

# THE PHILIPPINE JUDICIAL SYSTEM ON THE ISSUANCE OF EXTRATERRITORIAL SERVICE OF SUMMONS TO OTHER COUNTRIES

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## ABSTRACT

This paper describes the legal framework in the Philippines for serving summons outside of their borders. It highlights discussions of the Hague Conference on Private International Law, the objective, scope, and applicability of the service convention, as well as other channels of transmission. Primarily, it discloses the extraterritorial service of summons by emphasizing extraterritorial service of summons and adherence to the Hague Convention, this paper helps readers comprehend the Rules of Court in the Philippines.

Under Section 17, Rule 14 of the Rules of Court of the Philippines it provides that Extraterritorial service- When the defendant does not reside and is not found in the Philippines and the action 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 relief is demanded that consists, in whole or in part, of excluding the defendant. As long as the defendant is a nonresident and not present in the nation, the summons may be delivered extraterritorially under this clause.

**Keywords:** Extraterritorial service, Philippines, Rules of Court of the Philippines, Philippine Judicial System, Summons

## INTRODUCTION

The Philippines deposited its instrument of accession to the Convention on the Service of Civil and Commercial Process Outside of the State on March 4, 2020. (Service Convention). The Service Convention was created to "overcome the challenges of cross-border procedures" within the framework of international conventions and other instruments by the Hague Conference on Private International Law (HCCH), the leading global organization for the "progressive unification of the rules of private international law.

Transmissions of judicial papers for extraterritorial service were often made through diplomatic or consular channels prior to the Philippines' admission to the Service Convention. Outgoing documents from Philippine courts were first sent to the Department of Foreign Affairs (DFA) main office in Manila, which then forwarded the documents to the destination state's Philippine Embassy or Consulate General. Afterward, the Embassy or Consulate General would ask the host Ministry of Foreign Affairs to have the court papers served by local law enforcement, or sometimes, the Embassy or Consulate General would send the papers directly by registered mail.

As for inbound documents originating from abroad, they would first be transmitted to the State of origin's Ministry of Foreign Affairs. 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 in which the service is to be executed and have a request to serve them. Service of judicial documents under the Service Convention and Supreme Court Guidelines may be made through the Central Authorities of the Contracting State 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.

Notwithstanding, it ensures that the defendant's rights are properly upheld. As a procedural statute, the Service Convention is a useful tool for facilitating and streamlining the transmission of papers from one State to another State and provides the Philippines with a foundation for joining international cooperation for a more unified transnational system, despite the very fact that it "does not address or constitute substantive regulations relating to the actual service of process."

The Service Convention's centerpiece and primary innovation, the broadening of alternatives for a party litigant to serve extraterritorial service of summons overseas through the Central Authority of the Contracting State, provides an immediate benefit. The Service Convention also aims to establish suitable mechanisms to ensure that judicial and extrajudicial papers to be served abroad should be brought to the addressee's attention in sufficient time. As a result, the rights of the defendant are safeguarded.

The practical effects (and advantages) of joining the Hague Conventions will include improved efficiency and the orderly resolution of disputes, greater certainty and predictability, good governance, a decrease in the costs of cross-border transactions and litigation, and general rule of law governance as the Philippines engages in greater cooperation in the area of private international law.

## **RESULTS AND DISCUSSION:**

The Service Convention is efficient and effective, according to the HCCH, with statistics data showing that 75% of requests are fulfilled within two months. Prior to the Delivery Convention, extraterritorial service of outbound documents through diplomatic or consular channels required a turnaround time of four to six months, on occasion with no return or result of service.

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

The Service Convention "shall apply in all cases, in civil or commercial matters, where there is an occasion to transmit a judicial or extrajudicial document for service abroad" 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. 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. When it comes to civil or business concerns, the Service Convention "must apply in all circumstances, when there is an occasion to transfer a judicial or extrajudicial document for service abroad.]"

More so, the Service Convention is "non-mandatory"; (2) The address of the person to be served is known; (3) The document to be served is a judicial or extrajudicial document; and (4) The document to be served relates to a civil and/or commercial matter. If all these conditions are met, the transmission channels permitted by the Service Convention may be used to serve the document in the other States.

The two types of derogatory channels are those provided in bilateral or multilateral agreements concluded between and among the Contracting States and those provided by the domestic or internal law of the State of destination. In such a situation, "State Parties may provide a channel of transmission other than those provided for under the Service Convention." Since "civil or commercial matters" are covered by the Service Convention, it has been agreed that a flexible interpretation should be used.

### **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.

The Service Convention protects the rights of Contracting Parties to use alternate channels of communication, including direct communication between judicial officers, officials, or other competent individuals of the State of origin and the State of destination as well as direct communication between an interested party and judicial officers, officials, or other competent individuals of the State of destination.

Articles 8, 9, and 10 of the Service Convention address these. The request for service is forwarded to the consul or diplomat representing the State of origin within the State of destination by the Ministry of Foreign Affairs of the State of origin (forwarding authority), who then executes it

either personally (through direct channels) or otherwise forwards it for execution to a competent authority of the State of destination (through indirect channels).

### **Derogatory Channels**

The Service Convention permits Contracting Parties to use channels of communication that are offensive or otherwise prohibited by the Service Convention, including those established by specific agreements or in accordance with their own internal legal framework. According to Article 19 of the Service Convention, "the present Convention shall not affect the internal law of a contracting State to the extent that such law permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory."

Any mode of service permitted by the internal legislation of the Contracting Party where service is made may be used, as long as it is not in conflict with the foreign State, according to Article 19 of the Service Convention. According to Article 19 of the Service Convention, the person providing the service must substantiate that it is legal under the foreign country's internal legislation. However, it has been highlighted that in practice, this would be challenging to prove because various laws in some regions, particularly in Europe, do not expressly forbid some forms of foreign service.

In general, it is acknowledged that the Contracting States may use the channels allowed by a special agreement under the other disparaging channel. The Service Convention's Article 11 states that it "does not preclude two or more contracting States from agreeing to permit, for the purpose of serving judicial documents, channels of transmission other than those provided in preceding articles and, in particular, direct communication between the contracting States' respective authorities." Furthermore, supplementary agreements between Parties to the 1905 Civil Procedure Convention and the Convention of March 1, 1954, on Civil Procedure may be made.

The defendant is protected against default judgment under the Service Convention if they receive documents of judicial or extrajudicial nature. Articles 22 and 24 of the Service Convention provide that "the Service Convention shall not derogate from Conventions containing provisions on the matters addressed by this Convention to which the contracting States are, or shall become Parties.

When a writ of summons or an equivalent document had to be sent abroad for service in accordance with the provisions of the present Convention and the defendant has not appeared, Article 15 states that judgment shall not be rendered until it is established that — (a) the document was served using a procedure authorized by the internal law of the State for serving documents in domestic actions upon persons who are within its territory, or (b) the document was served using a procedure authorized by the present Convention.

### **CONCLUSIONS:**

Based on the findings and recapitulations aligned with the objectives of the study, the following conclusions were drawn:

1. The Supreme Court of the Philippines adheres to the Hague Service Convention.

2. The Philippines acceded to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”) almost 55 years after its conclusion.
3. The Philippine legal system works hand in hand and in harmonization with the international communities in the service of summons.

## **RECOMMENDATIONS:**

Based on the findings and data collected, the researchers recommended the following:

- (1) The Philippines should consider, and seriously study, acceding to other Hague Conventions — such as the Evidence Convention, Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, Convention of 30 June 2005 on Choice of Court Agreements, and the latest Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, in a way that would best serve the Filipinos.
- (2) The Philippines is currently party to four HCCH Conventions, 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; (3) the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction; and (4) Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. There is coherence and cohesion in accession to the other HCCH Conventions. There must be accession to more of the Hague Conventions in order for the Philippines to move towards greater international judicial assistance, cooperation, and legal cooperation.

## **REFERENCES:**

- (1) 'ATENEO LAW JOURNAL, 16 Aileen Charisse P. Cruz, J.D., with honors, Ateneo de Manila University School of Law.
- (2) 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-servicepostsupdate/>
- (3) 26142-ph-deposits-instrument-of-accession-to-the-hagueconference-on-private-international-law (last accessed July 31, 2021) [https://perma.cc/J2ZW-C57D]. 2.
- (4) 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].
- (5) 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
- (6) 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,
- (7) The HCCH Conventions and Their Practical Effects to Private International Law in the Philippines, 45 IBP J. 41, 66-67 (2020). 7. Id. 8. Id. at 67. See also De Midgeley v. Ferandos, G.R. No. L-34314, 64 SCRA 23, 33 (1975).
  - (8) 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
  - (9) 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).
  - (10) 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).
  - (11) Hague Service Convention, supra note 2, pmb1. 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>].
  - (12) . 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 32.
  - (13) 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.