

Theory of International Service: Part 1

There are different methods accepted to serve documents in Civil and Commercial matters issue by a Local Court in a Foreign Jurisdiction, these are; by the International Treaty of the Hague Convention of 1965, by treaty between Countries and Outside the Hague Convention.

1. The Hague Convention proposes two channels for service: Formal and Informal, both having the same legal value or hierarchy.
 - a. Formal service refers to service using the local governmental institutions called “Central Authorities”. The use of it is complex, does not Skip traces, requires translation of documents and is often slow or it fails.
 - b. The second channel propose by the convention is composed of 3 different ways to serve documents, Postal, Private hiring of Judicial officers and Legal Currier. These “bypasses” are regulated in Article 10 of the Convention and must be validated by the “Applicability table”, in constant evolution and updated periodically. This table reflect what “bypass” is accepted or opposed by the Country receiving service. Often, these oppositions are declarations indicating some internal rules to apply. Once a country has adhere without any reserve or opposition to article 10 it applies overlapping local laws of Civil Procedure.
2. Methods and Channels are a result of old concepts of sovereignty that have no space in a Global economy, reason why International Service of Process, must follow “Global legal guarantees”, which can be reduced to “Non existence of defenseless”. There are many aspects to consider, but basically are;
 - a. **Acknowledgement:** Addressee is properly Inform of a Court Case against him.
 - b. **Understanding:** Addressee understands the object of the case.
 - c. **Warning:** Addressee if informed of consequences of not responding.
 - d. **Legality:** Addressee is informed of the laws applied to service.
 - e. **Approach:** Addressee could “deny or oppose” during service.
 - f. **ADR:** Addressee is given an option to use a “Mediator”, “Arbitrator” or “Waiver”.
 - g. **Passive legitimation:** Addressee must accept service.
 - h. **Time:** Addressee has enough time to respond to service.
 - i. **Qualifications:** Process server is “Legally Competent to serve”
 - j. **Defense:** Addressee is informed of where to obtain Legal Aid.
 - k. **Evidence:** Sender must received confirmation “Affidavit”
 - l. **Language:** International Service of Process must be in English language.
3. The different study commissions of the Hague Convention recommend the use of their proposed “form”, for formal or informal service. This is a rudimentary documents that must be perfection and which will become a valid document or “Affidavit of Service” including to non Hague signatories, if its contents is the following;
 - a. Signing Process Server: Must have “International Personal Responsibility”, either by attachment to the local or to the foreign jurisdiction. Indeed, the following servers must not be accepted by Courts:
 - a.1. Illegal Aliens or Non legal residents
 - a.2. Limited Liability Corporations
 - a.3. Felons or persons with a Criminal record or Convicted.
 - a.4. Couriers that are not “Binded or Control by Associations”
 - b. Service by Mail must not be a simple “Existence of an Address”, reception by addressee must be confirmed either by its signature on the reception receipt or by telephone or electronic confirmation to server, who will detailed description of content sent to addressee in numbered pages.
 - c. Service by Judicial Officer: Must be limited and strictly submitted or according to local laws of Civil Procedure and no option should be given to addressee to refuse service but must include legal Advise.

To the best of my knowledge!



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"Ius gentium est quod naturalis ratio inter omnes homines constituit"