

EXHIBIT 12

HCCH Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Purpose of the Service Convention

The Service Convention provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State party to the Convention to another State Party for service in the latter.¹ The Convention deals primarily with the *transmission* of documents; it does not address or comprise substantive rules relating to the actual service of process.² The framework provided by the Convention is both efficient and effective – statistical data shows that 75% of requests are executed within 2 months.³

When does the Service Convention apply?

The Convention applies where: (i) a judicial or extrajudicial document is (ii) to be transmitted from one State Party to another, for service in the latter (the law of the forum State determines whether or not a document has to be transmitted abroad for service in the other State – the Convention is *non-mandatory*), (iii) the address of the person to be served is known, and (iv) the document to be served relates to a civil or commercial matter. If all these requirements are met, the transmission channels provided for under the Convention must be applied (the Convention is *exclusive*).

What are the channels of transmission provided for by the Service Convention?

The Convention provides for *one main channel* of transmission and *several alternative channels* of transmission.

Under the main channel of transmission provided for by the Convention, the authority or judicial officer competent under the law of the Requesting State (State where the document to be served originates) transmits the document to be served to the *Central Authority* of the Requested State (State where the service is to occur).⁴ The request for service transmitted to the Central Authority must comply with the *Model Form*⁵ annexed to the Convention and be accompanied by the documents to be served. The Central Authority of the Requested

¹ For a comprehensive and updated list of Contracting States to the Convention, follow the link entitled “Updated list of Contracting States (status table)” on the “Service Section” of the HCCH website at < www.hcch.net >.

² There are, however, two channels of transmission provided for by the Convention where the transmission process includes service of process upon the ultimate addressee: the direct diplomatic or consular channels and the postal channel. For all the other channels of transmission provided for by the Convention an additional step, not governed by the Convention, is required to serve process on the ultimate addressee.

³ This figure is based on statistical information received in 2014 from 47 Contracting States to the Service Convention.

⁴ The Convention specifies that the forwarding authority must be an authority or judicial officer of the Requesting State. It is that State’s law which determines which authorities or judicial officers are competent to forward the request for service. Thus, in certain countries, attorneys, solicitors or private process servers are authorised to send such a request. Under the Convention, private persons are not entitled to send directly a request for service to the Central Authority of the Requested State.

⁵ The Model Form comprises three parts: a *Request* for service (which is sent to the Central Authority of the Requested State), a *Certificate* (which is reproduced on the reverse side of the Request and which confirms whether or not the documents have been served), and a form entitled “*Summary of the document to be served*” (to be delivered to the addressee). In addition, the Fourteenth Session of the HCCH recommended that the Summary be preceded by a *warning* relating to the legal nature, purpose and effects of the document to be served. A fillable Model Form that can be completed electronically and printed is available on the “Service Section” of the HCCH website.

State will execute the request for service or cause it to be executed either (i) by informal delivery to the addressee who accepts it voluntarily, or (ii) by a method provided for under the law of the Requested State, or (iii) by a particular method requested by the applicant, unless it is incompatible with the law of the Requested State. Under Article 5(3), the Central Authority of the Requested State may request a translation of the documents to be served if they are to be served by a method prescribed by the internal law of the Requested State for the service of documents in domestic actions upon persons who are within its territory (Art. 5(1)(a)), or if service by a particular method is requested by the applicant (Art. 5(1)(b)). A State Party shall not charge for its services rendered under the Convention (Art. 12(1)). Thus, the services rendered by the Central Authority shall not give rise to any payment or reimbursement of costs. Under Article 12(2), however, an applicant shall pay or reimburse costs occasioned by the employment of a judicial officer or other competent person or by the use of a particular method of service. A Central Authority may request such costs to be paid in advance.

The alternative channels of transmission are: *consular or diplomatic channels* (direct and indirect) (Arts. 8(1) and 9), *postal channels* (Art. 10(a)), *direct communication between judicial officers, officials or other competent persons* of the State of origin and the State of destination (Art. 10(b)), and *direct communication between an interested party and judicial officers, officials or other competent persons* of the State of destination (Art. 10(c)). The Convention entitles a State to object to the use of some of these alternative channels. There is no hierarchy of the channels of transmission, and transmission through one of the alternative channels does not lead to service of lesser quality.

Protection of the plaintiff's and defendant's interests

Regardless of the applicable channel of transmission, the Convention contains two key provisions which protect the defendant *prior* to a judgment by default (Art. 15) and *after* a judgment by default (Art. 16). Articles 15 and 16 require the judge to stay entry of judgment (Art. 15) or allow the judge to relieve the defendant from the effects of the expiry of the time for appeal (Art. 16), subject to certain requirements.

Practical Handbook on the Operation of the Service Convention (4th Edition, 2016)

The Practical Handbook offers detailed explanations on the general operation of the Service Convention as well as authoritative commentaries on the major issues raised by practice over the past fifty years.

Since the publication of the 3rd edition of this Handbook in 2006, there have been important developments in case law and State practice in relation to the HCCH Service Convention. These developments are the most important basis for this updated and expanded 4th edition. In addition, it includes comprehensive research and analysis relating to the use of information technology in the operation of the Convention, an area that continues to evolve.

To order the Handbook, see the "[Service Section](#)" of the HCCH website.

Monitoring of the Convention

The Service Convention's practical operation was last reviewed by a Special Commission in 2014. The Special Commission confirmed the broad membership of the Convention, and welcomed the use of electronic tools in facilitating the progress of requests. With the aim of further enhancing cross-border judicial co-operation among Contracting States, the Special Commission set out some guidelines for the prompt execution of requests for service.

For additional information, please visit the "[Service Section](#)" of the HCCH website at <www.hcch.net> or contact the Permanent Bureau of the HCCH.