contract provision—to waive service or specify preferred methods to effect it; however, there is no consensus on whether parties may agree to methods that conflict with the Hague Service Convention's procedures. Although few federal courts have addressed this issue, those that did have generally held that parties may circumvent the treaty by agreement. In *Masimo Corp. v. Mindray DS USA Inc.*, for instance, the court reasoned that because "absent contracts of adhesion or great disparities in bargaining power, a party may waive, pre-litigation, its right to receive notice," there is "no reason why parties may not waive by contract the service requirements of the Hague Convention, especially given that parties are generally free to agree to alternative methods of service."[15]

Some commentators question this reasoning. While they agree that, if made explicit in a contract, waiver of service and alternative, domestic methods that comply with forum law may be permissible, they argue that courts should be wary of accepting methods of service that contravene the treaty's requirements. Under *Schlunk*, when the Hague Service Convention applies, it is mandatory. They therefore contend that using a procedure that violates the treaty, even if it is agreed upon in a contract, is invalid and violates the right of the defendant's nation to structure its civil procedure.[16] The risk, of course, is that the plaintiff obtains a judgment that is enforceable in the United States, but may not be enforceable in the defendant's home country where its assets may be located.

Procedure

Under the treaty, each signatory must designate a government agency or agencies as the *Central Authority* for incoming service requests from other

14. *Schlunk*, 486 U.S. at 707 ("Where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications.").

15. No. SA CV 12-02206-CJC (JPRx), 2013 WL 12131723, at *2–3 (C.D. Cal. Mar. 18, 2013); *see also* Vizio, Inc. v. LeEco V. Ltd., No. SA CV 17-1175-DOC (JDEx), 2017 WL 10441385, at *2–3 (C.D. Cal. Sept. 21, 2017).

16. John F. Coyle et al., *Contracting Around the Hague Service Convention*, 53 UC Davis L. Rev. Online 53, 54–56 (Oct. 2019).

signatories. The structure of the Central Authority is left up to each country.[17] Service requests must conform to the standard prescribed by the treaty and to any additional country-specific requirements, including translations.[18] The request must conform to a model annexed to the Hague Service Convention, and both the request and the documents must be provided in duplicate.[19]

When the Central Authority receives a request, it serves the documents or arranges for them to be served by a method prescribed by its domestic law, or if permitted by its domestic law, by a specific method requested by the applicant.[20] Often, to effect service a Central Authority transmits the documents to a court or competent official near where the person or entity being served resides, although the exact method varies by country. The U.S. Central Authority contracts with a private company for this purpose, and judicial involvement is not typically required.

A Central Authority should only reject a request if it does not comply with the provisions of the Convention or if the state deems that compliance would infringe its sovereignty or security. In such instances, the Central Authority should promptly inform the applicant and provide its reasons for refusing the request.[21]

After a Central Authority executes a service request, it returns a certificate, comporting with a model attached to the Hague Service Convention, to the requester to indicate how and when service occurred or to inform the requester that the Central Authority was unable to complete the request.[22] In many countries, the Central Authority is quick to complete service, usually doing so within weeks or months. But in some countries, service through a Central Authority can typically take a year or longer.[23] Countries known

17. Hague Service Convention, *supra* note 2, at art. 2. *See generally* Hague Conference on Private International Law, *Authorities*, https://www.hcch.net/en/instruments/conventions/authorities1/?cid=17.

18. *See* Hague Service Convention, *supra* note 2, arts. 3, 5; *see also* PATS Aircraft, LLC v. Vedder Munich GmbH, 197 F. Supp. 3d 663 (D. Del. 2016) (holding that service was ineffective because the papers were not translated into German as required).

19. Hague Service Convention, *supra* note 2, at art. 3.

20. *Id.* at art. 5.

21. *Id.* at arts. 4, 13.

22. *Id.* at art. 6.

23. *See* Coyle et al., *supra* note 16, at 54.

in the practice community for slow Central Authority action include China, India, and Mexico.[24]

The Hague Service Convention's drafters apparently anticipated this possibility: The treaty permits default judgments against defendants (1) if they have been served in accordance with its provisions and have had sufficient time to defend or (2) if a proper request was sent to the Central Authority but no certificate of service has been returned after at least six months.[25] However, some countries' courts may not recognize default judgments obtained under these circumstances, so plaintiffs suing defendants in those countries may be reluctant to request default judgments.

The Federal Rules of Civil Procedure also accommodate the potentially slow pace of cross-border service: Unlike for domestic service, as long as plaintiffs are pursuing service diligently, Rule 4(m) does not impose a time limit on international service. When there are long delays in service or delays are anticipated, judges often request periodic updates to ensure plaintiffs have not abandoned prosecution of their cases. Though this is not addressed in the treaty itself, when confronting actual or perceived Central Authority delays, some courts have allowed plaintiffs to use alternative means of service under Federal Rule of Civil Procedure 4(f)(3).[26] Using alternative methods of service in Hague Service Convention signatory countries is discussed in the next section.

Signatories may choose to permit service within their borders by certain other means. Most of these methods are detailed in Article 10 of the Convention, which states:

> Provided the State of destination does not object, the present Convention shall not interfere with
>
> a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
>
> b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial

24. *See* Aaron Lukken, *Things take longer overseas. Get used to it*, Hague L. Blog (June 11, 2019), https://www.haguelawblog.com/2019/06/things-take-longer-overseas-get-used-to-it/.

25. Hague Service Convention, *supra* note 2, at art. 15.

26. *See, e.g.*, Prods. & Ventures Int'l v. AXUS Stationary (Shanghai) Ltd., Case No. 16-cv-00669-YGR, 2016 WL 3924191 (N.D. Cal. July 21, 2016) (authorizing service on defendant's attorney under Fed. R. Civ. P. 4(f)(3) where service under the Hague Service Convention would cause undue delay).

documents directly through the judicial officers, officials or other competent persons of the State of destination,

c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

In *Water Splash, Inc. v. Menon*, the Supreme Court clarified that service by mail is permitted under Article 10(a) of the Hague Service Convention, provided "two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law."[27] In the United States, service by mail is often accomplished under Federal Rule of Civil Procedure 4(f)(2)(C)(ii), which provides that service may be effected "if an international agreement allows but does not specify other means . . . unless prohibited by the foreign country's law, by . . . using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt."

Many signatories object to the use of some or all of the additional methods outlined in Article 10 of the Convention, and nations often impose conditions or restrictions on their use. The Hague Conference on Private Law's website lists signatory countries' reservations, objections, and preferences regarding other methods of service.[28]

Alternative Methods of Service in Signatory Countries

As noted, U.S. courts may permit service "by other means not prohibited by international agreement" under Federal Rule of Civil Procedure 4(f)(3). Courts and scholars have interpreted how this provision interacts with the Hague Service Convention's procedures in several ways, which can be roughly summarized by the following three approaches:

1. Plaintiffs may always use alternative methods under Rule 4(f)(3), even when the treaty applies.

27. 137 S. Ct. 1504, 1513 (2017) (citing Brockmeyer v. May, 383 F.3d 798, 803–04 (9th Cir. 2004)).

28. Status Table, *supra* note 9. One must be careful when evaluating the stance of territories over which legal and political jurisdiction has changed since the treaty first came into force. For example, as of October 2020, Hong Kong's treaty objections match those of the United Kingdom, rather than those of China, which differ from the United Kingdom's objections considerably.

2. Plaintiffs should not use alternative methods under Rule 4(f)(3) when the treaty applies.
3. Plaintiffs may sometimes use alternative methods under Rule 4(f)(3) when the treaty applies, but only if they provide good reasons for why the treaty's procedures are inadequate or unduly burdensome.

The most common approach taken by courts is the third, although some subscribe to the first.[29] Although the second interpretation is primarily that of scholars and commentators, their reasons for encouraging strict adherence to the treaty merit consideration. This section elaborates on all three approaches.

Some courts have interpreted Rule 4(f)(3) to allow plaintiffs to serve defendants using court-approved alternative methods even when a treaty's procedures could apply under Rule 4(f)(1). Reasoning that the language, structure, and Advisory Committee notes do not indicate the "primacy" of Rule 4(f)(1) or 4(f)(2) over Rule 4(f)(3), these courts have concluded that "service of process under Rule 4(f)(3) is neither a 'last resort' nor 'extraordinary relief.' It is merely one means among several which enables service of process on an international defendant."[30] Practically speaking, this interpretation of Rule 4(f)(3) means plaintiffs do not need to attempt service under the Hague Service Convention before resorting to alternative court-ordered methods. Applying this reasoning, courts have approved a variety of methods of service that differ from those explicitly provided for in the treaty. For example, the Hague Service Convention did not mention electronic service like email when it was adopted in 1965 and has not been amended to address this issue; some courts have determined that email is therefore not prohibited by the treaty and may be used under Rule 4(f)(3).[31]

29. Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002).

30. *Id.* (internal citation omitted).

31. *See, e.g.*, Stat Medical Devices, Inc. v. HTL-Strefa, Inc., No. 15-20590-CIV, 2015 WL 5320947 (S.D. Fla. Sept. 14, 2015) (holding that service by email did not violate the Hague Service Convention even though Poland objected to Article 10(a) because the objection was limited to service through "postal channels" and does not equate to an express objection to service via electronic means); Title Trading Servs. USA, Inc. v. Kundu, No. 3:14-cv-225-RJC-DCK, 2014 WL 4053571 (W.D.N.C. Aug. 15, 2014) (holding that service by email in India was proper because Article 10 does not address service by email); *but see* Elobied v. Baylock, 299 F.R.D. 105 (E.D. Pa. 2014) (reasoning that email was not permitted because Switzerland objected to Article 10 and email was akin to a "postal channel").

Permitting the use of alternative service methods when the treaty applies has proven controversial among commentators, particularly in the context of new technologies like email. Commentators argue that these methods are inconsistent with Supreme Court precedent, the Hague Service Convention, and the structure of the Federal Rules of Civil Procedure; and they point out that the Advisory Committee Notes to Rule 4(f) clearly indicate that "Rule 4(f)(3) was intended as a safety valve available only when the Convention, by its own terms, does not apply."[32] Continuing this argument, they note that the treaty's procedures are indisputably mandatory when they apply and that Rule 4(f)(3) only permits service "not prohibited by international agreement." According to this view, even though the treaty does not explicitly prohibit service by email, foregoing the treaty's applicable, mandatory procedures violates the Hague Service Convention and Rule 4(f)(3) itself.[33] Many countries' rules of civil procedure forbid service by email, raising substantial enforcement and comity concerns. These concerns are not purely hypothetical: historically, other countries have viewed circumvention of their procedural rules as affronts to their sovereignty, and they have interposed diplomatic protests, enacted blocking statutes, and limited recognition of judgments obtained in the United States when U.S. litigants failed to follow their civil procedure rules.[34]

Most courts take the middle ground of these approaches. While accepting that Rule 4(f)(3) may be used to serve defendants in Hague Service Convention signatory countries, they also require plaintiffs to explain why treaty procedures are inadequate under the circumstances.[35] Such reasons include

32. Gardner, *supra* note 1, at 1000.

33. *Id.* at 1000–01.

34. *See* Baumgartner, *supra* note 8, at 971–72 & n. 20; Gardner, *supra* note 1, at 953; Bruno A. Ristau, International Judicial Assistance: Civil and Commercial §3-1-8 (rev. 2000).

35. *See, e.g.*, South Carolina v. Hitachi Displays, Ltd., No. 3:13-cv-00899-JFA, 2013 WL 4499149 (D.S.C. Aug. 20, 2013) (denying motion to serve through U.S. counsel because Japan is a signatory country that provides an effective means of service, defendant's address is readily attainable, and defendant has made no attempts to evade service); KG Marine, LLC v. VICEM Yat Sanayi ve Ticaret AS, 24 F. Supp. 3d 312 (W.D.N.Y. 2014) (denying motion for alternative service on Turkish defendants because plaintiff made no showing that it had previously attempted to effect service under the Hague Service Convention or that the court's intervention was necessary).

anticipated or actual undue delay,[36] futility,[37] failure or refusal of a Central Authority to complete service,[38] and contract provisions providing for specific service methods.[39]

Alternate methods of service like email and social media may be overrepresented in case law compared to their actual rate of use. Since plaintiffs must request a court's permission before serving a defendant under Rule 4(f)(3), unlike with many other means of service, these methods naturally generate more opinions than methods that do not require a court's prior approval.[40]

36. *See, e.g.*, Richmond Techs., Inc. v. Aumtech Bus. Sols., No. 11-CV-02460-LHK, 2011 WL 2607158 (N.D. Cal. July 1, 2011) (permitting service on U.S. counsel because India objected to mail service, service through India's Central Authority would take six to eight months, defendants had actual notice of the action, and defendant-counsel relationship was intended to be ongoing); Strabala v. Zhang, 318 F.R.D. 81 (N.D. Ill. 2016) (noting the six-month time frame in the Hague Service Convention for service via Central Authority and finding that service via email was therefore appropriate).

37. This reason often applies to service in Russia, whose Central Authority categorically refuses to process any requests coming from the United States. *See, e.g.*, AMTO, LLC v. Bedford Asset Mgmt., LLC, No. 14-CV-9913, 2015 WL 3457452, at *10 (S.D.N.Y. May 29, 2015) (authorizing alternative service by email because Russia suspended judicial cooperation with the United States); Arista Records LLC v. Media Servs. LLC, 2008 WL 563470, at *2 (S.D.N.Y. Feb. 25, 2008) ("[T]he Central Authority of the Russian Federation denies all requests for service of process originating from the United States.").

38. *See, e.g.*, Prof'l Investigating & Consulting Agency Inc. v. Suzuki, No. 2:11-cv-01025, 2014 WL 48260 (S.D. Ohio Jan. 7, 2014) (allowing service by email because attempts to serve through China's Central Authority and in person failed and the defendant had indicated to the court that it could be contacted through the email address); FTC v. PCCare247 Inc., No. 12 Civ. 7189(PAE), 2013 WL 841037 (S.D.N.Y. Mar. 7, 2013) (granting request for service through electronic means because Indian Central Authority had been unresponsive, other attempts at service had failed, and defendants had actual knowledge of the suit).

39. *See, e.g.*, Vizio, Inc. v. LeEco V. Ltd., No. SA CV 17-1175-DOC (JDEx), 2017 WL 10441385 (C.D. Cal. Sept. 21, 2017); *see also* Masimo Corporation v. Mindray DS USA Inc., No. SA CV 12-02206-CJC (JPRx), 2013 WL 12131723 (C.D. Cal. Mar. 18, 2013).

40. The author's own research, conducted while a Supreme Court Fellow, supports this conclusion. The author reviewed the dockets in the Southern District of New York and the Central District of California for cases involving foreign defendants over a five-year period. This review suggested that use of methods like email and social media is generally disfavored.

Hague Service Convention Checklist

1. Does the treaty apply?
   a. Does the case involve civil or commercial matters?
   b. Is the defendant in a signatory country?
   c. Is the defendant's address known?
   d. Must the service documents be transmitted abroad?

   If yes to all, then the treaty applies.

2. Is the method being used permitted by the treaty?
   a. Central Authority – *always permitted*
   b. Mail, or another alternate method directly addressed by the treaty – *sometimes permitted, depending on whether a country has objected to the method*
   c. Email or another alternate method not addressed by the treaty – *Use caution, as service via these methods may violate the other country's laws, and such methods' status under the treaty is ambiguous. Consider factors like futility, cost and delay, whether service has already been attempted through other means, and whether the proposed method comports with foreign law before granting a plaintiff's request.*

3. Are there delays in service?
   a. Has the plaintiff been diligently attempting service?
   If not, the court may request that a plaintiff show cause why the action should not be dismissed for failure to prosecute. If yes, then Federal Rule of Civil Procedure 4(m) does not impose a time limit on cross-border service.
   b. Has it been at least six months since the plaintiff sent documents to the Central Authority?
   If yes, the plaintiff may seek a default judgment. However, some countries will not enforce such judgments. The court may also consider whether it is appropriate to grant permission to use an alternate form of service at a plaintiff's request.

Inter-American Convention on Letters Rogatory and Additional Protocol

Overview and Scope

The Inter-American Convention on Letters Rogatory (IASC) and Additional Protocol (collectively, IACAP)[41] are important international agreements that address service of process. There are fewer disputes about their procedures compared to those about the Hague Service Convention because the IACAP's geographic reach is narrower: it is only in force between the United States and some Central and South American countries, but it covers many nations that are not Hague Service Convention signatories.[42] The Organization of American States maintains a list of signatories and any of their treaty reservations on its website.[43] The United States only recognizes the treaty as being in force between countries that have signed *both* the IASC and the Additional Protocol.[44] Like the Hague Service Convention, the IACAP applies only to civil or commercial matters, with rare exceptions.[45] Proceeding through a Central Authority is the main mechanism for effecting service of process in signatory countries.[46]

Procedure

The process for serving a foreign defendant through a Central Authority under the IACAP is similar to the process through a Central Authority under the Hague Service Convention. Plaintiffs must prepare a set of documents

41. *Reprinted in* 28 U.S.C. § 1781.

42. U.S. Dep't of State, *Inter-American Service Convention and Additional Protocol*, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html. As of this writing, Argentina, Brazil, Mexico, and Venezuela are also Hague Service Convention signatories.

43. *Available at* http://www.oas.org/juridico/english/Sigs/b-36.html *and* http://www.oas.org/juridico/english/Sigs/b-46.html.

44. Additional Protocol, *supra* note 3.

45. IASC, *supra* note 3, at art. 2. A country may elect for IACAP to apply to criminal or administrative matters as well, *see id.* at art. 16, but as of this writing, only Chile has done so.

46. *See id.* at art. 4.

(including necessary copies and translations) and a fee and provide it to the U.S. Central Authority's contractor to be transmitted to the relevant foreign Central Authority. The foreign Central Authority then executes the request according to that country's laws before returning confirmation of service.[47] Unlike in Hague Service Convention cases, under the IACAP, some documents must bear the seal of the clerk of court where the litigation is occurring.[48] According to the State Department, it is typical to wait six months to a year for Central Authority service.[49]

There are exceptions to these procedures. For example, if service occurs in a "border area," courts may transmit service requests directly to the foreign Central Authority instead of proceeding through the U.S. Central Authority's contractor.[50] But border areas are not specifically defined by the treaty, and the State Department and U.S. Central Authority advise that "Mexico requires that a request transmitted from a border state to the Mexican Central Authority be authenticated."[51] IACAP also allows litigants to use the traditional method of conveying letters rogatory through diplomatic or consular channels rather than through a Central Authority,[52] though these channels are probably slower than proceeding through a Central Authority. To serve defendants through diplomatic channels, plaintiffs still prepare essentially the same documents but then send them to the State Department, in accordance with its procedures, instead of to the U.S. Central Authority's contractor.[53]

The IACAP does not explicitly address service by mail or electronic means. It does, however, permit countries involved in an integrated economic system to devise more efficient service procedures,[54] and it does "not limit

47. Additional Protocol, *supra* note 3, at art. 4.

48. *See* IASC, *supra* note 3, at art. 8.

49. U.S. Dep't of State, *Inter-American Service Convention and Additional Protocol*, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html.

50. *See* IASC, *supra* note 3, at art. 7.

51. U.S. Dep't of State, *Inter-American Service Convention and Additional Protocol*, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process/Inter-American-Service-Convention-Additional-Protocol.html.

52. *See* IASC, *supra* note 3, at art. 4.

53. *See* U.S. Dep't of State, *Preparation of Letters Rogatory*, https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/obtaining-evidence/Preparation-Letters-Rogatory.html.

54. *See* IASC, *supra* note 3, at art. 14.

any provisions regarding letters rogatory in bilateral or multilateral agreements that may have been signed or may be signed in the future by the States Parties or preclude the continuation of more favorable practices in this regard that may be followed by these States."[55]

Conclusion

Whether or not a treaty such as the Hague Service Convention or the IACAP applies, navigating the various U.S., foreign, and international legal regimes that govern cross-border service of process can be time consuming and frustrating. Adding to the complexity are the sovereignty interests of foreign countries and the extent to which efficient international service relies on reciprocity between judicial systems. The information in this guide covers the most important procedural rules and obstacles to take into account when navigating international service of process.

55. *Id.* at art. 15.

About the Author

Sarah E. Kramer was the 2019–2020 Supreme Court Fellow assigned to the Supreme Court of the United States. Prior to that, she clerked for Judge Gary S. Katzmann of the United States Court of International Trade. Ms. Kramer earned a B.A., with highest honors, in International Relations from the University of Rochester and a B.M., with highest honors, in Applied Music from the Eastman School of Music. She earned a J.D. from the University of Pennsylvania Law School, where she was an executive online editor of the *University of Pennsylvania Journal of International Law*. She currently practices law in Washington, D.C.

The Federal Judicial Center

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This guide provides an overview of available methods for service of process on foreign defendants, focusing on the issues most likely to require judicial intervention. The volume addresses how service may be conducted under Federal Rule of Civil Procedure 4(f) when no treaty applies and discusses two relevant treaties, the Hague Service Convention and the Inter-American Convention on Letters Rogatory (IASC) and Additional Protocol (collectively, IACAP), and how these treaties interact with Rule 4(f).

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