

Top 10 FAQs

about international service of process

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// Resolve to perform what you ought; perform without fail what you resolve."

Benjamin Franklin

For attorneys who have lawsuits or documents that must be served in foreign countries, the task of determining how to properly effect service internationally can be complicated and time-consuming. The critical issue ultimately is whether any judgment obtained against that foreign defendant is enforceable. This end result often depends entirely on the effectiveness of service abroad. ▶



Q: 1

Can improper service of process outside the United States subject a client to criminal sanctions; or subject an attorney to a potential malpractice claim?

Yes! Regardless of U.S. laws or what a U.S. court rules regarding sufficiency of service, there are a number of countries which consider service of process (even by mail) within their borders a judicial act, which violates their sovereign jurisdiction. Such countries as the Federal Republic of Germany, Japan and Switzerland prohibit, and have penal sanctions against, service of civil process which is not made in strict accordance with their civil codes (even on U.S. citizens abroad). Inadequate service could create some real problems. For example, the plaintiff could encounter foreign penal sanctions when attempts at discovery or execution on foreign assets are made. Also, the U.S. judgment could be unenforceable because of failure to meet foreign requirements. Cure in this case could be impossible if the statute of limitations has run.

Q: 2

What is the difference between Formal and Informal Service of Process?

"Formal" service is made pursuant to international treaty law or letters rogatory and is made in strict accordance with the laws of the foreign jurisdiction. "Informal" service occurs when service is made abroad by a private process server placing the Summons & Complaint into the defendant's hands. Informal service is generally much faster and requires no translation; but it is not allowed in every foreign country. Motions to quash (dismiss) an informal service are commonplace and occasionally successful in a U.S. court. Such motions are usually successful in foreign courts (if execution abroad is necessary). Avoid informal service except as a supplement to formal service.

Q: 3

Why is U.S. mail always an inadequate method of service abroad?

Regardless of Rule 4, service by mail on a defendant in a foreign country seldom works and is never a good idea. Latent hazards to client and lawyer exist in every foreign country where service by mail is improper or illegal. If a plaintiff's lawyer selects an improper method of service, and the plaintiff is unable to prevail because of that, it is clear to whom the plaintiff will next look.

Q: 4

When there is a treaty for service, must its procedures be used?

The Schlunk case stated that U.S. law did not require treaty procedures in every case to bring a foreign defendant into a U.S. court. However, the court said these procedures could always be used; and Justice O'Connor said a lawyer who doesn't follow the procedures runs the risk of finding out later that he/she should have. Additionally, the Court stated that where treaty procedures were not used, regardless of what a U.S. court decided, a U.S. judgment might be unenforceable abroad. In the real world, a plaintiff's attorney will find that almost 90 percent of foreign defendants can avoid a U.S. judgment in their country if treaty or other formal procedures are not followed. An attorney would be foolish to rely on a thinly capitalized U.S. subsidiary of a foreign defendant to satisfy every plaintiff's judgment.

Q: 5

What do you do when there is no international treaty?

Approximately 20 percent of the world's nations have service of process treaties. Letters Rogatory are required to effect formal service when there is no international treaty prescribing a service method. A Letter Rogatory service is a

formal request by the judge of the U.S. court where the action is venued, to the highest judicial authority of the defendant's homeland, seeking judicial assistance for service of process. A specific format (with translations of the letters and pleadings) plus diplomatic authentications, acknowledgments and foreign embassy seals are generally required.

Q: 6

When are translations necessary?

Most industrialized nations require that documents served in their country be translated into their native language when formal service is made. A unique example is Switzerland (there is no "Swiss" language), which requires the documents to be translated into either French, German or Italian depending on the address of the defendant. There are no citations or rules (other than trial-and-error) which will help a plaintiff know when to translate, since it is generally foreign court rules or customs that dictate.

Q: 7

How long does service abroad take?

Service of process abroad can take as little as one week (or less); or as long as 18 months. This time frame varies from country to country depending on the method required to make proper service. The average time frame is 10 to 12 weeks. ▶

Q: 8

Can service by fax or email internationally suffice?

As with any method of service you choose to serve notice on your international defendant, you must remain cognizant of the most important issue: Will you be able to enforce your judgment? Regardless if the defendant does or does not appear (and if they do, it will probably be with a Motion to Quash), service by any method other than the legally recognized methods of BOTH countries involved could preclude enforcement of your eventual judgment.

Q: 8a

Can service by waiver internationally suffice?

The answer to this is no different than above. If eventual enforcement abroad will be required, then you need to know the foreign country's position on service by waiver. Many countries do not have a similar provision and so do not consider it proper service/notice. In addition, APS is aware of certain foreign defendants who routinely accept service by waiver with full knowledge that a U.S. judgment will not be enforced unless proper service through the courts is obtained.

Q: 9

What is a letter rogatory?

The simple answer is "A letter rogatory is a request from one judge to another judge to perform an act on behalf of the former in the jurisdiction of the latter."

A letter rogatory can encompass any type of request, for example: to file a subpoena, to compel production of testimony or documents, to perform international service of process, etc.

The function of the letter rogatory is based on comity. One court will request assistance and at the same time promise similar assistance to the receiving court in similar matters.

Q: 10

How do I expedite international service?

In general, this is a country-specific answer. For example, there are many countries where service can be done (properly) through a local agent within a matter of days or weeks. However, most industrialized nations are party to the Hague Service Convention and in accordance with the FRCP, compliance with its provisions are mandatory in those countries.

APS can expedite translations, if required, however it is beyond the control of any company and/or court to

compel a foreign government to handle a request in a specific time frame. Due to the relationship APS has with many of the Central Authorities (the governmental offices abroad designated to receive Hague Service Convention requests), APS has routinely been in the position to advise the Central Authority of court imposed deadlines to facilitate the process. In most cases, this has been sufficient to get service completed on time. However, there are still countries where any request for service under a certain amount of time will be returned unexecuted simply due to the impossibility of the request.

With regard to a Letter Rogatory request, these are processed through the U.S. Department of State and the U.S. Embassy in the foreign country. These requests routinely take 6-12 months. APS does regular follow-ups on the requests to make sure they are being handled and not lost in international mail or on someone's desk. However, it can be difficult to expedite the request once it has been received by the Department of State. ■

