

**UNIFORM RULES ON SERVICE IN OTHER
CONTRACTING STATES TO THE
*CONVENTION ON THE SERVICE ABROAD
OF JUDICIAL AND EXTRAJUDICIAL
DOCUMENTS IN CIVIL OR COMMERCIAL
MATTERS***

[Definitions]

[Definitions

In this part,

“Central Authority” means a Central Authority designated under the Convention. (“Autorité centrale”)

“Contracting State” means a contracting state under the Convention. (“État contractant”)

“Convention” means *the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965*. (“Convention”)]

[1. Force of law]

[1 The Convention has force of law in [*jurisdiction*].]

2. *Method of Service in a Contracting State*

- 2(1) Except as provided in (2), an [statement of claim/originating process] or other document to be served in another Contracting State shall be served,**
- a) through the Central Authority in the Contracting State [(Form A)];**
 - b) through Canadian diplomatic or consular agents if the Contracting State has not declare its opposition to this method of service;**
 - c) through consular channels to those authorities designated for this purpose by the Contracting State;**
 - d) through diplomatic channels;**
 - e) by any other method that is permitted by the Convention, that would be permitted by these rules if the document were being served in a non-Contracting State, and to which the Contracting State has not objected; or**
 - f) by any other method permitted by the law of the Contracting State for documents from abroad [if service made by that method could reasonably be expected to come to the notice of the person to be served].**

2. ...Method of Service in a Contracting State

OPTION 1

Where Convention does not apply

- (2) Where it is established that the Contracting State has determined that the Convention does not apply, service may be effected in accordance with rule [*# of general rule on service abroad*].

OPTION 2

General Methods of Service

- (2) A [statement of claim/originating process] or other document to be served outside [*jurisdiction*] in a jurisdiction that is not a Contracting State, or in a Contracting State that has determined that the Convention does not apply, may be served by the method provided by these rules for service in [*jurisdiction*], or by the method provided by the law of the jurisdiction where service is made, if service made by that method could reasonably be expected to come to the notice of the person to be served.

3. *Proof of Service*

3 Service may be proved,

OPTION 1

- a) by the method provided by these rules for proof of service in [*jurisdiction*];
- b) by the method provided by the law of the state where service is made; or
- c) with a certificate issued by the Central Authority of the state of destination, or any authority designated by the state of destination for that purpose which states that the document was served [(Forms A)].

OPTION 2

despite rule [# of rule on proof of service] with respect to service under Rule 2(1), with a certificate issued by the Central Authority of the receiving jurisdiction, or any authority designated by the receiving jurisdiction for that purpose which states that the document was served [(Form A)].

[4. Default Judgment under the Convention]

Conditions

- 4(1) Where a [statement of claim/originating process] was served on a defendant under rule 2(1) and the defendant has not [delivered/ served and filed a statement of defence/response/ demand for notice] in accordance with rule [*# of rule on responding to a statement of claim*] judgment may be given under rule [*# of rule on default judgment*].]
- [2) Notwithstanding subsection (1), the Court may give a default judgment if
- a. the [statement of claim/originating process] was sent by a method provided for in the Convention;
 - b. a period of not less than six months, or such longer period as the Court considers adequate in the circumstances, has elapsed since the day on which the [statement of claim/originating process] was sent; and
 - c. no certificate of service or delivery was received, and every reasonable effort was made to obtain such a certificate through the competent authorities of the state to which the [statement of claim/originating process] was sent.]

[In case of urgency

- (3) Notwithstanding subrule[s] [(1) and/or (2)], the court may order, in case of urgency, any provisional or protective measures.]

[4. ...Default Judgment under the Convention]

[Relief against default judgment]

- (4) A defendant against whom a default judgment is so made may, [*optional time limit, must not be shorter than one year from the judgment date*], apply for [*relief available e.g.: having the default judgment set aside/ an extension of time to appeal, another type of relief available under the rules*] if the defendant can show that, by no fault of his or her own, he or she did not become aware of the proceeding in sufficient time to file a defence or to exercise a recourse against the decision, and if the grounds raised in his or her defence do not appear completely unfounded.]
- [(5) Subsection (4) does not apply to judgments concerning the status or capacity of persons.]

Article 16

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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* defence 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.

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.

Lorsqu'un acte introductif d'instance ou un acte équivalent a dû être transmis à l'étranger aux fins de signification ou de notification, selon les dispositions de la présente Convention, et qu'une décision a été rendue contre un défendeur qui n'a pas comparu, **le juge a la faculté de relever ce défendeur de la forclusion résultant de l'expiration des délais de recours**, si les conditions suivantes sont réunies :

- a) le défendeur, sans qu'il y ait eu faute de sa part, n'a pas eu connaissance en temps utile dudit acte pour se défendre et de la décision pour exercer un recours,
- b) les moyens du défendeur n'apparaissent pas dénués de tout fondement.

La demande tendant au relevé de la forclusion est irrecevable si elle n'est pas formée dans un délai raisonnable à partir du moment où le défendeur a eu connaissance de la décision.

Chaque État contractant a la faculté de déclarer que cette demande est irrecevable si elle est formée après l'expiration d'un délai qu'il précisera dans sa déclaration, pourvu que ce délai ne soit pas inférieur à un an à compter du prononcé de la décision.

Le présent article ne s'applique pas aux décisions concernant l'état des personnes.