

A stylized line-art illustration of a sailboat with three sails, positioned behind the title. The title 'Frequently Asked Questions (FAQ)' is written in a blue, serif font, centered over the graphic. A horizontal green line is located below the graphic.

Frequently Asked Questions (FAQ)

This section is intended more particularly for persons wishing to obtain practical and speedy replies to the various questions that may arise in connection with application of the Service Convention. This is merely a succinct outline of the Convention's main provisions. Accordingly, readers are invited to consult the main part of the Handbook to which this section refers for further details (see also the Explanatory Charts following the FAQ). The most frequently asked questions in practice are:¹

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¹ Commonly used terms are underlined and are defined in the Glossary.

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29. *In what circumstances does the protection provided for under Article 15 (stay of entry of judgment) apply?*
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B) Relief from expiry of the time for appeal (Art. 16)

33. *In what circumstances does Article 16 relating to relief from expiry of the time for appeal apply?*
34. *When does a judge have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment?*
35. *Does the protection of the defendant provided for under Articles 15 and 16 apply regardless of the method of transmission?*

I. Purpose and nature of the Convention

1. *What is the purpose of the Convention?*

The Convention provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State Party to the Convention to another State Party for service in the latter. The terms used for “service” in the French text are “*signifié ou notifié*” (Art. 1(1)). Unless stated otherwise, the French version of this Handbook uses the term “*notification*” for “service”; for further details on this issue, see paragraph 55.

The Convention deals primarily with the *transmission of documents from one State to another State*; the Convention does *not* address or comprise substantive rules relating to the *actual service of process*. There are, however, two channels of transmission provided for by the Convention where the transmission process includes *service of process* upon the ultimate addressee: the direct diplomatic or consular channels (see question 25) and the postal channel (see question 26). For all the other channels of transmission provided for by the Convention an additional step, not governed by the Convention, is required to serve process on the ultimate addressee (this step typically involves the Central Authority of the requested State or a judicial officer, official or other competent person or authority of the State of destination, see question 4). Furthermore, the Convention contains two important provisions of substantive nature that protect the defendant *prior* to a judgment by default (Art. 15) and *after* a judgment by default (Art. 16). For further details on the purpose and nature of the Convention, see paragraphs 1 *et seq.*; on Articles 15 and 16, see questions 28 to 35.

2. *Which States are Parties to the Convention?*

A comprehensive and updated list of the Contracting States of the Convention is available on the Service Section of the Hague Conference website at < www.hcch.net >.

The Convention uses the term “Contracting State” in numerous provisions but with varying meanings. This Handbook distinguishes between the expressions “Contracting State” and “State Party”. According to Article 2(1)(f) of the *Vienna Convention of 23 May 1969 on the Law of Treaties*, the term “Contracting State” means a State which has consented to be bound by a convention, whether or not that convention has entered into force; this is in contrast to the term “Party”, which under Article 2(1)(g) of the Vienna Convention refers to a State that has consented to be bound by a convention and for which that convention is in force.

3. *When does the Convention apply?*

For the Convention to be applicable, the following requirements must be met:

- 1) A document is to be *transmitted from one State Party to the Convention to another State Party for service in the latter* (as regards the term “service”, see paras 52 *et seq.*). 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 Convention is “non-mandatory”, see paras 31 *et seq.*);
- 2) An *address* for the person to be served is known (where no address for the person to be served is known, see paras 88 *et seq.*);

- 3) The document to be served is a *judicial or extrajudicial document* (see paras 76 *et seq.*);
- 4) The document to be served relates to a *civil and/or commercial matter* (see paras 56 *et seq.*).

If all these requirements are met, the transmission channels provided for under the Convention must be applied (the Convention is “exclusive”, see para. 50), except in the case of a derogatory channel (see paras 294 *et seq.*).

II. The channels of transmission of documents

4. *What are the channels of transmission provided for under the Convention?*

The Convention provides for one main channel of transmission (see questions 7 to 21), and several alternative channels of transmission (see questions 22 to 27). See Explanatory Charts 1 and 2 following the FAQ.

5. *Is there a hierarchy or otherwise an order of importance or difference in quality among the channels of transmission?*

No. There is neither a hierarchy nor any order of importance among the channels of transmission, and transmission through one of the alternative channels does not lead to service of lesser quality. It is up to the party seeking to effect service to determine which mode of transmission it wants to use (this choice is of course subject to the conditions imposed by the Convention, in particular the absence of objection by the State of destination in case of some of the alternative channels of transmission). Thus, the alternative channels should not be regarded as “subsidiary” to the main channel (see para. 236).

6. *May channels of transmission other than those provided for under the Convention be used?*

States Parties may provide for channels of transmission other than those provided for under the Convention (derogatory channels). There are two types of derogatory channels: those provided in bilateral or multilateral agreements concluded among Contracting States (Arts 11, 24 and 25; see paras 295 *et seq.* and 329 *et seq.*), and those provided by the domestic law of the State of destination (Art. 19; see paras 300 *et seq.*).

A) The main channel of transmission

7. *What is the main channel of transmission?*

Under the main channel of transmission provided for by the Convention, the authority or judicial officer competent under the law of the requesting State (State where the document to be served originates – see question 8) transmits the document to be served to a Central Authority of the requested State (State where the service is to occur – see questions 9 and 17). For further details on the main channel of transmission, see paragraphs 111 *et seq.*; see also Explanatory Chart 1 following the FAQ.

8. *Who may send the request for service?*

The Convention specifies that the forwarding authority must be an authority or judicial officer of the requesting State. It is that State's law which determines which authorities or judicial officers are competent to forward the request for service. Thus, in certain countries, attorneys, solicitors or private process servers are authorised to send such a request. Under the Convention, private persons are not entitled to send directly a request for service to the Central Authority of the requested State. For further details, see paragraphs 121 *et seq.*

9. *To which Central Authority is the request for service to be addressed?*

The request for service should be addressed to the Central Authority of the requested State. Under Article 18(1), a Contracting State may designate "other" authorities in addition to the Central Authority; also, under Article 18(3), a federal State may designate more than one Central Authority.

A comprehensive and updated list of Central Authorities and "other" authorities, designated by each Contracting State under Articles 2 and 18, is available on the Service Section of the Hague Conference website at < www.hcch.net >.

10. *What should the request for service include and how is it to be transmitted to the Central Authority?*

The request for service transmitted to the Central Authority must:

- 1) comply with the Model Form annexed to the Convention (see questions 11 to 13); and
- 2) be accompanied by the documents to be served (the list of documents to be served is to be determined according to the law of the requesting State; regarding formalities connected with the documents to be served, see question 14).

The Convention does not specify the method for sending the request to the Central Authority. Postal channels are commonly used (ordinary mail, registered mail with acknowledgment of receipt, express mail, private courier service, etc.). Certain Central Authorities accept receipt of requests by fax or e-mail (for more information, see Annex 8, The use of information technology in the operation of the Service Convention). It is preferable, however, to approach the relevant Central Authority in order to determine in advance the methods for transmission of requests that it accepts. For further details, see paragraphs 134 and 135.

11. *What is the Model Form?*

In its Annex, the Convention provides a Model Form (reproduced in Annex 2 of this Handbook at pp. 125 *et seq.*; see comments in paras 136 *et seq.* and Annex 6, Guidelines for completing the Model Form). The Model Form consists of *three parts*: a Request for service (which is sent to the Central Authority of the requested State), a Certificate (which is reproduced on the reverse side of the Request and which confirms whether or not the documents have been served), and a form entitled "Summary of the document to be served" (to be delivered to the addressee).

In addition, the Fourteenth Session of the Hague Conference recommended that the Summary be preceded by a warning relating to the legal nature, purpose and effects of the document to be served (the Warning is reproduced in Annex 3 at pp. 131 *et seq.*).

12. *Is use of the Model Form mandatory?*

The Model Form is mandatory if and when the main channel of transmission is used (see para. 153). The Fourteenth Session of the Hague Conference, however, recommended that the part of the form containing the Summary, accompanied by the Warning (see Annex 3 at pp. 131 *et seq.*), be used in all cases when a judicial or extrajudicial document in civil or commercial matters is to be served abroad, *i.e.*, not only for transmission through the main channel of the Central Authority, but also for transmission through the alternative channels provided for in the Convention. In addition, the practice, in certain States, of returning the Certificate to the forwarding authority even if transmission of the request has been executed through the alternative channels provided for in Article 10(b) and (c) is to be approved.

13. *Who should complete the Model Form?*

The Request for service is to be completed by the forwarding authority. The Certificate (which confirms whether or not the request for service has been executed) must be completed either by the Central Authority of the requested State or any other competent authority that the requested State has designated for that purpose. This Certificate is sent to the forwarding authority directly. If the Certificate is not completed by the Central Authority or a judicial authority (*e.g.*, if it is completed by a *huissier de justice*), the forwarding authority may require that the Certificate be countersigned by one of these authorities (Art. 6(3)). The Summary of the document to be served is to be completed by the forwarding authority and delivered to the addressee with the documents to be served. It should also be accompanied by a warning (regarding the manner in which the Model Form is to be filled in, see paras 136 *et seq.* and the instructions drafted by Mr Möller, reproduced in Annex 4 at pp. 137 *et seq.*).

14. *What formalities apply to the documents to be served?*

Under Article 3(1) of the Convention, the request does not require legalisation or other equivalent formalities (*e.g.*, an Apostille). This exemption equally applies to the documents themselves. The documents to be served and the Request are to be forwarded in duplicate (however, in the case of use of new technologies, see Annex 8, The use of information technology in the operation of the Service Convention). They need not be originals. Regarding the existence of practices inconsistent with Article 3, see paragraph 156. Regarding the issue of translation of the documents to be served, see question 15.

15. *Should the documents to be served be translated into (one of) the official language(s) of the requested State?*

Under Article 5(3), the Central Authority of the requested State may request a translation of the documents to be served if they are to be served by a method prescribed by the internal law of the requested State for the service of documents in domestic actions upon persons who are within its territory (Art. 5(1)(a)), or if service by a particular method is requested by the forwarding authority (Art. 5(1)(b)). For further details, see paragraphs 171 *et seq.*

In order to avoid undue delay connected with return of the request for service by the Central Authority on the grounds of a missing translation, it is preferable to check the Service Section of the Hague Conference website at < www.hcch.net >, before sending the application, to determine whether or not the requested State has made a general declaration in this respect; if not, it may be beneficial to approach the Central Authority of the requested State for this purpose.

16. *What is the time for execution of the request?*

The Convention has not set a specific time-limit for execution of the request. For comments on the time for execution in practice and the principle of speedy procedures, see paragraphs 195 *et seq.*; on the date of service in particular, see paragraphs 202 *et seq.*

Also, under Article 15(1), if the defendant does not appear and the service has not been performed in due time to enable the defendant to defend, the judge may be compelled to stay entry of judgment (see paras 304 *et seq.*).

17. *How is the request for service executed?*

The Central Authority in the requested State will execute the request for service or cause it to be executed either:

- 1) by a method provided for under the law of the requested State (formal service – see paras 163 *et seq.*); or
- 2) by a particular method requested by the applicant (*i.e.*, the forwarding authority), unless it is incompatible with the law of the requested State (see paras 166 *et seq.*); or
- 3) by informal delivery to the addressee who accepts it voluntarily (see paras 169 *et seq.*).

The forwarding authority is advised to mention in the Request Form by which method the service is to be executed. If there is no indication, the Central Authority will have discretion to choose.

18. *What happens if the addressee refuses informal delivery of the document?*

The Central Authority may attempt formal service or directly return the Certificate (contained in the Model Form) to the forwarding authority, specifying the reasons for failure to execute the request. For further details, see paragraph 170.

19. *May the Central Authority refuse compliance with the request for service?*

The Convention provides for two situations in which the Central Authority may refuse execution of the request: temporary refusal if the Central Authority considers that the request does not meet the formal and substantive requirements of the Convention (Art. 4); and final refusal if the Central Authority considers that execution of the service would infringe the sovereignty or security of the requested State (Art. 13). For further details, see paragraphs 217 *et seq.*

20. *Is the forwarding authority informed of the proper execution or failure of execution of the request for service?*

In all cases, the Certificate of service, in the form of the model annexed to the Convention (see Annex 2 at pp. 125 *et seq.*), is returned to the forwarding authority by the Central Authority or any other authority designated for such purpose by the requested State (Art. 6). If it has been possible to execute the request, the effect of the Certificate is a presumption that the service was valid; if it has not been possible to execute the request, the Central Authority or other competent authority must mention in the Certificate the grounds for failure to execute. For further details, see paragraphs 147, 148 and 209 *et seq.*

21. *May the Central Authority require the reimbursement of costs connected with execution of the request?*

A State Party shall not charge for its services rendered under the Convention (Art. 12(1)). Thus, the services rendered by the Central Authority shall not give rise to any payment or reimbursement of costs. Under Article 12(2), however, a forwarding authority shall pay or reimburse costs occasioned by the employment of a judicial officer or other competent person or by the use of a particular method of service. A Central Authority may request that such costs be paid in advance. Against this background, it is advisable to approach the Central Authority prior to sending the request for service in order to avoid any undue delay in execution of the request connected with the absence of an accompanying payment. For further details, see paragraphs 186 *et seq.*

B) Alternative channels of transmission

22. *What are the alternative channels of transmission?*

The consular or diplomatic channels (direct and indirect) (Arts 8(1) and 9 – see questions 23 to 25); postal channels (Art. 10(a) – see questions 23, 24 and 26); direct communication between judicial officers, officials or other competent persons of the State of origin and the State of destination (Art. 10(b)); and direct communication between an interested party and judicial officers, officials or other competent persons of the State of destination (Art. 10(c) – see questions 23, 24 and 27). For further details on alternative channels of transmission, see paragraphs 236 *et seq.*; see also Explanatory Chart 2 following the FAQ.

Caution: before using one particular alternative channel of transmission, it should be ascertained that the State of destination has not objected to it. Declarations of objection, if any, made by Contracting States are available on the Service Section of the Hague Conference website at < www.hcch.net >. On the question of whether an objection has reciprocal effect, see paragraphs 263 *et seq.*

Also, failure of the State of destination to object to a particular channel of transmission under Article 10 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 (for further details, see para. 268).

23. *Should the Model Form annexed to the Convention also be used for the alternative channels of transmission?*

The Model Form was originally designed for the main channel of transmission (see question 12). The Fourteenth Session of the Hague Conference, however, recommended that the part of the form containing the Summary, accompanied by the Warning (see Annex 3 at pp. 131 *et seq.*), be used in all cases when a judicial or extrajudicial document in civil or commercial matters is to be served abroad, *i.e.*, not only for transmission through the main channel of the Central Authority, but also for transmission through the alternative channels provided for in the Convention. In addition, the practice, in certain States, of returning the Certificate to the forwarding authority even if transmission of the request has been executed through the alternative channels provided for in Article 10(b) and (c) is to be approved.

24. *Should the documents to be served be translated into (one of) the official language(s) of the State of destination?*

The alternative channels of transmission do not, in principle, require a translation of the documents to be served under the Convention. There are, however, inconsistent practices (see paras 285 *et seq.*); in addition, recognition and enforcement of a foreign decision may be refused when the documents served have not been translated.

25. *What are consular or diplomatic channels?*

These are channels of transmission whereby 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. Depending on the case, the latter will execute the request for service personally (direct channels) or will be required to forward it for execution to a competent authority of the State of destination (indirect channels). For further details, see paragraphs 239 *et seq.*

26. *May the documents to be served be sent directly to the addressee through postal channels?*

According to Article 10(a), judicial documents may be served by sending them directly to the addressee abroad through postal channels if the following two conditions are met:

- 1) the conditions set by the law of the State of origin (*lex fori*) for valid service by mail are met; and
- 2) the State of destination has not objected to this channel of transmission (the declarations of objection made by States Parties may be consulted on the Service Section of the Hague Conference website at < www.hcch.net >).

There is no doubt that the reference to postal channels includes the sending of letters by ordinary mail, registered post and registered post with acknowledgment of receipt (regarding the use of electronic mail, see Annex 8, The use of information technology in the operation of the Service Convention).

For a more detailed analysis of service by mail, see paragraphs 250 *et seq.*; for a comprehensive analysis of the word “send” in the English version of Article 10(a) in particular, see paragraphs 270 *et seq.*

27. *What is direct communication to a judicial officer, official or other competent person?*

This is a channel of transmission whereby any person interested in the proceedings (Art. 10(c)) or any judicial officer, official or other competent person in the State of origin (Art. 10(b)) may approach directly a judicial officer, official or other competent person in the State of destination to serve the documents. This latter method allows, in particular, the transmission of documents to be served by a *huissier de justice* to another *huissier de justice*. A State may object to the use of these channels of transmission (the declarations of objection made by States Parties may be consulted on the Service Section of the Hague Conference website at < www.hcch.net >). For further details regarding this channel of transmission, see paragraphs 287 *et seq.*

III. Protection of the plaintiff's and defendant's interests

28. *What substantive protection does the [Convention](#) provide for the defendant?*

The [Convention](#) contains two key provisions which protect the defendant *prior* to a judgment by default (Art. 15) and *after* a judgment by default (Art. 16). Articles 15 and 16 require the judge to stay entry of judgment (Art. 15 – see questions 29 to 32) or allow the judge to relieve the defendant from the effects of the expiry of the time for appeal (Art. 16 – see questions 33 to 35), subject to certain requirements. See Explanatory Charts 3 and 4 following the FAQ.

A) Stay of entry of judgment (Art. 15)

29. *In what circumstances does the protection provided for under Article 15 (stay of entry of judgment) apply?*

Article 15(1) applies in the cases where a [writ of summons](#) or equivalent document had to be transmitted abroad, under the provisions of the [Convention](#), for the purpose of [service](#) and the defendant has not appeared. For further details on the stay of entry of judgment, see paragraphs 304 *et seq.*

30. *What are the conditions requiring a judge to stay entry of judgment?*

Under Article 15(1), judgment shall not be given until it is established that:

- 1) the document was served in accordance with the law of the [requested State](#) (or, in the case of an [alternative channel of transmission](#), the [State of destination](#)) or actually delivered to the defendant or to the latter's residence by another method provided for by the [Convention](#); and
- 2) that, in either of these cases, the [service](#) or the delivery was effected in sufficient time to enable the defendant to defend.

31. *Are there exceptions from the duty to stay entry of judgment?*

Yes, the judge may rule by default, notwithstanding the fact that the requirements under the foregoing question are met, but only if:

- 1) the [Contracting State](#) has made a declaration to this respect (see the table of declarations made under Art. 15(2) on the [Service Section](#) of the [Hague Conference](#) website at < www.hcch.net >);
- 2) the document was transmitted by one of the methods provided for in the [Convention](#);
- 3) 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 [requested State](#) (or, in the case of an [alternative channel of transmission](#), the [State of destination](#)); and
- 4) a period of time considered adequate by the judge, but of not less than six months, has elapsed since the date of transmission of the document (Art. 15(2)).

These conditions are to be satisfied concurrently.

32. *May the judge order provisional or protective measures despite the duty to stay entry of judgment?*

Yes, in cases of urgency, the judge may order provisional or protective measures (Art. 15(3) – see para. 321).

B) Relief from expiry of the time for appeal (Art. 16)

33. *In what circumstances does Article 16 relating to relief from expiry of the time for appeal apply?*

Article 16 applies when the defendant has not appeared, a decision not relating to personal status or capacity has been entered by default, and the time for appeal has expired. For further details on relief from expiry of the time for appeal, see paragraphs 322 *et seq.*

34. *When does a judge have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment?*

A judge may relieve the defendant from the effects of the expiration of the time for appeal from the judgment if (Art. 16(3)):

- 1) without any fault on his or her part, the defendant did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal;
- 2) the defendant has disclosed a *prima facie* defence to the action on the merits; and
- 3) the defendant files the application for relief within a reasonable time after being informed of the judgment or within the time determined by the State in its declaration to the depositary to this effect (in such a case, however, this time shall in no case be less than one year following the date of judgment). A list of declarations and a table recapitulating the declarations made by each State are available on the Service Section of the Hague Conference website at < www.hcch.net >.

These conditions are to be satisfied concurrently.

35. *Does the protection of the defendant provided for under Articles 15 and 16 apply regardless of the method of transmission?*

These two provisions apply irrespective of which channel of transmission provided for by the Convention is used (*i.e.*, the main channel or any of the alternative channels of transmission).