

# The Hague Service Convention: A Practical Step Towards Greater International Legal Cooperation

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## I. INTRODUCTION

On 4 March 2020, the Philippines deposited its instrument of accession<sup>1</sup> to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service Convention).<sup>2</sup> The Service Convention falls under the auspices of the Hague Conference on Private International Law (HCCH),<sup>3</sup> the leading global organization for the “progressive unification of the rules of private international law[,]”<sup>4</sup> and was established to “overcome the challenges of cross-border procedures” through the framework of international conventions and other instruments.<sup>5</sup>

Prior to the accession of the Philippines to the Service Convention, transmissions of judicial documents for extraterritorial service were generally made through diplomatic or consular channels.<sup>6</sup> Outbound documents originating from Philippine courts were first transmitted to the Department of Foreign Affairs (DFA) main office in Manila, after which the said office would forward the documents to the Philippine Embassy or Consulate General of the State of destination.<sup>7</sup> Afterwards, the Embassy or Consulate General would request the host Ministry of Foreign Affairs to have the court documents

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1. Department of Foreign Affairs, PH Deposits Instrument of Accession to the Hague Conference on Private International Law, *available at* <https://dfa.gov.ph/dfa-news/news-from-our-foreign-service-postsupdate/26142-ph-deposits-instrument-of-accession-to-the-hague-conference-on-private-international-law> (last accessed July 31, 2021) [<https://perma.cc/J2ZW-C57D>].
  2. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, *signed* Nov. 15, 1965, 658 U.N.T.S. 163 [hereinafter Hague Service Convention].
  3. *Id.* arts. 26 & 28.
  4. Statute of the Hague Conference on Private International Law art. 1, *adopted* Oct. 31, 1951, 220 U.N.T.S. 121 (entered into force July 15, 1955).
  5. Dr. Gérardine Goh Escolar, First Secretary, Permanent Bureau of the Hague Conference on Private International Law, *Statement of the Hague Conference on Private International Law*, Address at the Sixth Committee of the 74th Session of the United Nations General Assembly (Oct. 11, 2019) (transcript *available at* [https://www.un.org/en/ga/sixth/74/pdfs/statements/rule\\_of\\_law/hcch.pdf](https://www.un.org/en/ga/sixth/74/pdfs/statements/rule_of_law/hcch.pdf) (last accessed July 31, 2021) [<https://perma.cc/V7AG-6W3R>]).
  6. J. Eduardo Malaya & Jilliane Joyce R. De Dumo-Cornista, *The HCCH Conventions and Their Practical Effects to Private International Law in the Philippines*, 45 IBP J. 41, 66-67 (2020).
  7. *Id.*

served by local authorities, and at other times, send the documents by registered mail directly.<sup>8</sup> As for inbound documents originating from abroad, they would first be transmitted to the State of origin's Ministry of Foreign Affairs.<sup>9</sup> The former office would then transmit the documents to DFA's main office, which in turn would transmit the same to the Executive Judge of the area where service is to be effected, with a request to serve them.<sup>10</sup>

Service of judicial documents under the Service Convention and Supreme Court Guidelines may be made through the Central Authorities of the Contracting State<sup>11</sup> without need for, and without discarding, the much slower diplomatic and consular routes of transmission.

The Service Convention streamlines the channels of transmission for service abroad of judicial or extrajudicial documents in civil or commercial matters from one Contracting State to the other Contracting State.<sup>12</sup> At the same time, it ensures that the rights of the defendant are sufficiently protected.<sup>13</sup> The Service Convention "does not address or comprise substantive rules relating to the actual service of process."<sup>14</sup> As an international agreement entered by the Philippines, the Service Convention forms part of Philippine law.<sup>15</sup> As a procedural law, it works as an effective tool that facilitates and simplifies the transmission of documents from one State to another State,<sup>16</sup> and provides a framework for the Philippines to join the

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8. *Id.* at 67. *See also* De Midgeley v. Ferandos, G.R. No. L-34314, 64 SCRA 23, 33 (1975).

9. Malaya & De Dumo-Cornista, *supra* note 6, at 67.

10. *Id.*

11. HCCH, PRACTICAL HANDBOOK ON THE OPERATION OF THE SERVICE CONVENTION XLVI, ¶ 7 (2016).

12. Malaya & De Dumo-Cornista, *supra* note 6, at 65 (citing HCCH, *supra* note 11, at XLV, ¶ 1).

13. HCCH, *supra* note 11, at XLV, ¶ 1 & LII, ¶ 28.

14. *Id.* at XLV, ¶ 1.

15. PHIL. CONST. art. II, § 2 ("The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.").

16. HCCH, *supra* note 11, at XLV, ¶ 1.

international cooperation for a more unified transnational service of processes and court documents.<sup>17</sup>

An immediate benefit of the Service Convention is the expansion of options for a party litigant to serve extraterritorial service of summons abroad through the Central Authority of the Contracting State, which is the centerpiece and principal innovation of the Service Convention.<sup>18</sup> At the same time, the rights of the defendant are protected, as the purpose of the Service Convention is also “to create appropriate means to ensure that judicial and extra-judicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time[.]”<sup>19</sup> As the Philippines participates in greater cooperation in the field of private international law, the practical effects (and benefits) of joining the Hague Conventions will result in better efficiency and the orderly settlement of disputes, greater certainty and predictability, good governance, reduction of cross-border transactions and litigation costs, and overall governance of the rule of law.<sup>20</sup>

## II. PURPOSE AND SCOPE OF THE SERVICE CONVENTION

### *A. A Brief History of the HCCH and the Service Convention*

The HCCH convened as early as 1893, and its first session gathered delegates from 13 States in an international conference on the regulation of issues relating to civil procedure and jurisdiction.<sup>21</sup> Since then, the HCCH has since expanded to 89 members across the continents,<sup>22</sup> and has promoted its effective cooperative mechanisms in the private international law setting, especially in the fields of international family and child protection law,

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17. Rikki Daniele Louis A. Dela Paz, *Expanding the Rules on Summons: Assessing the Viability of Philippine Accession to the Hague Service Convention & Providing Key Learnings from British and American Civil Procedure: A Treatise on Summons* (2017) (unpublished J.D. thesis, De La Salle University College of Law) (on file with De La Salle University College of Law).

18. Richard J. Hawkins, *Dysfunctional Equivalence: The New Approach to Defining “Postal Channels” under the Hague Service Convention*, 55 *UCLA L. REV.* 205, 213-14 (2007).

19. Hague Service Convention, *supra* note 2, pmbl.

20. *See* Escolar, *supra* note 5.

21. HCCH, History, available at <https://www.hcch.net/en/test-stu/history> (last accessed July 31, 2021) [<https://perma.cc/8GG8-49FT>].

22. HCCH, Members, available at <https://www.hcch.net/en/states/hcch-members> (last accessed July. 31, 2021) [<https://perma.cc/8V7P-GFRN>].

international civil procedure and the recognition of documents, and international commercial and financial law.<sup>23</sup>

The first successful Hague Convention was ratified by 14 European countries and laid the groundwork for the several Conventions on family law, as well as the Convention on Civil Procedure, which was signed on 17 July 1905.<sup>24</sup> The HCCH's *modern Conventions* have taken the matter of international civil procedure in three separate Conventions to address service of documents abroad (the Service Convention),<sup>25</sup> taking of evidence abroad (Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (Evidence Convention),<sup>26</sup> and legal aid, deposits for costs, safe conduct of witnesses and detention of foreign debtors, lumped together (Convention of 15 October 1980 on International Access to Justice) (1980 Convention in International Access to Justice).<sup>27</sup> The "three 'modern Conventions' reflect a determined effort on the part of the Conference to build a bridge between countries having civil law procedural system ... and common law countries[.]"<sup>28</sup>

The shift, however, from the States' use of diplomatic and consular channels to judicial and administrative channels through the Central Authorities was largely in part due to the growth of international procedural processes following the World War II.<sup>29</sup> After this time, countries around the world gradually shed their global and judicial isolationist policies, and the increased participation in international business and commerce would lead to more cross-border litigation.<sup>30</sup> Many countries were ill-equipped to handle the rise in international disputes, considering that internationally acceptable means of service process had not yet been established.<sup>31</sup>

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23. Escolar, *supra* note 5. *See also id.*

24. Georges A.L. Droz, *A Comment on the Role of the Hague Conference on Private International Law*, 57 L. & CONTEMP. PROBS. 3, 3-4 (1994).

25. *Id.* at 4.

26. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *opened for signature* Mar. 18, 1970, 847 U.N.T.S. 231.

27. Convention on International Access to Justice, *signed* Oct. 25, 1980, 1510 U.N.T.S. 375 & Droz, *supra* note 24, at 4.

28. *Id.*

29. *Id.*

30. *See* Hawkins, *supra* note 18, at 210-11.

31. *Id.* at 211.

In October 1964, the HCCH convened to formulate a convention on regulating the transmission of judicial and extrajudicial documents between its member nations.<sup>32</sup> The Service Convention addressed an inherent problem in the service of processes where fundamental differences existing between civil and common law legal systems were concerned, which often exposed litigants to unpredictability and uncertainty in legal relations.<sup>33</sup> Further, it sought to meet the objectives of the drafters in three ways: “(a) it creates a new and specific governmental method for service of documents from abroad by each signatory [S]tate; (b) it regulates previous methods of service; and (c) it regulates the method for obtaining default judgments when documents are served abroad.”<sup>34</sup>

The Philippines joined the HCCH in 2010.<sup>35</sup> On 1 October 2020, the Service Convention entered into force for the Philippines after it deposited its instrument of accession on 4 March 2020.<sup>36</sup> Currently, the Service Convention has 79 Contracting Parties.<sup>37</sup>

#### *B. Scope and Applicability of the Service Convention*

According to the HCCH, the Service Convention is both efficient and effective, with statistical data showing that 75% of requests are executed within two months.<sup>38</sup> Prior to the Service Convention, outbound documents coursed through diplomatic or consular channels for extraterritorial service abroad had

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32. *Id.* at 212 (citing Leonard A. Leo, *The Interplay Between Domestic Rules Permitting Service Abroad by Mail and the Hague Convention on Service: Proposing an Amendment to the Federal Rules of Civil Procedure*, 22 CORNELL INT’L L.J. 335, 340 (1989)).

33. Hawkins, *supra* note 18, at 212.

34. Stephen F. Downs, *The Effect of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, 2 CORNELL INT’L L.J. 125, 130 (1969).

35. HCCH, Member: Philippines, available at <https://www.hcch.net/en/states/hcch-members/details1/?sid=121> (last accessed July 31, 2021) [<https://perma.cc/6G9U-4UV5>].

36. HCCH, Status Table, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last accessed July 31, 2021) [<https://perma.cc/VLG2-UVCG>].

37. *Id.*

38. HCCH, Service Section, available at <https://www.hcch.net/en/instruments/conventions/specialised-sections/service> (last accessed July 31, 2021) [<https://perma.cc/FNJ7-SUW3>].

a turnaround time of four to six months for the service, and on some occasions, with no return or result of service.<sup>39</sup>

The Service Convention “shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad[;]”<sup>40</sup> however, the Service Convention shall not apply where the address of the person to be served with the judicial or extrajudicial document is not known.<sup>41</sup> Thus, for the Service Convention to be applicable, the following requirements must be met:

- (1) A document is to be transmitted from one State Party to the [Service] Convention to another State Party for service in the latter ... . The law of the State of origin (forum law) determines whether or not a document has to be transmitted abroad for service in the other State [the [Service] Convention is ‘non-mandatory’ ...];
- (2) An address for the person to be served is known[;]
- (3) The document to be served is a judicial or extrajudicial document[;]
- (4) The document to be served relates to a civil and/or commercial matter[.]<sup>42</sup>

If all these requirements are met, the transmission channels provided for under the Service Convention must be applied (and the Service Convention is exclusive), except in case of a derogatory channel.<sup>43</sup> In such case, “State Parties may provide [a] channel[ ] of transmission other than those provided for under the [Service] Convention[.]”<sup>44</sup> The two types of derogatory channels are those provided in bilateral or multilateral agreements concluded between and among Contracting States, and those provided by the domestic or internal law of the State of destination.<sup>45</sup>

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39. Malaya & De Dumo-Cornista, *supra* note 6, at 67.

40. Hague Service Convention, *supra* note 2, art. 1.

41. *Id.*

42. HCCH, *supra* note 11, at XLV-XLVI, ¶ 3 (emphases omitted).

43. *Id.* at XLVI, ¶ 3.

44. *Id.* at XLVI, ¶ 6.

45. *Id.*

The Service Convention is applicable to “civil or commercial matters”<sup>46</sup> and it has been recognized that a liberal approach should be taken with respect to such interpretation,<sup>47</sup> thus —

The Convention is applicable ‘in civil or commercial matters[.]’ The interpretation of these terms brought on lively discussions, for it was [recognized] that the accepted meaning could be substantially different as between one system and another. For some, the concept covered everything which was not criminal, for others everything which was neither criminal nor having to do with taxes, for yet others everything which was not a criminal, tax[,] or administrative matter. Finally, in the Egyptian system of personal laws matters of personal status are not considered to be civil matters. There appeared besides very deep differences concerning the determination of the law applicable to [characterization] of these matters. Some looked to the system of the requesting States, others to the system of the States addressed. The authors of the Convention of 1965 had refused to deal with this question, leaving it to the States Parties to solve it. *It appeared that, in practice, the Central Authorities were very liberal, being ready to serve documents which they would not be obligated to serve under the terms of the Convention, this for the purpose of rendering service to the addressee, the only effective barriers being raised against service in criminal or tax matters. This is why, [realizing] that it would not be possible for them to recommend a uniform solution acceptable to all the States, the Experts limited themselves to expressing the wish that the Convention be applied in the most liberal possible manner in respect of the scope of its subject matter.*<sup>48</sup>

Several articles allow for a Contracting Party’s declarations or objections to the applicability of certain provisions, in particular, Articles 8 (2), 10, 15 (2), and 16 (3) thereof.<sup>49</sup> Significantly, the Philippines has made the following Declarations with respect to the Service Convention:

- (1) In accordance with Article 5 of the Convention, formal service shall be permissible only if the document to be served is written in or translated into the English or Filipino language.
- (2) Pursuant to Article 8, the Philippines objects to service of judicial documents directly through diplomatic or consular agents upon persons in its territory, unless the document is served upon a national of the State in which the documents originate.

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46. Hague Service Convention, *supra* note 2, art. 1.

47. Permanent Bureau, *Report on the Work of the Special Commission on the Operation of the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, § 1 (A) (Dec. 1977).

48. *Id.* (emphasis supplied).

49. See Hague Service Convention, *supra* note 2, arts. 8 (2), 10, 15 (2), & 16 (3).



- (3) The Philippines objects to the transmission channels under paragraphs a and c as provided for in Article 10 of the Convention.<sup>50</sup>

#### I. Main Channel of Transmission

The Service Convention provides for one main channel of transmission where documents must pass through a Contracting State's Central Authority and several alternative channels of transmission, which preserves the applicant's option to resort to different modes of service.<sup>51</sup>

Under the main channel of transmission, an authority or judicial officer competent in one Contracting Party (referred to as the Forwarding Authority) transmits a request for service to the Central Authority of the Contracting Party in which service is to be effected.<sup>52</sup> In this respect, Article 3 of the Service Convention provides —

The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legaliz[ation] or other equivalent formality.

The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.<sup>53</sup>

Article 5 of the Service Convention requires each Contracting State to create a Central Authority to receive requests for service from other Contracting States, and to attempt to satisfy the requests from abroad for service upon persons within their territory.<sup>54</sup> The Central Authority of the

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50. HCCH, Declaration/Reservation/Notification (Philippines), *available at* <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=1435&disp=resdn> (last accessed July 31, 2021) [<https://perma.cc/RH5D-Q6W6>].

51. HCCH, Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, at 1-2, *available at* <https://assets.hcch.net/docs/f4ccc07b-55ed-4ea7-8fb9-8a2b28549e1d.pdf> (last accessed July 31, 2021) [<https://perma.cc/YBP7-F79B>] [hereinafter HCCH Outline].

52. *Id.* See also Hague Service Convention, *supra* note 2, art. 5.

53. *Id.* art. 3.

54. Downs, *supra* note 34, at 130.

Requested State effects service of the document, or causes service thereof, in the manner stated therein<sup>55</sup> —

The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either —

- (a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
- (b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.<sup>56</sup>

In accordance with the treaty provisions of the Service Convention, the Philippines has declared under Article 5 of the Service Convention that it requires the document originated from the Requesting State to be served to be written in, or translated into, the official languages of Filipino or English.<sup>57</sup>

The execution of the request for service by the Central Authority under Article 5 (1) (a) of the Service Convention shall be the method prescribed for the service of documents in domestic actions upon persons who are within its territory.<sup>58</sup> Notably, Article 5 (1) (b) of the Service Convention provides that the applicant (the Forwarding Authority in the Requesting State) may request that a particular method or procedure be used, to the extent that it is not incompatible with the law of the Requested State.<sup>59</sup> Lastly, “the authority executing the request must complete the certificate as annexed to the [Service]

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55. Hague Service Convention, *supra* note 2, art. 5.

56. *Id.*

57. HCCH, *supra* note 50. See PHIL. CONST. art. XIV, § 7 (“For purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English.”).

58. Downs, *supra* note 34, at 130.

59. HCCH Outline, *supra* note 51, at 1.

Convention, stating that the service was effected, or if not, the reasons that prevented service[.]”<sup>60</sup> thus —

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities.

The certificate shall be forwarded directly to the applicant.<sup>61</sup>

## 2. Alternative Channels of Transmission

The Service Convention preserves the freedom of Contracting Parties to use alternative channels of transmission through diplomatic or consular channels (direct and indirect), postal channels, direct communication between judicial officers, officials, or other competent persons of the State of origin and the State of destination, and direct communication between an interested party and judicial officers, officials, or other competent persons of the State of destination.<sup>62</sup> These are provided for under Articles 8, 9, and 10 of the Service Convention.<sup>63</sup>

Diplomatic or consular transmissions under Article 8 and 9 are channels of transmission where “the request for service is forwarded by the Ministry of Foreign Affairs of the State of origin (forwarding authority) to the consul or diplomat representing the State of origin within the State of destination.”<sup>64</sup> After, the latter executes the request for service either personally (through direct channels), or otherwise forwards the same for execution to a competent authority of the State of destination (through indirect channels).<sup>65</sup>

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60. *Id.*

61. Hague Service Convention, *supra* note 2, art. 6.

62. HCCH Outline, *supra* note 51, at 2.

63. Hague Service Convention, *supra* note 2, arts. 8–10. *See also* HCCH, *supra* note 51, at 2.

64. HCCH, *supra* note 11, at LI, ¶ 25.

65. *Id.*

The Philippines has declared under Article 8 of the Service Convention that it is opposed to service of judicial documents directly through its diplomatic or consular agents upon persons in its territory, “unless the document is to be served upon a national of the State in which the documents originate.”<sup>66</sup>

Article 10 (a) of the Service Convention allows service by postal channels.<sup>67</sup> The HCCH has expressed the conclusion that the use of private courier was the “equivalent of the postal channel.”<sup>68</sup> The HCCH has also noted that using postal channels for service under Article 10 (a) of the Service Convention is a method quite separate from service via the Central Authorities or between judicial officers.<sup>69</sup> In effect, the same provision gives Contracting States the opportunity to consider that service by mail would be considered an infringement of their sovereignty and thus object to it on those grounds.<sup>70</sup> In this respect, the Philippines has objected to the following transmission channels under Article 10 (a) of the Service Convention.<sup>71</sup>

Article 10 (b) allows for channels of transmission “directly through the judicial officers, officials[,] or other competent persons of the State of destination[.]”<sup>72</sup> Under this provision, any person interested in the proceedings (Article 10 (c)) or any judicial officer, official or other competent person in the State of origin (Article 10 (b)) can directly approach and communicate with a judicial officer, official, or other competent persons in the State of destination to serve the documents.<sup>73</sup> Under some jurisdictions, the provisions provide for “transmission of documents to be served by a *huissier de justice* to another *huissier de justice*.”<sup>74</sup> Notably, the Philippines has objected to Article 10 (c),<sup>75</sup> which gives “the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the

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66. Hague Service Convention, *supra* note 2, art. 8.

67. *Id.* art. 10 (a).

68. Permanent Bureau, *Conclusions and Recommendations Adopted by the Special Commission on the Practical Operation of the Hague Apostille, Evidence and Service Conventions*, ¶ 56 (Oct. 28 - Nov. 4, 2003).

69. HCCH, *supra* note 11, at XLVII, ¶ 10.

70. *Id.* at XLIX, ¶ 19.

71. HCCH, *supra* note 50.

72. Hague Service Convention, *supra* note 2, art. 10 (b).

73. *See id.* art. 10.

74. HCCH, *supra* note 11, at LI, ¶ 27.

75. HCCH, *supra* note 50.

judicial officers, officials[,] or other competent persons of the State of destination.”<sup>76</sup>

### 3. Derogatory Channels

The Service Convention allows Contracting Parties to employ derogatory channels, or channels of transmission other than those provided under the Service Convention, including those made by special agreements, or as otherwise provided by their internal law.<sup>77</sup>

Article 19 of the Service Convention provides that “[t]o the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.”<sup>78</sup>

Under Article 19 of the Service Convention, Contracting Parties are free to employ any method of service permitted under the internal law of the Contracting Party where service is made, provided that the method is not incompatible with the foreign State.<sup>79</sup> Article 19 of the Service Convention requires the person effecting service to prove that the service is valid under the internal law of the foreign country.<sup>80</sup> It has been noted, however, that practically speaking, this would be difficult to affirmatively prove since some laws in some jurisdictions, particularly in Europe, do not specifically prohibit methods of foreign service.<sup>81</sup>

Under the other derogatory channel, and in general, it is accepted that Contracting States may employ channels provided for by special agreement.<sup>82</sup> Under Article 11, the Service Convention does “not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided in preceding articles and, in particular, direct communication between [the contracting States’] respective authorities.”<sup>83</sup> Additionally, supplementary

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76. Hague Service Convention, *supra* note 2, art. 10 (c).

77. HCCH, *supra* note 11, at XLVI, ¶ 6.

78. Hague Service Convention, *supra* note 2, art. 19.

79. *Id.*

80. Downs, *supra* note 34, at 132.

81. *Id.* at 132-33.

82. Permanent Bureau, *supra* note 47, § 1 (F).

83. Hague Service Convention, *supra* note 2, art. 11.

agreements between Parties to the 1905 Civil Procedure Convention<sup>84</sup> and the Convention of 1 March 1954 on Civil Procedure<sup>85</sup> “shall be considered as equally applicable to the [Service] Convention, unless the Parties have otherwise agreed.”<sup>86</sup> Lastly, “the [Service] Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the contracting States are, or shall become, Parties[.]”<sup>87</sup> without prejudice to the provisions of Articles 22 and 24 thereof.<sup>88</sup>

### *C. Protection of the Defendant*

The Service Convention provides protection from default judgment to the defendant to whom documents of judicial or extrajudicial nature are served.<sup>89</sup> These safeguards are found in Articles 15 and 16 of the Service Convention. Article 15 states —

Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that —

- (a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- (b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention,

and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.

Each contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled —

- (a) the document was transmitted by one of the methods provided for in this Convention,

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84. Convention Relating to Civil Procedure, *signed* July 17, 1905, 99 B.F.S.P. 990.

85. Convention Relating to Civil Procedure, *signed* Mar. 1, 1954, 286 U.N.T.S. 265.

86. Hague Service Convention, *supra* note 2, art. 24.

87. *Id.* art. 25.

88. *Id.*

89. *Id.* arts. 15 & 16.

- (b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.<sup>90</sup>

Article 15 of the Service Convention serves as a protection prior to judgment, unless it is established that service was effective under the Service Convention.<sup>91</sup> It is designed to prohibit a party from obtaining an enforceable default judgment, unless reasonable effort has been made to effect service upon the defendant, and the defendant has had an opportunity to give his defense.<sup>92</sup> It requires that a defendant must be served either under Philippine procedural law under Article 15 (a),<sup>93</sup> or receive actual notice under Article 15 (b).<sup>94</sup>

Article 16 provides the defendant relief from judgment that has already been given for the time-bar arising out of the expiry of the period of appeal,<sup>95</sup> thus —

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled —

- (a) 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
- (b) the defendant has disclosed a *prima facie* [defense] to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

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90. *Id.* art. 15.

91. *Id.*

92. Downs, *supra* note 34, at 135.

93. Hague Service Convention, *supra* note 2, art. 15 (a).

94. *Id.* art. 15 (b).

95. Dela Paz, *supra* note 17, at 68.

Each 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.

This article shall not apply to judgments concerning status or capacity of persons.<sup>96</sup>

Notably, the 2016 Practical Handbook on the Operation of the Service Convention states of Article 16 —

Article 16 does not impose an obligation on the forum judge to relieve the defendant from the relevant time-bar. It merely establishes a power to do so, and the forum judge has a broad discretion in exercising that power. Moreover, Article 16 does not give the court a power to allow an appeal from (or to set aside) a judgment given in default, or allow the defendant an opportunity to appeal from (or apply to set aside the default judgment); these remain matters for the law of the forum court, which may well afford the defendant with other opportunities to appeal from the judgment.<sup>97</sup>

### III. APPLICATION OF THE SERVICE CONVENTION ON THE SERVICE OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS

#### *A. Overview of the Supreme Court Guidelines on the Implementation in the Philippines of the Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters*

The Supreme Court’s Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters (Guidelines),<sup>98</sup> which took effect on 1 October 2020,<sup>99</sup> governs the operation and implementation of the Service Convention in the Philippines, insofar as they concern judicial documents in civil or commercial matters.<sup>100</sup> These Guidelines are to be “interpreted with the end in view of expeditiously granting requests for transmission or service

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96. Hague Service Convention, *supra* note 2, art. 16.

97. HCCH, *supra* note 11, at 105, ¶ 328.

98. Supreme Court, Guidelines on the Implementation in the Philippines of the Hague Service Convention on the Service Abroad of Judicial Documents in Civil and Commercial Matters, Administrative Order No. 251-2020 [SC A.O. No. 251-2020] (Sept. 11, 2020).

99. *Id.* ¶ V, (1).

100. *Id.* ¶ I, (1).



abroad of judicial documents[;] however, [w]here applicable, the provisions of the Rules of Court, as amended, and other pertinent laws and rules, shall apply suppletorily[.]”<sup>101</sup>

While requests for service of judicial documents are governed by the Supreme Court’s Guidelines, requests for service of extrajudicial documents should be directly transmitted to the Integrated Bar of the Philippines (IBP).<sup>102</sup>

The objectives of the Service Convention as stated by the Guidelines are the following:

- (a) To establish a system which, to the extent possible, brings actual notice of the document to be served to the recipient in sufficient time;
- (b) To simplify the method of transmission of these documents from the requesting State to the requested State; and
- (c) To facilitate proof that service has been effective abroad, by means of certificates contained in a uniform model.<sup>103</sup>

The Guidelines provide that the Service Convention shall apply in the Philippines, provided the following conditions are present:

- (a) A document is to be transmitted from one State Party for service to another State Party;
- (b) The address of the intended recipient in the receiving State Party is known;
- (c) The document to be served is a judicial document; and
- (d) The document to be served relates to a civil or commercial matter.<sup>104</sup>

The Central Authority may object to, and decline the request for service, if such Request does not comply with the provisions of the Service Convention, or when compliance with the request would infringe upon its

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101. *Id.* ¶ I, (5).

102. Office of the Court Administrator, Requests for Service of Judicial Documents in the Philippines from Other State Parties (Inbound Requests), at 1, *available at* <https://oca.judiciary.gov.ph/wp-content/uploads/2020/10/Inbound-Request.pdf> (last accessed July 31, 2021) [<https://perma.cc/L8WZ-DYU2>].

103. SC A.O. No. 251-2020, ¶ I (4) (citing HCCH, PRACTICAL HANDBOOK ON THE OPERATION OF THE HAGUE SERVICE CONVENTION (3d ed. 2006) [hereinafter PRACTICAL HANDBOOK 2006]).

104. SC A.O. No. 251-2020, ¶ I (2).

sovereignty or security.<sup>105</sup> Notably, Article 4 of the Service Convention provides that in cases where the Central Authority considers that the request does not comply with the provisions of the Service Convention, it shall promptly inform the applicant and specify its objections to the request.<sup>106</sup>

The Guidelines are aligned with the Service Convention and define certain terms therein.

‘Service’ 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 of process, nor shall it determine the conditions or formalities of that service[.]

[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.<sup>107</sup>

Notably, Article 2 of the Service Convention provides that the Central Authority “will undertake to receive requests for service coming from other contracting States and to proceed in conformity with the provisions of articles 3 to 6.”<sup>108</sup> Further, the Contracting State shall organize the Central Authority in conformity with its own law.<sup>109</sup> The Office of the Court Administrator (OCA) is the Central Authority designated for the Philippines for judicial documents.<sup>110</sup>

The “‘Forwarding Authority’ refers to the authority or judicial officer of the Requesting State competent to forward the request for service”<sup>111</sup> to the Central Authority of the Requested State.<sup>112</sup> “All Justices and Clerks of Court of collegiate courts, and Judges of lower courts are designated as Forwarding Authorities in the Philippines.”<sup>113</sup> Article 3 of the Service Convention relates

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105. *Id.* ¶ I (3) (citing Hague Service Convention, *supra* note 2, art. 13).

106. Hague Service Convention, *supra* note 2, art. 4.

107. SC A.O. No. 251-2020, ¶ I (5) (b) & (c) (citing PRACTICAL HANDBOOK 2006, paras. 46 & 83).

108. Hague Service Convention, *supra* note 2, art. 2.

109. *Id.*

110. SC A.O. No. 251-2020, ¶ I (5) (c).

111. *Id.* ¶ I (5) (d) (citing Hague Service Convention, *supra* note 2, art. 3) (emphases omitted).

112. *Id.*

113. SC A.O. No. 251-2020, ¶ I (5) (d).

the provision on forwarding authorities, and defines them as the “authority or judicial officer competent under the law of the State in which the documents originate[, who] shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of [legalization] or other equivalent formality.”<sup>114</sup>

“Competent Authority” refers to “the authority in Article 6 [of the Service] Convention [which], in addition to the Central Authority, [is] designated to complete the Certificate in accordance with the Model Form annexed to the Service Convention.”<sup>115</sup> All judges are designated as Competent Authorities who are authorized to complete the Certificate in accordance with the Model Form annexed to the Service Convention in the Philippines.<sup>116</sup>

[A] ‘Judicial Document’ refers to 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.

[An] ‘Extrajudicial Document’ refers to any private or public document not directly connected with pending or terminated lawsuits before courts. These shall include, but not limited to, demands for payment, notices to quit in connection with leaseholds, and protests in connection with bills of exchange[.]<sup>117</sup>

The “Model Form” refers to the form annexed to the Service Convention, which consists of three parts:

- (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.<sup>118</sup>

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<sup>114</sup>. Hague Service Convention, *supra* note 2, art. 3.

<sup>115</sup>. SC A.O. No. 251-2020, ¶ I (5) (e) (citing Hague Service Convention, *supra* note 2, art. 6).

<sup>116</sup>. *Id.*

<sup>117</sup>. *Id.* ¶ I (5) (f) & (g) (citing Permanent Bureau, *supra* note 47, § I (E)).

<sup>118</sup>. SC A.O. No. 251-2020, ¶ I (5) (h).

The Model Form is annexed to the Service Convention, as well as the Guidelines for Filling up the Model Form, form Annexes A and B of the Guidelines, and are likewise accessible from the HCCH and OCA websites.<sup>119</sup>

The Guidelines provide the step-by-step process for Requests for Service Abroad of Judicial Documents, depending on whether they are Outbound Requests or Inbound Requests for service. Similarly, the OCA has included information regarding Inbound and Outbound Requests in its website.<sup>120</sup>

#### I. Outbound Requests for Service

Requests for extraterritorial service of judicial documents from the Philippines to other State Parties, or Outbound Requests for Service, are made by application of a party in a civil or commercial proceeding, upon motion for leave of court accompanied by the following documents in duplicate:<sup>121</sup>

- (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.<sup>122</sup>

Under the Guidelines, a party seeking leave from court to effect extraterritorial service of judicial documents must take into account the particular requirements of the Requested State.<sup>123</sup> The reservations, declarations, notifications, or depositary communications, as well as the designation of authorities for each Contracting State are tabulated, and easily

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119. *Id.*

120. Office of the Court Administrator, Hague Service Convention, available at <https://oca.judiciary.gov.ph/hague-service-convention> (last accessed July 31, 2021) [<https://perma.cc/B8LW-F8XU>].

121. SC A.O. No. 251-2020, ¶ II (1).

122. *Id.* (citing HCCH, *supra* note 36).

123. SC A.O. No. 251-2020, ¶ II (2).

accessible at the HCCH website.<sup>124</sup> Notably, the 2019 Amendments to the 1997 Rules of Civil Procedure (2019 Rules)<sup>125</sup> also requires that any application to the court for leave to effect service of summons under Rule 14 (Summons) in any manner for which leave is necessary “shall be made by motion in writing, [and] supported by an affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.”<sup>126</sup> Additionally, HCCH Guidelines for Completing the Model Form instructs that the Model Form is to be completed electronically using a word processor, and with the use of plain, understandable language which avoids unnecessary legal or technical language.<sup>127</sup>

Upon the party’s motion for leave of court, “the court shall determine whether extraterritorial service through the [ ] Service Convention is necessary, in accordance with Rules 13 and 14 of the Rules of Court, as amended.”<sup>128</sup>

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

The Judge, in the case of lower courts, or the Justice or the Clerk of Court, in the case of collegiate courts, as forwarding authorities, shall accomplish and sign the Request using the Model Form, check the completeness of documents, and ensure compliance with the requirements of the Service Convention and that of the Requested State.

When the request for service entails costs and fees, the party, in accordance with his [or] her undertaking, shall settle the payment 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. Proof of payment of the costs and fees shall be immediately sent to the clerk of court where the case is pending.

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124. HCCH, *supra* note 36.

125. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE.

126. *Id.* rule 14, § 19.

127. HCCH, Guidelines for Completing the Model Form, at 1, *available at* <https://assets.hcch.net/docs/1e4boag6-9e87-4b10-99c8-8647c843b80e.pdf> (last accessed July 31, 2021) [<https://perma.cc/HR4V-S7YE>].

128. SC A.O. No. 251-2020, ¶ II (1).

Failure to settle the fees in full, whenever necessary, shall be a ground 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 the 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:

- (a) The Order granting the extraterritorial service;
- (b) The filled-out Request and Summary of Document to be Served with Warning
- (c) The blank Certificate (to be completed by the Central Authority of the Requested State);
- (d) The documents sought to be served; and
- (e) 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 shall update the OCA on the status of its request.<sup>129</sup>

After transmission of the documents abroad —

[t]he 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. The completed Certificate shall thereafter be transmitted back to the requesting [or forwarding] court, and shall form part of the records of the case.<sup>130</sup>

## 2. Inbound Requests for Service

The Guidelines likewise govern inbound requests, or requests for service of judicial documents in the Philippines from abroad. Requests for service of documents from other State Parties, or inbound requests for service of judicial documents originating from other State Parties shall be referred to the OCA, as the Central Authority.<sup>131</sup> The requirements are:

- (a) The documents sought to be served are judicial;
- (b) The Request conforms to the Model Form;
- (c) The document sought to be served is attached to the Request;

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<sup>129</sup>. *Id.* ¶ II (2), (3), & (4).

<sup>130</sup>. *Id.* ¶ II (7).

<sup>131</sup>. *Id.* ¶ I (5) (c) & ¶ III (1).

- (d) The Request and its attachments are accomplished/translated in English or Filipino;
- (e) The Request and its attachment/s are filed in duplicate; and
- (f) 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.<sup>132</sup>

As to payment of costs —

All requests must be accompanied by payment of One Hundred U.S. Dollars (U.S. \$100.00) for costs of service for each recipient to be served. For multiple recipients residing in the same address, only one fee shall be paid. Should cost for the service of document exceed the said amount, the OCA shall send an updated Statement of Cost to the Forwarding Authority of the Requesting State for payment. Payment methods shall be posted on the OCA website and official receipts shall be issued upon verification of payment and a copy shall be sent to the applicant immediately.<sup>133</sup>

The OCA website details the payment method for service of documents to be made through bank deposit or transfer to the Land Bank of the Philippines.<sup>134</sup>

Upon transmission of the request,

[t]he 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 any of the following modes:

- (1) Electronic transmission - via email to:

PHCA-Service@judiciary.gov.ph

- (2) Physical transmission - via registered mail or courier services to:

Central Authority[,] Office of the Court Administrator[,] Supreme Court  
of the Philippines[,] Third Floor, Old Supreme Court Building[,] Padre  
Faura Street, Ermita, Manila 1000 Philippines.<sup>135</sup>

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132. *Id.* ¶ III (2).

133. SC A.O. No. 251-2020, ¶ III (3).

134. Office of the Court Administrator, *supra* note 102, at 1.

135. SC A.O. No. 251-2020, ¶ III (4).

Should the request, upon evaluation of the OCA, fail[ ] to comply with any of the [ ] requirements [under the Guidelines], or [if] there are objections for the execution of the request, the OCA shall inform the Forwarding Authority, specifying the objection/s thereto. 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.<sup>136</sup>

When the Inbound Request is sufficient in form,

the OCA shall forward the request to the [Executive Judge or Presiding Judge of] the court having jurisdiction over the area where the intended recipient resides. Requests sent via e[-]mail shall be transmitted to the official e-mail 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. Requests transmitted via e[-]mail shall be printed by the court concerned. The judge shall ensure that service is done in accordance with these Guidelines and the Rules of Court.

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 of the court who directed the service of the document within five (5) days from service. The return shall state that the document and attachment/s have been served, and shall include the method, the place and the date of service, and the person to whom the document was delivered.

If the document was not delivered successfully, the return shall state the reasons which prevented the successful service. The officer assigned shall deliver the unserved document to the court, so that it may later be returned to the Forwarding Authority.<sup>137</sup>

The Judge, as a Competent Authority, “shall immediately accomplish and sign the Certificate, following the Model Form annexed to the [ ] Service Convention. In cases of unsuccessful service, the documents sought to be served shall be attached to the Certificate.”<sup>138</sup>

Within thirty (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

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136. *Id.* ¶ III (5).

137. *Id.* ¶ III (6), (7), & (8).

138. *Id.* ¶ III (9).



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 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 reimbursement.

The request for reimbursement, together with the supporting documents, shall be submitted to the OCA and processed accordingly, and charged against the Service Convention Fund.<sup>139</sup>

*B. Operation of the Service Convention Under the 2019 Revised Rules of Civil Procedure*

Under the 1997 Rules of Civil Procedure,<sup>140</sup> extraterritorial service of summons as against a defendant non-resident who is not found in the country, in actions *in rem* or *quasi in-rem*, could be effected under any of three modes of service:

- (1) by personal service out of the country, with leave of court;
- (2) by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address, also with leave of court; or
- (3) by any other means the judge may consider sufficient.<sup>141</sup>

In a case, a trial court's prescribed mode of extraterritorial service — by way of publication in a newspaper of general circulation once a week for three (3) consecutive weeks, at the same time, furnishing respondent copy of this Order as well as the corresponding Summons and copy of the petition at her given address at ... California, U.S.A., thru the Department of Foreign Affairs,<sup>142</sup>

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139. *Id.* ¶¶ III (10), IV (1), & V (2).

140. 1997 RULES OF CIVIL PROCEDURE.

141. *Romualdez-Licaros v. Licaros*, G.R. No. 150656, 401 SCRA 762, 771 (2003) (emphasis omitted).

142. *Id.*

has been considered a valid mode of service as “any other means the judge may consider efficient.”<sup>143</sup>

Under the 2019 Rules and the Supreme Court Guidelines on the Service Convention, international conventions such as the Service Convention have been well incorporated into the procedural law.

#### 1. Outbound Requests for Service of Judicial Documents

Rule 13 of the 2019 Rules and the Supreme Court Guidelines on the Service Convention governs the rule on the service of pleadings, motions, and other court submissions, unless a different mode of service is prescribed,<sup>144</sup> while Rule 14 governs the rule on summons.<sup>145</sup> Under the 2019 Rules, service is the “act of providing a party with a copy of the pleading or any other court submission.”<sup>146</sup> Under the Guidelines, the court shall determine whether extraterritorial service through the Service Convention is necessary in accordance with Rules 13 and 14 of the Rules of Court, as amended.<sup>147</sup>

Rule 14, Section 17 of the 2019 Rules provides the rule on the extraterritorial service for defendants who do not reside, and who are not found in the Philippines, where the action involves *in rem* or *quasi in rem* proceedings.<sup>148</sup>

Section 17. *Extraterritorial service.* — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under Section 6; or as provided for in international conventions to which the Philippines is a party; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be

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143. *Id.*

144. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 13, § 1.

145. *Id.* rule 14.

146. *Id.* rule 13, § 2.

147. SC A.O. No. 251-2020, ¶ II (1).

148. 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 17.

less than [60] calendar days after notice, within which the defendant must answer.<sup>149</sup>

Among the modes of extraterritorial service provided therein, the 2019 Rules recognize service “as provided for in international conventions to which the Philippines is a party.”<sup>150</sup> Service may, by leave of court, be also effected out of the Philippines as under Section 17, as against a defendant who ordinarily resides within the Philippines, but who is temporarily out of it.<sup>151</sup>

Extraterritorial service may also be effected as against a foreign juridical entity that is not registered in the Philippines, or has no resident agent, but has transacted or is doing business in it, as defined by law.<sup>152</sup>

Section 14. *Service upon foreign private juridical entities.* — When the defendant is a foreign private juridical entity which has transacted or is doing business in the Philippines, as defined by law, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers, agents, directors or trustees within the Philippines.

If the foreign private juridical entity is not registered in the Philippines, or has no resident agent but has transacted or is doing business in it, as defined by law, such service may, with leave of court, be effected outside of the Philippines through any of the following means:

- (a) By personal service coursed through the appropriate court in the foreign country with the assistance of the [D]epartment of [F]oreign [A]ffairs;
- (b) By publication once in a newspaper of general circulation in the country where the defendant may be found and by serving a copy of the summons and the court order by registered mail at the last known address of the defendant;
- (c) By facsimile;
- (d) By electronic means with the prescribed proof of service; or
- (e) By such other means as the court, in its discretion, may direct.<sup>153</sup>

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149. *Id.* (emphasis supplied).

150. *Id.*

151. *Id.* rule 14, § 18.

152. *Id.* rule 14, § 14.

153. *Id.*

In *Luzon Iron Development Group Corp. v. Bridestone Mining and Development Corp.*,<sup>154</sup> the Court had the occasion to expound on the principle that foreign private juridical entities not registered or without a resident agent may be served —

The petitioners are mistaken in arguing that it cannot be served summons because under Section 15, Rule 14 of the Rules of Court, extrajudicial service of summons may be resorted to only when the action is *in rem* or *quasi in rem* and not when the action is *in personam*. The premise of the petitioners is erroneous as the rule on extraterritorial service of summons provided in Section 15, Rule 14 of the Rules of Court is a specific provision dealing precisely with the service of summons on a defendant which does not reside and is not found in the Philippines. On the other hand, Section 12, Rule 14 thereof, specifically applies to a defendant foreign private juridical entity which had transacted business in the Philippines. Both rules may provide for similar modes of service of summons, nevertheless, they should only be applied in particular cases, with one applicable to defendants which do not reside and are not found in the Philippines and the other to foreign private juridical entities which had transacted business in the Philippines.

In the case at bench, it is crystal clear that Consolidated Iron transacted business in the Philippines as it was a signatory in the TPAA that was executed in Makati. Hence, as the respondents argued, it may be served with the summons in accordance with the modes provided under Section 12, Rule 14 of the Rules of Court.<sup>155</sup>

The premise that a foreign corporation may be served with summons is by reason of its transacting business in the country without a license, which allows it to be sued or proceeded against in the Philippines.<sup>156</sup>

## 2. Inbound Requests for Service of Judicial Documents

The Service Convention provides that Inbound Requests for service of judicial documents may be formally served by the method prescribed by the

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154. *Luzon Iron Development Group Corporation v. Bridestone Mining and Development Corporation*, G.R. No. 220546, 813 SCRA 583 (2016).

155. *Id.* at 599 (citing *NM Rothschild & Sons (Australia) Limited v. Lepanto Consolidated Mining Company*, G.R. No. 175799, 661 SCRA 328, 343 (2011)).

156. An Act Providing for the Revised Corporation Code of the Philippines [REV. CORP. CODE], Republic Act No. 11232, § 150 (2019).

Contracting State's internal law for the service of documents in domestic actions upon persons who are within its territory.<sup>157</sup>

Under the Guidelines, inbound requests for service of judicial documents sufficient in form are forwarded by the OCA to the court having jurisdiction over the area where the intended recipient resides.<sup>158</sup> Upon transmittal of the documents,

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. ... [Further, the] judge shall ensure that service is done in accordance with these Guidelines and the Rules of Court.

[Thereafter, 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 of the court who directed the service of the document within five (5) days from service. The return shall state that the document and attachment/s have been served, and shall include the method, the place and the date of service, and the person to whom the document was delivered.

If the document was not delivered successfully, the return shall state the reasons which prevented the successful service. The officer assigned shall deliver the unserved document to the court, so that it may later be returned to the Forwarding Authority [of the Requesting State].<sup>159</sup>

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157. Hague Service Convention, *supra* note 2, art. 5 (a).

158. SC A.O. No. 251-2020, ¶ III (6).

159. *Id.* ¶ III (7) & (8). See also 2019 AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE, rule 14, § 20.

Section 20. Return. — Within thirty (30) calendar days from issuance of summons by the clerk of court and receipt thereof, the sheriff or process server, or person authorized by the court, shall complete its service. Within five (5) calendar days from service of summons, the server shall file with the court and serve a copy of the return to the plaintiff's counsel, personally, by registered mail, or by electronic means authorized by the Rules.

Should substituted service have been effected, the return shall state the following:

- (1) The impossibility of prompt personal service within a period of thirty (30) calendar days from issue and receipt of summons;

Pertinently, Rule 13, Section 5 states the modes of service under the Rules of Civil Procedure, thus —

Section 5. Modes of Service. — Pleadings, motions, notices, orders, judgments, and other court submissions shall be served personally or by registered mail, accredited courier, electronic mail, facsimile transmission, other electronic means as may be authorized by the Court, or as provided for in international conventions to which the Philippines is a party.<sup>160</sup>

Considering that the 2019 Rules include in the modes of service those provided for in international conventions to which it is a party,<sup>161</sup> service using the channels of transmission under the Service Convention are included.

#### IV. DEVELOPING AND EMERGING ISSUES ON THE OPERATION AND IMPLEMENTATION OF THE SERVICE CONVENTION

The Author notes some of the developments, as well as the emerging issues and trends, which have arisen in the operation and implementation of the Service Convention. Although by no means an exhaustive list, this Article frames some of the recent and developing issues that have been encountered by Contracting States in implementing the Service Convention, which legal practitioners may find relevant to the Philippine setting.

##### *A. On the Mandatory Nature of the Service Convention*

Article 1 provides that the Service Convention applies in “all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial documents for service abroad.”<sup>162</sup> Article 1 also limits application

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- (2) The date and time of the three (3) attempts on at least (2) two different dates to cause personal service and the details of the inquiries made to locate the defendant residing thereat; and
  - (3) The name of the person at least eighteen (18) years of age and of sufficient discretion residing thereat, name of competent person in charge of the defendant’s office or regular place of business, or name of the officer of the homeowners’ association or condominium corporation or its chief security officer in charge of the community or building where the defendant may be found.

*Id.*

<sup>160.</sup> *Id.* rule 13, § 5 (emphasis supplied).

<sup>161.</sup> *Id.*

<sup>162.</sup> Hague Service Convention, *supra* note 2, art. 1.

of the Service Convention to where the address of the person to be served is not known.<sup>163</sup>

Despite there being no obligation to provide assistance in locating the person to be served, Contracting States have in practice employed a variety of measures to assist requests for service where the address is incomplete or incorrect, or even when the address is unknown.<sup>164</sup> A bigger issue to the question of the Service Convention's application lies in the interpretation of courts of different jurisdictions as to the meaning of the first paragraph of Article 1, which grants to the Contracting State application of the Service Convention in all civil and commercial cases, where there is occasion to transmit a document for service abroad.<sup>165</sup> While there is no doubt that the prevailing interpretation presumes that the internal law of the forum determines whether there is "occasion ... for service abroad,"<sup>166</sup> the problem of ambiguity can be framed in the matter concerning service to a purported agent of the person to be served within the borders of the forum State. In the Report of the Special Commission of April 1989 on the Operation of the Service Convention<sup>167</sup> —

This question was posed as indicated in the Checklist by two cases decided by [ ] the highest courts in two different countries involving service upon the purported agent of a foreign incorporated company within the territory of the respective country: *Schlunk v. Volkswagen Aktiengesellschaft*, decided by the Supreme Court of the United States, 15 June 1988 and *Segers and Rufa BV v. Mabanaft GmbH*, decided by the *Hoge Raad* of the Netherlands on 27 June 1986. The *Schlunk* case involved service upon a wholly owned domestic subsidiary of the foreign company which was deemed to be an agent to receive service of process on behalf of the parent company, even though it had not been expressly so designated. The *Mabanaft* case involved the question of whether procedural rules adopted by the Netherlands to make a

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163. *Id.*

164. HCCH, Conclusions and Recommendations of the Special Commission on the Practical Operation of the Hague Service, Evidence and Access to Justice Conventions (20–23 May 2014), ¶ 23, available at <https://assets.hcch.net/docs/eb709b9a-5692-4cc8-a660-e406bc6075c2.pdf> (last accessed July 31, 2021) [<https://perma.cc/BZB5-4GX2>].

165. Hague Service Convention, *supra* note 2, art. 1.

166. *Id.* & *Volkswagen Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 699 (1988).

167. Permanent Bureau, *Report on the Work of the Special Commission of April 1989 on the Operation of the Hague Conventions of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters* (Apr. 1989).

lawyer a continuing agent for his client who had elected domicile at his office to receive service of process in later (appellate) stages of a legal proceedings were intended to apply when the person to be served resided abroad, thus rendering the Convention inapplicable to notice of appeal to the intermediate appellate court or the *Hoge Raad*. The courts in both cases had started from the assumption that it was for the court before which the proceeding was pending to decide whether there was ‘occasion’ to transmit documents abroad for service.<sup>168</sup>

In the *Volkswagen Aktiengesellschaft v. Schlunk* case,<sup>169</sup> the petitioner, a foreign company, challenged the respondent’s attempt to serve process on the former by serving its wholly owned United States subsidiary in accordance with state rules instead of pursuant to the procedures in the Service Convention.<sup>170</sup> The Circuit Court found that under Illinois state law, the relationship between the parent and subsidiary constituted the latter as the former’s involuntary agent for service of process; hence, service could be perfected entirely within the U.S., and the court held it was not necessary to follow the method of procedure under the Service Convention.<sup>171</sup> In holding that the service was validly made upon the foreign company, the U.S. Supreme Court affirmed and held that the Service Convention is “mandatory” and preempts inconsistent state law methods of service in all cases in which it is applicable,<sup>172</sup> however, the forum’s internal law determines whether a process is for *service abroad*, thus —

[T]here is no comparable evidence in the negotiating history that the Convention was meant to apply to substituted service on a subsidiary like VWoA, which clearly does not require service abroad under the forum’s internal law. Hence neither the language of the Convention nor the negotiating history contradicts our interpretation of the Convention, according to which the internal law of the forum is presumed to determine whether there is occasion for service abroad.<sup>173</sup>

In the case of *Segers and Rufa BV v. Mabanafit GmbH*,<sup>174</sup> the plaintiffs issued notice by summons of their appeal from a decision of the Court of Appeals at

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168. *Id.* ¶ 12.

169. *Volkswagen Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988).

170. *Id.* at 697.

171. *Id.*

172. *Id.* at 699.

173. *Id.* at 704.

174. *The Netherlands: Supreme Court Decision in Segers and Rufa BV v. Mabanafit GmbH*, 28 I.L.M. 1584 (1989).



the Hague, and the summons was served with the defendant Mabanaf GmbH's attorney at the Hague.<sup>175</sup> When Mabanaf did not appear, the plaintiffs sought entry of default judgment against Mabanaf.<sup>176</sup> The issue in the case is whether the plaintiffs must first show compliance with Article 15 of the Service Convention.<sup>177</sup> The Supreme Court of Netherlands rules that the Service Convention in this case was applicable, and that the internal law on the rules relating to the service of summons in civil cases, does not stand in the way of the fact that a notice of appeal to the appellate court of the Supreme Court (*Hoge Raad*), when such document is intended for the defendant whose domicile or habitual residence is in one of the Contracting States, should be considered as one document for which there is occasion to transmit for service abroad, within the meaning of Article 15.<sup>178</sup> Hence, judgment cannot be entered on default of appearance against the non-appearing defendant as long as it has not become apparent that the requirements under Article 15 of the Service Convention have been met.<sup>179</sup>

Although the principle generally remains that it is the forum that decides the applicability of the Service Convention under its own law, there is a danger as in some cases where a person not expressly designated as an agent to receive service of process may constitute valid service under the law of the forum State. In such case, refusal of the court to apply the provisions of the Service Convention may harm the efficacy of the Service Convention. Further, conflicting rulings as determined by different interpretations of the courts may also tend to more variation, rather than uniformity, in the international service of process.

#### *B. Application of the Service Convention in Arbitration Proceedings*

There are several recent issues that have surfaced regarding the applicability of the Service Convention to arbitration. In a recent U.S. judgment rendered by the California Supreme Court, *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.*,<sup>180</sup> the U.S. court has allowed service of a petition to confirm an arbitral award by agreement of the parties, and

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175. *Id.* ¶ 1.

176. *Id.*

177. *Id.* ¶ 2.2.

178. *Id.* ¶ 2.5.

179. *Id.*

180. *Rockefeller Technology Investments (Asia) VII v. Changzhou SinoType Technology Co., Ltd.*, 9 Cal.5th 125 (2020) (U.S.).

service of process was made through Federal Express, it ruled that the agreement of the parties constituted a waiver of formal service of process under California law, in favor of the agreed-upon method of notification.<sup>181</sup>

In the case, the parties signed a memorandum of understanding stating their intent to form a new company, and which contained a provision that the parties shall provide notice to each other via Federal Express (FedEx) or similar courier and consented to service of process in accord with the notice provisions thereof.<sup>182</sup> The plaintiff, Rockefeller, filed a demand for arbitration in Los Angeles, and the defendant, SinoType, did not appear.<sup>183</sup> After hearing Rockefeller's evidence, the arbitrator issued an award in its favor, and Rockefeller thereafter filed a petition to confirm the award in the California state court.<sup>184</sup> It sent a copy of the summons to SinoType via Federal Express at the address listed in the parties' agreement.<sup>185</sup> Although SinoType received the Federal Express envelope in China, the defendant did not appear again at the hearing in California, and the state court confirmed the arbitral award.<sup>186</sup> Thereafter, the defendant sought to set aside the judgment on account of invalid service.<sup>187</sup> SinoType argued that the Service Convention does not permit Chinese nationals to be served via Federal Express considering China has objected to Article 10 which precludes service through postal channels or through Federal Express; hence, the failure to comply with the Service Convention rendered judgment confirming the arbitration award void.<sup>188</sup>

Although the California Court of Appeals ruled in favor of SinoType, the California Supreme Court reversed the decision.<sup>189</sup> It ruled that under the civil procedure law of California, a petition to confirm, correct, or vacate an arbitral award shall be served in the manner provided for in the arbitration agreement.<sup>190</sup> In such case, the parties may agree to waive the formal service

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181. *Id.* at 138.

182. *Id.* at 133.

183. *Id.*

184. *Id.* at 134.

185. *Id.*

186. *Rockefeller*, 9 Cal.5th at 134.

187. *Id.*

188. *Id.*

189. *Id.* at 146.

190. *Id.* at 142.

requirement under California law in favor of notification by a method chosen by the parties; hence, the Service Convention did not apply.<sup>191</sup>

In some cases, the relationship between the Service Convention and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)<sup>192</sup> has been considered.<sup>193</sup> A Greek court has ruled that the formality of the Service Convention cannot be reconciled with the flexibility of the New York Convention, and ruled the latter applicable, taking precedence as a special set of rules governing arbitration.<sup>194</sup>

On the other hand, the Service Convention applies to “civil or commercial matters,”<sup>195</sup> and courts have considered the applicability of arbitration documents to the Service Convention in another light, i.e., as not falling within matters civil or commercial;<sup>196</sup> thus, the following argument should be considered —

Whether the Hague Service Convention applies to arbitration documents has been considered by the Japanese, Chinese[,] and Russian authorities, and answered in the affirmative by the Lithuanian authorities. Some arbitration rules go so far as to waive application of the Hague Service Convention, although such a waiver [—] even considering that the convention applies to arbitration [—] would be invalid in the vast majority of jurisdictions. Nevertheless, the Hague Service Convention text is not supportive of its application to arbitration. The convention applies in cases of ‘civil or commercial matters’ (as per Article 1). *This term, although interpreted in a broad, liberal[,] and autonomous manner, relates to the nature and subject matter of the causes of action, and not to the documents falling under its scope. Such documents are either judicial or extrajudicial. While judicial documents require the involvement of a state court, which obviously cannot include arbitration (except for marginal cases, such as when a court appoints or replaces an arbitrator), extrajudicial documents (in which arbitration documents could seemingly fit) should emanate from ‘authorities or judicial*

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191. *Id.* at 144.

192. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed June 7, 1959, 330 U.N.T.S. 3 (1958).

193. Antonios D. Tsavdaridis, Hague Service Convention Does Not Apply to Arbitration Documents, at 1, available at <https://rokas.com/wp-content/uploads/2021/04/Hague-Service-Convention-Does-not-Apply-to-Arbitration-Documents.pdf> (last accessed July 31, 2021) [<https://perma.cc/DZX9-JKLT>].

194. *Id.*

195. Hague Service Convention, *supra* note 2, art. 1.

196. Tsavdaridis, *supra* note 193, at 2.

*officers' (as per Article 17 of the convention). However, arbitrators, tribunal secretaries, arbitral institutions[,] or parties to an arbitration can hardly be considered as 'authorities or judicial officers[ ].'*<sup>197</sup>

The Author opines that parties under the Philippine jurisdiction will not likely be allowed to waive the applicability of the Service Convention by agreement of the parties, as the Service Convention forms part of Philippine law under Article 2, Section 2 of the 1987 Philippine Constitution.<sup>198</sup> The Author further opines that the Service Convention may not likely find application in arbitration proceedings. It should be noted that the Supreme Court's A.M. No. 07-11-08-SC, or the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules)<sup>199</sup> governs the procedure to be followed by the courts whenever judicial intervention is sought in arbitration proceedings, in the specific cases allowed.<sup>200</sup> Additionally, the Court has been emphatic that resorting to the Rules of Court even in a suppletory capacity is not allowed under the Special ADR Rules.<sup>201</sup> On that note, the Author notes that the Service Convention should give way to the rules and interpretations of the specific rule or law applicable to the matter, such as in the case where the Special ADR Rules or the New York Convention applies to the transmission of arbitration documents.

### *C. Transmission of Documents via Postal Channels, E-mail, and Social Media*

The structure of the alternative channels of transmission in the Service Convention<sup>202</sup> are broadly worded and accommodates for the varied methods of service in different jurisdictions. In particular, the method of serving documents by postal channels saves considerable time and money; however, the meaning of the term "postal channels" itself has remained undefined and conspicuously vague, so far that Article 10 (a) has reportedly resulted in more litigation than any other provision of the Service Convention.<sup>203</sup>

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197. *Id.* (emphasis supplied).

198. PHIL. CONST., art. II, § 2.

199. SPECIAL ADR RULES, A.M. No. 07-11-08-SC (Sept. 1, 2009).

200. Department of Environment and Natural Resources (DENR) v. United Planners Consultants, Inc. (UPCI), G.R. No. 212081, 751 SCRA 389, 398 (2015).

201. *Id.* at 406.

202. Hague Service Convention, *supra* note 2, art. 10.

203. Hawkins, *supra* note 18, at 207 (citing PRACTICAL HANDBOOK 2006, *supra* note 103).

At the outset, the Philippines has objected to Article 10 (a) of the Service Convention, which allows for transmission through postal channels.<sup>204</sup> Nonetheless, the issues relating to the same were discussed in the 1989 Report of the Special Commission —

It was pointed out that the postal channel for service constitutes a method which is quite separate from service via the Central Authorities or between judicial officers. Article 10 [a] in effect offered a reservation to Contracting States to consider that service by mail was an infringement of their sovereignty. Thus, theoretical doubts about the legal nature of the procedure were unjustified. Nonetheless, certain courts in the United States of America in opinions cited in the ‘Checklist’ had concluded that service of process abroad by mail was not permitted under the Convention.

The Japanese delegation explained that their Government wished the following statement of position to be made known:

*Japanese position on Article 10 [a] of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters:*

*Japan has not declared that it objects to the sending of judicial documents, by postal channels, directly to persons abroad. In this connection, Japan has made it clear that no objection to the use of postal channels for sending judicial documents to persons in Japan does not necessarily imply that the sending by such a method is considered valid service in Japan; it merely indicates that Japan does not consider it as infringement of its sovereign power.’*

It was understood that the Japanese position as expressed in this statement would be included in the next revision of the Practical Handbook on the Hague Service Convention.<sup>205</sup>

It should be noted that the failure of the State of destination to object to a particular channel of transmission under Article 10 of the Service Convention “should not be imputed to mean that the State of destination will regard the resulting service to be sufficient for later enforcement of judgment in that State[.]”<sup>206</sup> Certain Contracting States have expressed this view; hence, no objection made by a Contracting State to the use of postal channels (or other alternative channels of transmission) for sending judicial documents to persons within the Contracting State does not necessarily imply that the sending by such method will be considered valid service in the Contracting

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204. HCCH, *supra* note 50.

205. Permanent Bureau, *supra* note 167, ¶¶ 16–17 (emphasis supplied).

206. HCCH, *supra* note 11, at L, ¶ 22.

State.<sup>207</sup> It may merely indicate that the Contracting State does not consider such alternative mode under Article 10 as an infringement of its sovereignty.<sup>208</sup>

Recently, technological advances have also been examined in light of the Service Convention. In this regard, the 2014 Special Commission encourages and welcomes studies conducted on the use of information technology in the operation of the Service Convention.<sup>209</sup> In fact, requests for service transmitted through the Central Authority may be executed by electronic means under Article 5, subject to the internal law of the Requested State.<sup>210</sup> Recent “developments have included movements towards electronic court filings, the admission of electronic documents as evidence, and expanded notions of service of process.”<sup>211</sup> Some courts have expressed the opinion that service by email or other electronic means is proper even if a Contracting Party has objected to service through postal channels, so long as no explicit objection to service through electronic means is expressly made.<sup>212</sup> In fact, one U.S. District Court has gone so far as to serve process on the defendant by email and two social networking sites, Facebook and LinkedIn, for a defendant in Turkey.<sup>213</sup> This is because, although Turkey objected to service by postal channels, it did not object to service by email or social media.<sup>214</sup>

## V. CONCLUSION

With the Philippines’ accession to the Service Convention,<sup>215</sup> the (long) days of serving documents through diplomatic and consular channels no longer have to be the norm. In order to further benefit from the Hague Conventions, this Author recommends that the Philippines should consider, and seriously

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207. *Id.*

208. *See id.* at XLIX, ¶ 19.

209. HCCH, *supra* note 164, ¶ 36.

210. *Id.* at 37.

211. Yvonne A. Tamayo, *Are You Being Served?: E-mail and (Due) Service of Process*, 51 S.C.L. REV. 227, 228 (2000).

212. Louise Ellen Teitz, *Is the Hague Service Convention Ready for Early Retirement at Age Fifty-Five? Or Can it be ‘Serviceable’ in a World Without Borders?*, in HCCH A| BRIDGED EDITION 2019: THE HCCH SERVICE CONVENTION IN THE ERA OF ELECTRONIC AND INFORMATION TECHNOLOGY 62, n. 177 (2020).

213. *WhosHere, Inc. v. Orun*, Civil Action No. 1:13-cv-00526-AJT-TRJ, at 1 (E.D. Va. 2014) (U.S.).

214. *Id.* at 6.

215. Department of Foreign Affairs, *supra* note 1.

study, acceding to other Hague Conventions — such as the Evidence Convention,<sup>216</sup> Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance,<sup>217</sup> Convention of 30 June 2005 on Choice of Court Agreements,<sup>218</sup> and the latest Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters,<sup>219</sup> in a way that would best serve the Filipinos.

The Philippines is currently party to four HCCH Conventions,<sup>220</sup> namely: (1) the Service Convention; (2) the Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents or the Apostille Convention;<sup>221</sup> (3) the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;<sup>222</sup> and (4) Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>223</sup> There is coherence and cohesion in accession to the other HCCH Conventions. Thus, this Author advocates accession to more of the Hague Conventions in order that the Philippines moves towards greater international judicial assistance and cooperation, and legal cooperation.

The HCCH Conventions advocate not only greater legal and judicial assistance and cooperation technology<sup>224</sup> but adapt to the modernizing technological developments. The Philippines should move towards accession to the other HCCH Conventions and should consider including such within the Philippine procedural law framework.

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216. Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, *signed* Mar. 18, 1970, 847 U.N.T.S. 240.

217. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, *signed* Nov. 23, 2007, S. Treaty Doc. No. 110–21.

218. Hague Convention on Choice of Court Agreements, *signed* June 30, 2005, 44 I.L.M. 1294.

219. Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, *signed* July 2, 2019.

220. HCCH, *supra* note 35.

221. Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, *opened for signature* Oct. 5, 1961, 527 U.N.T.S. 189.

222. Convention on the Civil Aspects of International Child Abduction, *signed* Oct. 25, 1980, 1343 U.N.T.S. 89.

223. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *signed* May 29, 1993, S. Treaty Doc. No. 105–51.

224. *See* Hague Service Convention, *supra* note 2, pmb1.