

# Questionnaire relating to the *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Service Convention)*

Responding State:

Brazil

## I. General Feedback

1. How does your State rate the general operation of the Service Convention?  
(b) Good.
2. How does your State rate the useability of the HCCH [Practical Handbook on the Operation of the Service Convention](#)?  
(a) Excellent.
3. Does your State's Central Authority have a manual or electronic case management register or system that is used to track incoming requests under the Service Convention?  
(b) Yes – electronic for incoming and outgoing.
4. If your State's Central Authority has oversight for all outgoing requests, please indicate if there is a system used to track the progress of these.  
(a) Yes – electronic.

## II. Scope of the Convention

5. In the previous five years\*, has your State experienced any difficulties in interpreting the scope of the Service Convention?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

- (a) Yes, regarding the interpretation of “civil or commercial matters” (Art. 1).  
*“We do not have clear information about which countries would accept requests under the Convention related to administrative matters or related to administrative improbity.”*

### A. Extrajudicial documents

6. Is the concept of “extrajudicial documents” (Art. 17) defined in the internal law of your State?  
(a) Yes.  
*“O artigo 726, caput do CPC. The extrajudicial notification consists of a legal document that requires the payment of some debt, demanding the fulfillment of some non-compliance contract or cessation of an activity that is infringing the law.”*
7. What types of extrajudicial documents are **transmitted** under the Service Convention by your State?  
*“All permitted by domestic law.”*

### III. Operation of the Convention

Requesting State refers to the State from which a request for service is, or will be, issued.

Requested State refers to the State to which a request for service is, or will be, addressed.

8. As the **requested State**, does your State provide assistance to locate a person to be served under the Service Convention?

*(The Special Commission, at its 2014 meeting, encouraged Contracting Parties to provide such assistance consistent with their legal and structural capabilities, when able to do so, see C&R No 23.)*

Yes.

*“The Central Authority and other authorities have access to governmental databases to locate the persons to be served. The Superior Court of Justice also determines that water, electricity and telephone companies provide information. Judicial Officers call any phone number provided, try to fix incomplete addresses and talk to neighbors and other people that could help determining if the person lives in or around the provided address.”*

9. As the **requesting State**, how would your State transmit a document for service upon another State, a State official, or a State-owned company?

(a) The Service Convention would not apply.

10. As the **requested State**, how is a request for service on your State, State official or State-owned company executed?

*“Through the Ministry of Foreign Affairs.”*

11. Does your State serve judicial and extrajudicial documents in the same way?

(a) Yes.

#### A. Main Channel of Transmission (Art. 5)

12. In your State, what are the authorities or who are the persons competent to forward a request for service to a foreign Central Authority?

(a) Courts / Tribunals.

(c) Registrars.

(f) Central Authority(ies).

13. Do outgoing requests for service have to be transmitted through your State’s Central Authority?

(a) Yes.

*“The outgoing requests have to be transmitted through this Central Authority.”*

14. As the **requested State**, when no particular method is requested by the applicant, what is the primary / default method of service? (Art. 5(1)(a))

(c) By post.

15. In the previous five years\*, as the **requested State**, has your State **received** a request with a particular method of service requested by the applicant? (Art. 5(1)(b))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

15.1. If yes, what method of service was requested?

(a) Personal service.

15.2. If yes, was the requested method of service able to be executed?

(a) Yes.

16. In the previous five years\*, as the **requesting State**, has your State's forwarding authorities requested a particular method of service? (Art. 5(1)(b))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(a) Yes.

16.1. If yes, what particular method of service was requested?

(a) Personal service.

16.2. If yes, was the requested method of service able to be executed?

(a) Yes.

16.3. If yes, were there costs associated with this method of service?

(b) No.

## **B. Alternative Channels of Transmission (Arts 8, 9 & 10)**

State of origin refers to the State in which proceedings are commenced and where the document to be served originates.

State of destination refers to the State where service is, or will be, effected.

### **1. Model Form**

Use of the Model Form is mandatory for the main channel of transmission. The Special Commission, at its 2009 meeting, urged State Parties to widely encourage the use of the part of the Model Form containing the "Summary", accompanied by the "Warning" (see C&R No 31).

17. As the **State of origin**, does your State use the "Warning" and "Summary" sections of the Model Form when transmitting a request through alternative channels?

(a) Always.

18. As the State of destination, does your State use the “Certificate” section of the Model Form when informing whether documents have been served (in response to a request received through alternative channels)?

(a) Always.

## 2. Diplomatic and Consular Agents (Art. 8)

19. In the previous five years\*, have the diplomatic or consular agents of your State directly effected service of judicial or extrajudicial documents upon a person abroad? (Art. 8(1))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) Not applicable, due to the objection made.

20. In the previous five years\*, has service by diplomatic or consular agents of your State been rejected by the addressee? (Art. 8(1))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(d) Not applicable, due to the objection made.

## 3. Diplomatic and Consular Channels (Art. 9)

21. In the previous five years\*, has your State used consular channels to forward documents? (Art. 9(1))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

22. In the previous five years\*, under exceptional circumstances, has your State used diplomatic channels to forward documents? (Art. 9(2))

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

## 4. Postal Channel (Art. 10(a))

23. Has your State (as the **State of destination**) objected to service under Article 10(a)?

(a) Yes.

23.1. If an objection has been made under Article 10(a), does your State continue to use postal channels for service as the State of origin, despite the objection?

(b) No.

23.2. If no objection has been made, does your State, as the **State of destination**, accept the use of postal channels for service from other States of origin that have made an objection under Article 10(a)?

N/A

23.3. If no objection has been made, which of the following categories does your State recognise as a “postal channel” under Article 10(a)?

N/A

23.4. If no objection has been made, more specifically, would your State consider service by e-mail to be analogous to service by postal channels under Art. 10(a)?

N/A

23.5. If no objection has been made, does your State require the documents served to be translated into one of your State’s official languages?

N/A

#### **5. Judicial Officers, Officials or other Competent Persons (Art. 10(b))**

24. Has your State objected to service under Article 10(b)?

(a) Yes.

24.1. If no objection has been made, which of the following categories does your State recognise as a “judicial officer, official or other competent person” under Article 10(b), either for sending or receiving?

N/A

24.2. If no objection has been made, how does this channel of transmission operate in practice?

N/A

24.3. If no objection has been made, are there costs associated with this channel of transmission?

N/A

#### **6. Person Interested in a Judicial Proceeding (Art. 10(c))**

25. Has your State objected to service under Article 10(c)?

(a) Yes.

25.1. If no, which of the following categories does your State recognise as “any person interested in a judicial proceeding” under Article 10(c), either for sending or receiving?

N/A

25.2. If no, how does this channel of transmission operate in practice?

N/A

25.3. If no, are there costs associated with this channel of transmission?

N/A

### C. Refusal to Execute Request (Art. 13)

26. In the previous five years\*, has your State refused a request for service on grounds of infringing “sovereignty or security”?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

27. In the previous five years\*, has a request from your State been refused on grounds of infringing “sovereignty or security”?

\*If your State has become a Party to the Convention during the previous five years, responses to this questionnaire should reflect the period of time, commencing from when the Convention entered into force in your State.

(b) No.

## IV. Use of Information Technology

In 2019, the PB circulated a questionnaire on the use of information technology in relation to the operation of the Service Convention. That survey was concluded prior to the COVID-19 pandemic. The questions below seek information from Contracting Parties on the use of technology and in light of the pandemic.

28. Has your State taken any steps (including through legislation) to enable or increase the use of technology to facilitate the operation of the Service Convention, including in response to the COVID-19 pandemic?

(a) Yes.

*“We are able to receive requests through e-mail from any country that can do the same.”*

29. Do the forwarding authorities of your State transmit requests under the Service Convention electronically?

(a) Yes.

29.1. If yes, what methods of transmission do the forwarding authorities of your State use?

(a) E-mail (regular).

(c) Electronic transmission via online platform administered by the government.

30. Does your State’s Central Authority accept requests under the Service Convention transmitted electronically in circumstances where **only** an electronic copy is provided (and where a paper copy is not subsequently provided)?

(a) Yes.

30.1. If yes, what methods of transmission does your State accept?

- (a) E-mail (regular).
- (b) E-mail (secured / encrypted).
- (c) Electronic transmission via online platform administered by the government.
- (d) Electronic transmission via online platform administered by a private service provider.
- (f) Other.

*“Brazil is able to accept many methods of electronic transmission, provided it was previously agreed upon in a bilateral, regional or multilateral initiative. For example, as soon as the “Protocolo de Medellín” is in force in Brazil, requests will also be exchanged using the Iber@ system.”*

30.2. If no, please provide further information about why this is not yet possible.

N/A

31. Does your State permit execution of service via electronic means?

- (a) Yes, this is possible via the following means: -
- (b) E-mail (regular).
- (c) E-mail (secured / encrypted).
- (d) Electronic transmission via online platform administered by the government.
- (e) Electronic transmission via online platform administered by a private service provider.

31.1. If no, what are your State’s reasons for refusing to execute the requests for service to be performed by using information technology?

N/A

32. What challenges, if any, has your State faced regarding the use of information technology under the Service Convention?

- (h) Other.  
*“Lack of reciprocity from many of our partners, since many countries only accept paper requests. Also, many countries have difficulties accepting electronic signatures.”*

33. In your State’s opinion, what further work could the PB do on the use of information technology under the Service Convention?

- (c) Other.  
*“Stimulate all the countries to use electronic transmission, preferably by regular e-mail, as other initiatives that involve developing systems tend to take too long to develop and some are closed down shortly after they start being used and some don't even get to be used at all. If the development of a system becomes unavoidable, the same interface should be used for requests under all HCCH Conventions. Multiple systems should be avoided, but they may be acceptable if there is only one interface. Stimulate information exchange and confidence building among Members for the acceptance of electronic signatures. An idea would be to have an area on the website to disseminate information about each countries' valid electronic signatures.”*

34. In addition to the Service Convention, is your State a Party to any bilateral, regional, or multilateral agreements that provide rules for the service of documents abroad?

- (a) Yes.

For Parties that answered “yes” to Q34 above:

34.1. Do any of these agreements provide for the use of electronic means (e.g., e-mail) to transmit or execute requests for service?

(a) Yes.

*“Many of the treaties are technology neutral and thus permit the electronic transmission of requests. Also, as soon as the “Protocolo de Medellín” is in force in Brazil, requests will also be exchanged electronically using the Iber@ system. An initiative of the COMJIB, the Protocol provides for the electronic transmission of mutual legal assistance requests in civil or criminal matters and is open to the accession of any other State.”*

## V. 2023 Meeting of the Special Commission & Monitoring

35. What are the three key topics or practical issues related to the Service Convention that your State would like discussed at the 2023 meeting of the Special Commission?

1. *“Electronic transmission of requests, preferably by regular e-mail.”*
2. *“Best practices to overcome excessive requirements and formalities for incoming requests.”*
3. *“The discussion of the scope of “Civil and Commercial” and the creation of a list of what type of requests countries can receive under the Convention. Civil matters related to corruption cases are a priority, as provided for by treaties like the UN Convention against Corruption and the OECD Bribery Convention.”*

35.1. Please indicate whether the information provided in Q35 above may be published.

(a) Yes.

36. Does your State have any suggestions that could assist in the promotion, implementation, or operation of the Service Convention?

(a) Yes.

*“Please refer to the specific questions in this questionnaire, where these suggestions were made.”*

36.1. If the answer to Q36 above is “yes”, please indicate whether the information provided may be published.

(a) Yes.

37. The PB is in the process of revising the Service Handbook. Are there any specific topics, suggestions for presentation or formatting, or any other proposals you recommend for inclusion?

(a) Yes.

*“Best practices to overcome excessive requirements and formalities for incoming requests could be discussed for inclusion on the Handbook.”*

37.1. If the answer to Q37 above is “yes”, please indicate whether the information provided may be published.

(a) Yes.



## DATA & STATISTICS FOR CONTRACTING PARTIES

### I. Statistics under Main Channel of Transmission (Art. 5)

#### A. Incoming Requests

1. How many incoming requests for service did your State receive under the main channel of transmission (Art. 5) in each of the following years?

2017	<i>"Not applicable. Convention not yet in force."</i>
2018	<i>"Not applicable. Convention not yet in force."</i>
2019	46
2020	315
2021	579
2022	623
Unknown – <i>please explain.</i>	
-	

2. Which three States made the most requests?

Requesting State	Number
Portugal	728
United States of America	173
Italy	153

3. If possible, please provide a breakdown of how long (in months) it took to execute incoming requests.

	< 1	1-3	3-6	6-12	> 12
2017	-	-	-	-	-
2018	-	-	-	-	-
2019				X	
2020				X	
2021				X	
2022 (if data available)				X	
Unknown – <i>please explain.</i>					
-					

4. How many of these incoming requests for service did your State receive via **electronic transmission** in each of the following years?

2017	-
2018	-
2019	29
2020	69
2021	326
2022	424
Unknown – <i>please explain.</i>	
-	

5. How many incoming requests for service did your State **execute for service** via electronic means in each of the following years?

This is regardless of whether a paper copy of the documents was subsequently provided.

2017	-
2018	-
2019	100%
2020	100%
2021	100%
2022	100%
Unknown – <i>please explain.</i>	
-	

6. Are execution times for electronically transmitted requests for service generally faster than those transmitted by post?

(b) Yes, moderately faster.

## B. Outgoing Requests

7. How many outgoing requests for service did your State make under the main channel of transmission (Art. 5) in each of the following years?

2017	<i>“Not applicable. Convention not yet in force.”</i>
2018	<i>“Not applicable. Convention not yet in force.”</i>
2019	123
2020	579
2021	1096

2022	1228
Unknown – <i>please explain.</i>	
-	

8. Which three States were the subject of the most requests?

Requesting State	Number
Portugal	1252
Japan	338
Germany	193

9. How many outgoing requests for service did your State make via electronic transmission under the main channel of transmission (Art. 5) in each of the following years?

2017	<i>“Not applicable. Convention not yet in force.”</i>
2018	<i>“Not applicable. Convention not yet in force.”</i>
2019	47
2020	288
2021	487
2022	572
Unknown – <i>please explain.</i>	
-	

## II. Statistics under Alternative Channels of Transmission

10. Does your State have statistics on incoming requests under alternative channels of transmission?

- (a) Yes, Article 8.
- (b) Yes, Article 9.
- (c) Yes, Article 10(a).
- (d) Yes, Article 10(b).
- (e) Yes, Article 10(c).
- (x) No, none of the above.

10.1. If yes, how many (total) incoming requests for service did your State receive under the alternative channels of transmission in each of the following years?

N/A

### III. Refusals (Art. 13)

11. If applicable, please indicate how many incoming requests for service your State refused to comply with between 2017 and 2022?

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12. If applicable, please indicate how many outgoing requests for service transmitted by your State were refused between 2017 and 2022?

*“The Convention is in force in Brazil since mid 2019 only. Since then, seventeen outgoing requests were denied by countries that did not accept requests of an administrative or fiscal nature. Also, many requests were not sent because it was known that the requested country would not accept it for these reasons or because they were related to corruption cases.”*

## **CASE LAW, ADDITIONAL INFORMATION & SUPPORTING DOCUMENTS**

### **I. Case Law**

Please list all your State's judicial decisions that have considered the Service Convention since 2014 and provide a link to, or upload the decisions (in PDF format only).

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### **II. Additional Documents**

Please provide links to and / or any additional information or documentation to support your response (in PDF format only). This may include:

- ⇒ resources for the general public or guidelines for Central or other Authorities' staff;
- ⇒ implementation legislations, recent legislative developments; or
- ⇒ books, articles, or other published work.

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## **PUBLICATION OF RESPONSES**

Please confirm whether your responses to this questionnaire can be published on the HCCH website.

- (a) Yes.