

## PART ONE – GENERAL INFORMATION AND STATISTICS

### I. Questions for non-Contracting States

1) Please indicate why your State is not a Contracting State to the Service Convention (select as many answers as are relevant):

The availability of possibilities for transmission of documents for service abroad, proof of service abroad and protection of the interests of plaintiffs and defendants under domestic law, bilateral or regional agreements, treaties or instruments means that so far it has not appeared to your authorities that there would be added value in becoming a Party to the Service Convention

The number of cross-border cases that require the service abroad of judicial or extrajudicial documents has so far been limited and has not required a global framework

There are legal obstacles in your domestic legal system that prevent your State from becoming a party to the Convention – if so, please specify what these are:

Your State considers that there are specific issues arising out of the Service Convention (*e.g.*, costs, the absence of specific deadlines for the transmission and execution of requests for service, the absence of a specific provision on how to determine the date of service, the need, where requested, to translate documents to be served in accordance with Art. 5(3), etc.) which dissuade your State from joining the Service Convention – please explain:

Your State does not have the means or resources to properly implement the Service Convention

The question of becoming a Party to the Convention has never been examined in detail

Other reason – please explain:

*Malaysia is currently studying the Service Convention.*

2) Please forward a list of any bilateral or regional agreements, treaties or instruments to which your State is a party and that provide rules for the transmission of documents to be served abroad, for proof of service, and for the protection of the interests of plaintiffs and defendants:

*Malaysia does not have any bilateral or regional agreements, treaties or instruments that provide rules for the transmission of documents to be served abroad, for proof of service, and for the protection of the interests of plaintiffs and defendants. However, in Malaysia there are procedures for transmitting of documents to be served abroad, for proof of service, and for the protection of the interests of plaintiffs and defendants. The procedure is provided under Order 11 of the Rules of the High Court 1980 [P.U. (A)50/1980] which states the following:*

***“Order 11. Service of Process, etc., Out of the Jurisdiction.***

***Rule 1. Principal cases in which service of notice of writ out of jurisdiction is permissible. (O. 11 r. 1)***

*(1) Where the writ does not contain any claim for damage, loss of life or personal injury arising out of-*

*(i) a collision between ships; or*

*(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships; or*

*(iii) non-compliance on the part of one or more of two or more ships, with the collision regulations made under section 251 of the Merchant Shipping Ordinance 1952, 70/52 service of a notice of a writ out of the jurisdiction is permissible with the leave of the Court in the following cases, what is to say-*

*(a) if the whole subject-matter of the action begun by the writ is immovable property situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to immovable property so situate;*

*(b) if an act, deed, will, contract, obligation or liability affecting immovable property situate within the jurisdiction is sought to be construed, rectified, set aside or enforced in the action begun by the writ;*

*(c) if in the action begun by the writ relief is sought against a person domiciled or ordinarily resident or carrying on business within the jurisdiction;*

*(d) if the action begun by the writ is for the administration of the estate of a person who died domiciled within the jurisdiction or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;*

*(e) if the action begun by the writ is for the execution, as to property situate within the jurisdiction, of the trusts of a written instrument, being trusts that ought to be executed according to law and of which the person to be served with the writ is a trustee or if the action begun by the writ is for any relief or remedy which might be obtained in any such action as aforesaid;*

*(f) if the action begun by the writ is brought against a defendant to enforce rescind, dissolve annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which-*

*(i) was made within the jurisdiction; or*

*(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or*

*(iii) is by its terms, or by implication, governed by the law of Malaysia;*

*(g) if the action begun by the writ is brought against a defendant in respect of a breach committed within the jurisdiction of a contract made*

*within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;*

*(h) if the action begun by the writ is founded on a tort committed within the jurisdiction;*

*(i) if in the action begun by the writ an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);*

*(j) if the action begun by the writ being properly brought against a person duly served within the jurisdiction, a person out of the jurisdiction is a necessary or proper party thereto;*

*(k) if the action begun by the writ is either by a charge of property situate within the jurisdiction (other than immovable property) and seeks the sale of the property, the foreclosure of the charge or delivery by the charger of possession of the property but not an order for payment of any moneys due under the charge or by a charger of property so situate (other than immovable property) and seeks redemption of the charge, reconveyance of the property or delivery by the chargee of possession of the property but not a personal judgment;*

*(l) if the action begun by the writ is brought under the provisions of any written law relating to carriage by air.*

*(2)(There is no paragraph (2)).*

*(3)(There is no paragraph (3)).*

**Rule 2. Service out of the jurisdiction in certain actions of contract. (O. 11 r. 2)**

*Where it appears to the Court that a contract contains a term to the effect that the High Court shall have jurisdiction to hear and determine any action in respect of the contract, the Court may grant leave for service out of the jurisdiction of the notice of the writ by which an action in respect of the contract is begun.*

**Rule 3. Leave for service of notice of writ. (O. 11 r. 3)**

*Notice of a writ for service out of the jurisdiction must be in Form 11.*

**Rule 4. Application for, and grant of, leave to serve notice of writ out of jurisdiction. (O. 11 r. 4)**

*(1)An application for the grant of leave under rule 1 or 2 must be supported by an affidavit in Form 12 stating the grounds on which the application is made and that in the deponent's belief, the plaintiff has a good cause of action, and showing in what place or country the defendant is, or probably may be found.*

*(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.*

*(3) An order in Form 13 granting under rule 1 or 2 leave to serve a notice of writ out of the jurisdiction must limit a time within which the defendant to be served must enter an appearance.*

**Rule 5. Service of notice of writ abroad: General. (O. 11 r. 5)**

*(1) Subject to the following provisions of this rule, Order 10, rule 1, and Order 62, rule 5, shall apply in relation to the service of a notice of a writ notwithstanding that the notice is to be served out of the jurisdiction.*

*(2) Nothing in this rule or in any order or direction of the Court made by virtue of shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.*

*(3) A notice of a writ which is to be served out of the jurisdiction need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country in which service is effected.*

*(4) Where a certificate under the following provisions of this rule is produced in relation to the service of notice of a writ in accordance with rule 6 or rule 7, Order 10 rule 1(4), shall not apply in relation to that service.*

*(5) An official certificate stating that a notice of a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate-*

*(a) by a consular authority in that country; or*

*(b) by the Government or judicial authorities of that country; or*

*(c) by any other authority designed in respect of that country, under the Hague Convention, shall be evidence of the facts so stated.*

*(6) An official certificate by the Minister stating that notice of a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact.*

*(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.*

*(8) Where the defendant is in Singapore or Brunei, the notice of a writ may be sent by post or otherwise by the Registrar to Magistrate, Registrar, or other appropriate officer of any Court exercising civil jurisdiction in the area in which the person to be served is said to be or to be carrying on business for service on the defendant, and if it is returned with an indorsement of service and with an affidavit of such service, it shall be deemed to have been duly served.*

**Rule 6. Service of notice of writ abroad through foreign governments judicial authorities and Malaysian consuls or by plaintiff. (O. 11 r. 6)**

*(1) Where in accordance with these rules notice of a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served-*

*(a) through the judicial authorities of that country; or*

*(b) subject to any provision of the Convention as to the nationality of persons who may be so served-*

*(i) through a Malaysian Consular authority in that country; or*

*(ii) by the plaintiff or his agent.*

*(2) Where in accordance with these rules notice of a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the High Court, the notice may be served-*

*(a) through the Government of that country, where that Government is willing to effect service; or*

*(b) except where service through a consular authority or by the plaintiff or his agent is prohibited by the law of that country-*

*(i) through a Malaysian Consular authority in that country; or*

*(ii) by the plaintiff or his agent.*

*(3) Where a person wishes to serve notice of a writ in any country-*

*(a) through the judicial authorities of that country under paragraph (1); or*

*(b) through a Malaysian consular authority under paragraph (1) or (2); or*

*(c) through the Government of that country under paragraph (2);*

*that person must lodge in the Registry a request in Form 14 for service of notice of the writ by that method, together with a copy of the notice and an additional copy thereof for each person to be served.*

*(4) Every copy of a notice lodged under paragraph (3) must be accompanied by a translation of the notice in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:*

*Provided that this paragraph shall not apply in relation to a copy of a notice which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a Malaysian consular authority on a Malaysian citizen, unless the service is to be effected under paragraph (1) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.*

*(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.*

*(6) Documents duly lodged under paragraph (3) shall be sent by the Registrar to the Secretary General to the Ministry of Foreign Affairs with a request that he arranges for the writ to be served by the method indicated in the request lodged under paragraph (3) or, where alternative methods are so indicated, by such one of those methods as is most convenient.*

**Rule 7. Service of notice of writ in certain actions under certain written law. (O. 11 r. 7)**

*(1) where a person to whom leave has been of granted under rule 1 to serve notice of a writ on a High Contracting Party to the Warsaw Convention being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the notice served on that Party, he must lodge in the Registry-*

*(a) a request for service to be arranged by the Minister; and*

*(b) a copy of the notice; and*

*(c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the notice in the official language or one of the official languages of the High Contracting Party.*

*(2) Rule 6(5) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (4) of that rule.*

*(3) Documents duly lodged under this rule shall be sent by the Registrar to the Secretary General to the Ministry of Foreign Affairs with a request that he arranges for the notice to be served on the High Contracting Party or the Government in question, as the case may be.*

**Rule 8. Undertaking to pay expenses of service incurred by Minister. (O. 11 r. 8)**

*Every request lodged under rule 6(3) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the office of*

*the said Minister and to produce a receipt for the payment to the proper officer in the Registry.*

**Rule 9. Service of originating summons, petition, notice of motion etc. (O. 11 r. 9)**

*(1) Subject to paragraph (2), service out of the jurisdiction of an originating summons is permissible with the leave of the Court.*

*(2) Where the proceedings begun by an originating summons might have been begun by writ, service out of the jurisdiction of the originating summons is permissible as aforesaid if, but only if service of the notice of the writ out of the jurisdiction would be permissible had the proceedings been begun by writ.*

*(3) Where any proceedings are authorised by these rules or (apart from these rules) by or under any written law to be begun by originating motion or petition, service out of the jurisdiction of the notice of motion or of the petition is permissible with the leave of the Court.*

*(4) Service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court.*

*(5) Rule 4(1) and (2) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2.*

*(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons to which an appearance is required to be entered must limit a time within which the defendant to be served with the summons must enter an appearance.*

*(7) Rules 5, 6 and 8 shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ."*

**FORMS**

**No. 11**

**NOTICE OF WRIT OF SUMMONS TO BE SERVED  
OUT OF JURISDICTION (O. 11 r. 3)**

(Title as in action)

To .....

Take notice that ..... of ..... has begun an action against you ..... in the High Court of Malaya/Borneo at ..... by writ of summons dated the ... day of ..... 19 ..... , which writ is indorsed as follows (copy the indorsements) and you are required within ..... days after receipt of this notice, inclusive of the day of receipt, to cause an appearance to be entered for you in the said Court to the said action, and in default of your so doing the said ..... may proceed therein and judgment may be given in your absence.

You may enter an appearance in person or by a solicitor either (1) by handing in the appropriate forms, duly completed, at the Registry of the High Court, or (2) by sending them by post to the Registrar, High Court at .....

If writ is indorsed with a statement of claim, add:

If you enter an appearance, then, unless a summons for judgment is served on you in the meantime, you must also serve a defence on (the solicitor for) the plaintiff within ..... days after the last day of the time limited for entered an appearance, otherwise judgment may be entered against you without notice.

Dated the ... day of ..... 19...

By Order of the Court.

(Seal)

.....

*Registrar*

This notice was served by me at ..... on the defendant .....on ..... the .....



Indorsed the ... day of ..... , 19...

.....

*Process-server*

**No. 12**

**AFFIDAVIT FOR LEAVE TO SERVE WRIT OUT OF  
JURISDICTION (O. 11 r. 4)**

(Title as in action)

I (name, address and description of deponent) do make oath (or affirm) and say as follows:

1. I reside at ..... and am a .....
2. I verily believe that I have a good cause of action against the abovenamed intended defendant (state the grounds on which the application is founded and where the action arose).
3. The said intended defendant is at present residing (or carrying on business) at ..... in the State of .....
4. At least ..... days will probably be necessary to effect service on the intended defendant and to enable him to enter an appearance in the Registry of the High Court.
5. I apply for leave to serve the same on the said intended defendant ..... at ..... or elsewhere as he may be found in the State of .....

Sworn (or affirmed) as in Form 78.

**No. 13**

**ORDER FOR SERVICE OUT OF JURISDICTION (O. 11 r. 4)**

(Title as in action)

Upon the application of ..... the intended plaintiff and upon reading the affidavit of ..... filed the ... day of ..... , 19... and upon hearing.

It is ordered that the intended plaintiff have leave to issue a notice of a writ of summons (or originating summons) (or as may be) against the intended defendant and to serve the said notice of writ on him at (address at which intended defendant to be served) or elsewhere in (name of country within which service to be effected).

And it is ordered that the time for entry of an appearance in the action by the intended defendant be ..... days after service on him of the notice of writ.

Dated the ... day of ..... , 19...

(Seal)

.....

*Registrar*

**No. 14**

**REQUEST FOR SERVICE OF DOCUMENT ABROAD (O. 11 r. 6)**

(Title as in action)

I hereby request that the notice of the writ of summons (or as may be describing the document) in this action be sent through the proper channel to (name of country) for service on the (defendant) ..... , at ..... or elsewhere in (name of country) and that it may be served .....

(i) through the government of ..... (where the Government is willing to effect service)

(ii) through the judicial authority of .....

(iii) through a Malaysian (or British) Consular authority at .....

(delete which methods not desired)

I hereby undertake to be responsible personally for all expenses incurred by the Minister in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the officer of the said Minister and to produce a receipt for the payment to the proper office in the Registry.

Dated the ... day of ..... , 19...

.....  
*Solicitor for the .....*

-

- 3) Is your State currently studying the Service Convention or does your State envisage studying it with a view to becoming a State Party in the near future?
- YES – please specify (status of considerations in your State, etc.):  
*Malaysia is currently studying the Service Convention.*
- NO

## II. Questions for Contracting States

### A. "Service Section" of the HCCH website

- 4) On the "Service Section" of the HCCH website, the Permanent Bureau currently provides practical information for each Contracting State that was mainly obtained from the responses to the 2003 Questionnaire accompanying the provisional version of the new edition of the Practical Handbook on the operation of the Service Convention (2003 Service Questionnaire). This practical information, which is presented in form of a chart, consists of the following:
- 1) Contact details of each of the Central Authorities (Arts 2 and 18)
  - 2) Forwarding authorities (Art. 3(1))
  - 3) Methods of service (Art. 5(1) and (2))
  - 4) Translation requirements (Art. 5(3))
  - 5) Costs relating to the execution of the request for service (Art. 12)
  - 6) Time for the execution of a request
  - 7) Judicial officers, officials and other competent persons (Art. 10 *b*) and *c*)
  - 8) Oppositions and declarations (Art. 21(2), in particular with respect to Arts 8(2), 10 *a*), *b*) and *c*), 15(2) and 16(3))
  - 9) Derogatory channels (bilateral or multilateral agreements or domestic law permitting other transmission channels (Arts 11, 19, 24 and 25)
  - 10) Useful links

The Permanent Bureau invites your State to peruse the "Service Section" and to verify if all the information contained in the practical information chart for your State is (still) correct or if it needs to be updated, amended or supplemented. **The States that currently do not have a chart of practical information on the "Service Section" are kindly invited to submit this information to the Permanent Bureau.**

- 5) Would your State consider that the information provided on the "Service Section" of the HCCH website is:
- [ ] Very useful  
[ ] Useful – would you have any suggestions for improvement?
- [ ] Not useful – would you have any suggestions for improvement?

### B. Contact details for designated Authorities

- 6) Please check the contact information as contained on the HCCH website with regards to the **Central Authority(ies)** designated by your State (Arts 2 and 18(3)). If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

Name of Authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

If your State is a federal State that has designated several Central Authorities under Article 18(3) and one of the above categories is missing for more than one Central Authority designated, please provide separate details for each of those Central Authorities (copy and paste if necessary – also, please provide both a postal address and a street address, if these are not identical):

Name of Authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

- 7) Please also verify the contact information as contained on the HCCH website with regards to the following authorities in your State, *if applicable*. If one of the following categories of information is missing then please provide it below (please provide both a postal address and a street address, if these are not identical):

- a. **Other Authorities** that may have been designated in addition to the Central Authority (Art. 18(1)):

Name of Authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

- b. An **Authority** that may have been designated instead of the Central Authority to complete the Certificate in the form of the model annexed to the Service Convention (Art. 6(1)):

Name of Authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

- c. The **Competent Authority** that receives documents transmitted by indirect diplomatic or consular channels (Art. 9(1)):

Name of Authority:

Address:

Telephone:

Fax:

E-mail:

Website:

Language(s) of communication:

Name of contact person:

- 8) In Conclusion and Recommendation No 48, the 2003 Special Commission invited all States to provide information on the forwarding authorities (the authority or judicial officer competent under the law of the requesting State to forward to the Central Authority of the requested State the request for service) and their competences

this information to be posted on the HCCH website. If your State has not yet done so, please provide comprehensive information to this effect below (obviously, the Permanent Bureau is not asking for a comprehensive list of individuals who may be forwarding authorities, but rather for a reference to all the categories of authorities, officials or professionals that may be forwarding authorities, for example "the courts", "bailiffs", "(professional) process servers", etc.):

**C. Statistics**

***Main Channel of Transmission (Art. 3)***

***Requests for Service – Incoming***

- 9) The following questions relate to the number of requests for service *addressed to your State* under the Service Convention.
- a. Please complete the following table to indicate how many *incoming* requests for service the Central Authority(ies) of your State received in each of the past five years under the main channel of transmission. Please also note, if possible for each year, the country(ies) from which your State received the most requests for service.

<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
Number:	Number:	Number:	Number:	Number:
State(s):	State(s):	State(s):	State(s):	State(s):

- b. Of the total amount of requests for service received in 2007, please divide these depending on the method of service that was used by your State and complete the following table with respect to the time that lapsed between the Central Authority(ies) of your State receiving a request for service and the relevant authority of your State forwarding the Certificate of service to the applicant in the requesting State.

For example, if your State executed 12 requests for service using personal service and the entire process took less than two months in each case, please write the number "12" in the relevant box. The total amount of incoming requests for service that your State received in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) a))							
Service by a particular method (Art. 5(1) b)) <sup>4</sup>							
Informal delivery (Art. 5(2))							
<b>Sub-totals:</b>							

**Requests for Service – Outgoing**

10) The following questions relate to the number of requests for service *sent by the forwarding authorities of your State* under the Service Convention. These questions are likely to require some consultation with the (main) forwarding authorities in your State that (may) have previously forwarded requests for service:

- a. Please complete the following table to indicate how many *outgoing* requests for service the forwarding authorities of your State have forwarded to Central Authorities of other States Parties in the past five years. If possible, please also note the country(ies) to which your State sent the most requests for service for each year listed below.

2003	2004	2005	2006	2007
Number:	Number:	Number:	Number:	Number:
State(s):	State(s):	State(s):	State(s):	State(s):

- b. Of the total amount of requests for service sent in 2007, please complete the following table with respect to the *time that lapsed* between the forwarding authority of your State sending a request for service and the applicant receiving the Certificate of Service from the requested State. Please also divide these depending on the method of service that was used in the requested State.

For example, if your State is made aware that six requests for service were sent from your State and the entire process took less than two months in each case, please write the number "6" in the relevant box. The total amount of outgoing requests for service that your State is aware were sent in the past year should therefore equal the sum of the figures appearing in the sub-totals line below:

<sup>4</sup> See Question 29) b. for an explanation as to the meaning of Art. 5(1) b) – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).

Method of service	Less than 2 months	Between 2 and 4 months	Between 4 and 6 months	Between 6 and 12 months	More than 12 months	Returned un-executed (Art. 13)	Cases currently pending
Formal service (Art. 5(1) a))							
Service by a particular method (Art. 5(1) b)) <sup>5</sup>							
Informal delivery (Art. 5(2))							
<b>Sub-totals:</b>							

#### D. General appreciation of the Service Convention

11) Please indicate below how your State rates the general operation of the Service Convention:

- Excellent
- Good
- Satisfactory
- Unsatisfactory

If your State considers that the general operation of the Service Convention is good, satisfactory or unsatisfactory, please indicate what particular aspects of the Convention your State considers require improvement or where your State has encountered difficulties. For any areas that require improvement, please also indicate whether your State considers that solutions could be developed in specific *Conclusions and Recommendations* to be adopted by the next Special Commission or by specific comments in a new edition of the *Service Handbook* or if a *Protocol* to the Convention is needed.

#### E. Case law and reference work

- 12) The Permanent Bureau invites States Parties to provide copies of any guides, desk instructions or any other practical information that may have been produced for the assistance of their judicial authorities or other authorities when sending or executing requests for service under the Service Convention.
- 13) The Permanent Bureau invites States Parties to provide copies of decisions rendered after the publication of the Service Handbook (or from before this time if these have not already been provided to the Permanent Bureau) that apply or relate to the Service Convention. If the decision is in a language other than English or French, a summary into either of these languages would be appreciated.

<sup>5</sup> See Question 29) b. for an explanation as to the meaning of Art. 5(1) b) – please adopt that meaning to fill in the chart above, independently of your response to Question 29) b. (i).



- 14) The Permanent Bureau invites States Parties to forward a list of references of articles or books in connection with the Service Convention that do not already appear on the bibliography tab of the HCCH website or in the Service Handbook.
- 15) The Permanent Bureau invites States Parties to forward a citation for and / or a copy of the domestic legislation which implemented the Service Convention in their territory(ies), as well as any citations for and / or copies of any domestic laws which provide for the service of documents abroad.
- 16) The Permanent Bureau invites States Parties to forward a list of any other bilateral treaties and / or international instruments to which they are a party and that provide rules for the service of documents abroad. In particular, States Parties are invited to identify those treaties that allow for direct judicial communication (see Art. 11 *in fine* of the Service Convention).

**F. Service Handbook**

- 17) In 2006 during the Special Commission on General Affairs and Policy of the HCCH (now referred to as the "Council on General Affairs and Policy"), the Permanent Bureau distributed free copies of the Service Handbook to the heads of all delegations in attendance. Subsequently, the Permanent Bureau also sent free copies of the Service Handbook to the National Organs of Member States of the HCCH (in most instances for them to be passed on to the Central Authorities designated by their States), and the Central Authorities of non-Member Contracting States to the Service Convention. Additional copies of the Service Handbook may be ordered via the "Service Section" of the HCCH website (< [www.hcch.net](http://www.hcch.net) >). Do(es) the Central Authority(ies) of your State have copies of the Service Handbook at their / its disposal?

NO – why not?

YES

- a. Do(es) the Central Authority(ies) of your State regularly consult the Service Handbook when confronted with issues regarding the operation of the Service Convention?

YES

NO – why not?

- b. Do(es) the Central Authority(ies) of your State find the Service Handbook to be:

Very useful

Useful

Not useful

Please indicate what particular aspects of the Service Handbook could be improved:

- 18) Do practitioners (attorneys, process servers, etc.) in your State also consult and rely on the Service Handbook?

YES

NO

No information available for possible comment

19) Has the Service Handbook been quoted or referred to in judicial proceedings and / or court decisions in your State (please provide precise references and copies of the relevant decisions)? If a decision is in a language other than English or French, a summary into either of these languages would be appreciated.

YES – references / comments:

NO

## PART TWO – SUBSTANTIVE ISSUES

### I. Non-mandatory but exclusive character of the Service Convention

- 20) In Conclusion and Recommendation No 73, the 2003 Special Commission unanimously confirmed the view that the Service Convention is non-mandatory but exclusive (see also Service Handbook, paras 24-45).
- a. Has the non-mandatory but exclusive character of the Service Convention led to any questions or difficulties in your State since the 2003 Special Commission?
- [ ] NO
- [ ] YES – please explain what these questions or difficulties were and how they were addressed and solved:
- b. Have any judicial proceeding and / or court decisions addressed this particular matter of the non-mandatory but exclusive character of the Service Convention?
- [ ] NO
- [ ] YES – please explain how the court(s) addressed and / or decided the matter (please provide precise references and copies of the relevant decisions; if a decision is in a language other than English or French, a summary into either of these languages would be appreciated):

### II. Scope of the Service Convention

#### A. Interpretation of the phrase “civil or commercial matters”

- 21) In Conclusions and Recommendations Nos 69 to 72, the 2003 Special Commission urged for a broad and liberal interpretation of the phrase “civil or commercial matters” (Art. 1) and reaffirmed the Conclusions adopted at the 1989 Special Commission regarding the scope of the Service Convention.
- a. Has the interpretation of the phrase “civil or commercial matters” given rise to specific issues in your State (either as a requested or a requesting State) since 2003?
- [ ] YES
- (i) What were they and how have they been solved?
- (ii) Have the authorities of your State followed the Conclusions and Recommendations of the 2003 Special Commission?
- [ ] YES
- [ ] NO – why not?
- (iii) Please provide details and / or a copy of any relevant decision(s) (if these decisions are in a language other than English or French, a brief summary into either of these languages would be appreciated):
- [ ] NO

b. Has (any of) the Central Authority(ies) of your State been in direct contact with an authority of another Contracting State to discuss the interpretation of this phrase (so as to decide whether or not to execute a request for service)?

YES – please briefly explain the circumstances and modalities of any exchange:

NO – please explain why there was no communication on this issue:

22) Regardless of whether a matter has actually arisen, please indicate (by placing a "YES" or a "NO" in the relevant box) which of the following types of matters the authorities of your State consider as falling within the scope of the phrase "civil or commercial matters":

Bankruptcy or insolvency in general

Reorganisation under bankruptcy laws

Insurance

Social security

Employment

Taxation

Anti-trust and competition

Consumer protection

Regulation and oversight of financial markets and stock exchange (*e.g.*, in matters possibly involving insider trading)

Proceeds of crime

Other matters (please specify):

23) *This question is addressed to States that are also States Parties to the Evidence Convention:* Does your State interpret the expression "civil or commercial matters" in the same way under both the Service Convention and the Evidence Convention (see also Questions 17) and 18) in the Evidence Questionnaire, Prel. Doc. No 1 of May 2008 for the attention of the Special Commission on the practical operation of the Hague Evidence, Service, Apostille and Access to Justice Conventions)?

YES

NO – please explain the difference(s):

## **B. Interpretation of "judicial and extrajudicial documents"**

24) The Service Convention applies to both judicial and extrajudicial documents (Art. 1(1) – see paras 65 to 70 of the Service Handbook).

a. Is the concept of extrajudicial documents, which may have to be served on an addressee, known in the domestic law of your State?

NO

YES

(i) What are the most important examples of extrajudicial documents generated in your State and which, under the domestic law of your State, may have to be served (*e.g.*, consents for adoption, notarial documents)?

- (ii) Please explain in what circumstances these extrajudicial documents may have to be served abroad:
  
  - (iii) Who may serve these extrajudicial documents? Please specify in particular whether or not private persons may serve extrajudicial documents (see para. 70 of the Service Handbook).
  
  - (iv) How many extrajudicial documents has your State, as a requesting State, forwarded in 2007 to another State Party for service?
    - 0
    - 1-10
    - 11-20
    - more than 20
- b. In 2007, how many extrajudicial documents has(have) the Central Authority(ies) or other relevant authorities and officials of your State received under the Service Convention, as the requested State, for service in your State?
- 0
  - 1-10
  - 11-20
  - more than 20
- (i) Please specify from which States these requests for service of extrajudicial documents emanated:
  
  - (ii) Were all these requests executed?
    - YES
    - NO – why not?

**C. Service on States and State Officials**

- 25) Have the forwarding authorities of your State, as a State of origin, used any channel(s) of transmission available under the Service Convention when service has had to be effected upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see also Question 39))?
- YES – please indicate:
- a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context:
  
  - b. those State(s), or agents representing such State(s), for which / whom such requests for service have been forwarded:
  
  - c. whether service was eventually effected, and if so, by what method:
  
  - d. any difficulties that were encountered in any of these cases:

NO – if applicable, please indicate the method(s) of transmission that was (were) used, not under the Service Convention, to transmit requests for service upon a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

26) Has(have) the Central Authority(ies) or other authorities and officials in your State, as a State of destination, received requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company?

YES – please indicate:

- a. which channel(s) of transmission under the Service Convention has(ve) most commonly been used in this context?
- b. from which State(s), or which agents representing that State, such requests for service were received:
- c. if service was eventually effected after such requests for service were received, and if so, by what method:
- d. any difficulties that were encountered in any of these cases:

NO – if applicable, please indicate the method(s) of transmission that was(were) used, not under the Service Convention, by other States to transmit requests for service upon your State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for your State or a State-owned company, whether or not service was eventually effected, and, if so, by what method:

### **III. The main channel of transmission**

#### **A. Forwarding Authority (Art. 3)**

27) In Conclusion and Recommendation No 49, the 2003 Special Commission advised that in case of doubt as to the competence of the forwarding authority, rather than rejecting the request for service, the authorities in the requested State should seek to confirm that competence by either consulting the HCCH website or by making informal enquiries, including by way of e-mail.

Has your State, as a requested State, experienced any difficulties in determining whether a specific forwarding authority was in fact a legitimate forwarding authority under the law of the requesting State?

NO

- YES – please specify whether or not the authorities of your State followed Conclusion and Recommendation No 49 of the 2003 Special Commission:  
 YES  
 NO – why not?

- 28) The Service Convention does not specify how requests for service should be sent by the forwarding authority of the requesting State to the relevant Central Authority of the requested State.
- a. Do the forwarding authorities of your State use the official postal mail service of your State to send most of their requests for service abroad?  
 YES  
 NO
- b. Do the forwarding authorities of your State also use *private* courier services to send requests for service abroad?  
 YES – please explain in what circumstances they use private courier services:  
  
 NO – please explain why:
- c. Do(es) the Central Authority(ies) of your State, as a requested State, accept requests for service when they are sent via a private courier service?  
 YES  
 NO – why not?

*See also Question 33) regarding the use of modern technologies, in particular sub-questions b. and c.*

## **B. Methods of service (Art. 5)**

- 29) Please complete:
- a. Formal service (Art. 5(1) a))
- (i) Please describe the methods of service prescribed by the domestic law of your State to effect formal service of documents upon persons who are within the territory of your State (Art. 5(1) a)):
- (ii) Please indicate the method(s) generally used by your State when service is requested under Article 5(1) a) and no preference has been indicated as to the manner in which service should be effected (*e.g.*, personal service, by post, etc. See also below Question 29) c. (ii) and (iii)). Please also indicate your State's reasons behind any such default choice:
- b. Service by a particular method (Art. 5(1) b))
- Pursuant to Article 5(1) b), service may be effected by a particular method requested by the applicant unless such a method is incompatible with the law

of the requested State (requests for the use of a particular method are fairly rare in practice, see para. 132 of the Service Handbook). The purpose of this provision is to enable requests for a particular method of service *contemplated by the law of the requesting State* to be applied in the requested State so that the validity requirements for service in the requesting State are met. However, it appears that some forwarding authorities are systematically requesting that their request for service be executed under Article 5(1) *b*) even in circumstances where they intend to have service effected by a method that is recognised under the laws of the *requested State* (such as personal service). The Permanent Bureau believes that this practice is erroneous and that such a request should instead be made and specified under Article 5(1) *a*).

- (i) Does your State agree with the position of the Permanent Bureau that a request for a method of service that is recognised by the law of the requested State (such as personal service) may be specified and effected under Article 5(1) *a*) and that Article 5(1) *b*) serves a separate purpose?

YES

NO – please explain why:

- (ii) If relevant, please describe the particular methods of service which your forwarding authorities have requested other States to use under Article 5(1) *b*) and whether these particular methods have in fact been used to effect service:

- (iii) If relevant, please describe the particular methods of service by which your State has been requested to effect service under Article 5(1) *b*) and whether these particular methods have in fact been used to effect service:

c. Informal delivery (Art. 5(2))

- (i) Does the law of your State provide for *informal delivery* of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?

YES – please describe how service of documents via informal delivery is made in your State (Art. 5(2)):

NO

- (ii) As a matter of practice, does your State systematically attempt service of process by informal delivery if and when no particular method of service has been requested under Article 5(1) *a*) or *b*)?

YES

NO

- (iii) As a matter of practice, does your State systematically attempt service of documents via a *formal* method of service when informal delivery has proven to be unsuccessful?

YES – please specify if your State imposes any additional requirements before such formal service will be attempted (*e.g.*, a translation):

NO



**C. Translation requirements (Art. 5(3))**

30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):

NO requirements

YES – please indicate what these requirements are, in each of the following set of circumstances:

a. Formal service (Art. 5(1) a)):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the “Summary” section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) a), that the document be translated into another language (*i.e.*, one of the official languages of your State)?

YES – please indicate why:

NO

b. Particular method requested by the applicant (Art. 5(1) b)):

In circumstances where the / a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the “Summary” section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) b) that the document be translated into another language (*i.e.*, one of the official languages of your State)?

YES – please indicate why:

NO

c. Informal delivery (Art. 5(2)):

NO translation requirement for informal delivery

31) The Service Convention does not state how any translation of the documents to be served under Article 5(1) should be prepared or who should prepare it. According to your State, which law determines these issues?

The domestic law of the requesting State

The domestic law of the requested State

Both laws

Please specify / comment if needed:

#### **D. Costs (Art. 12)**

32) Please indicate the costs incurred (if any) for each of the following methods of service under the law of your State (as a requested State) in accordance with Articles 5 and 12:

a. Formal service (Art. 5(1) *a*):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

b. Particular method requested by the applicant (Art. 5(1) *b*):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

c. Informal delivery (Art. 5(2)):

(i) Who bears these costs?

Your State (requested State)

The applicant / forwarding authority / requesting State – please explain whether or not service will only be effected in your State, as the requested State, only once any costs have been reimbursed. Also, please explain the modalities of any reimbursement (to whom the costs are reimbursed (relevant Competent Authority of your State, judicial officer, other person, etc.), and how the reimbursement is effected (electronic bank transfers, cheques, etc.))

#### **E. Modern Technologies**

33) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving the operation of the Convention and that States Parties should explore all ways in which they can use modern technology. In Conclusion and Recommendation No 63, a variety of steps were identified for the exploration and use of modern technologies: in

communications between a requesting party and a forwarding authority, in communications between a forwarding authority and a Central Authority of a requested State, and in the retransmission of the certificate of execution by the Central Authority or the designated authority (Art. 6). In light of these Conclusions, and in the context of the main channel of transmission, please comment on the following (see also below Part Three, Section II. C.):

- a. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a requesting party to a forwarding authority* by fax, e-mail or a similar technology?

YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc.):

NO – please explain / specify:

- b. Does the law of your State, as a requesting State, allow for documents to be forwarded *from a forwarding authority to a Central Authority of a requested State* by fax, e-mail or a similar technology?

YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, confirming any requirements and / or capabilities of the Central Authority of the requested State in this regard, etc.).

NO – please explain / specify:

- c. Does the law of your State, as a requested State, allow for documents to be *received by your (one of your) Central Authority(ies) from a forwarding authority abroad* by fax, e-mail or a similar technology?

YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to accept such documents for service).

NO – please explain / specify:

- d. Does the law of your State, as a requested State, allow for *the certificate of execution to be transmitted* from the relevant Central Authority of your State or the authority designated under Article 6 to the applicant by fax, e-mail or a similar technology?

YES – please specify what technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to transmit the certificate of execution):

NO – please explain / specify:

- e. Does the law of your State, as a requesting State, allow for the certificate of execution to be received from the requested State by fax, e-mail or a similar technology?

YES – please specify what modern technologies are used in practice (*e.g.*, (secured or unsecured) transmission via fax or e-mail) and any requirements of the law of your State (*e.g.*, obtaining the consent of all / some of the authorities or parties involved, etc., before being able to receive the certificate of execution):

NO – please explain / specify:

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

##### **A. Translation requirements**

- 34) In Conclusion and Recommendation No 65, the 2003 Special Commission recognised that whilst no translation is required under the Service Convention for documents transmitted under the alternative channels of transmission, in isolated cases, translations are sometimes required in these circumstances by the domestic law of States. Does the domestic law of your State impose translation requirements on documents that are transmitted for service through an alternative channel of transmission?

NO

YES – please provide to the Permanent Bureau all relevant information pertaining to these internal legal requirements and to which alternative channel they relate. If this information is not in either French or English then a translation into one of these languages would be appreciated:

##### **B. Model Form**

- 35) The Fourteenth Session of the HCCH (held in 1980) recommended that the part of the Model Form that contains the “Summary”, accompanied by the “Warning”, not only be used under the main channel of transmission but also under the alternative channels of transmission of the Service Convention (the Recommendation and the accompanying Report established by Gustaf Möller are available on the “Service Section” of the HCCH website (< [www.hcch.net](http://www.hcch.net) >)). Please indicate whether the forwarding authorities in your State systematically send the “Summary” accompanied by the “Warning” when requests for service are sent abroad using an alternative channel of transmission.

YES

NO – why not?

- 36) The Permanent Bureau approves and encourages the practice of certain States to return the Certificate to the applicant even if transmission of the request for service occurred via an alternative channel of transmission provided for in Article 10 *b*) and *c*) (see para. 119 of the Service Handbook). This practice may even be extended to Article 10 *a*), depending on the postal mail service used in the State of destination. Is it a practice within your State, as a State of destination, to use the “Certificate” part of the Model Form and to transmit this to the applicant in the

State of origin when the transmission of the request for service occurred under one of the alternative channels of transmission contained within Article 10 *a)*, *b)* and *c)*?

YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *a)* – please provide further details:

YES, the Certificate is transmitted to the applicant when the transmission of the request for service occurred under Article 10 *b)* and / or *c)* – please provide further details, *i.e.*, what category of or which judicial officers, officials or competent persons exercise this practice:

NO

### **C. Diplomatic and Consular Channels**

#### **Article 8 – Direct Channels**

37) Have the diplomatic and consular agents of your State been used to directly effect service of judicial documents upon persons abroad in accordance with Article 8(1) in the past five years?

NO – why not?

Yes – please specify:

a. on how many occasions your diplomatic and consular agents abroad have been used to effect service in accordance with Article 8(1):

b. in which States these diplomatic and consular agents were based:

c. the average time taken between the transmission of the documents for service and the execution of service:

d. whether your State considers this channel to be efficient and effective:

YES

NO – why not?

e. whether there have been situations whereby the diplomatic and consular agents of your State have attempted to directly effect service of judicial documents upon persons abroad but were unable to as a result of the addressee not voluntarily accepting delivery of the document:

YES – please indicate how this matter was dealt with:

NO

- f. whether the transmission of judicial documents to the diplomatic agents or consular officers of your State posted abroad, or the actual service of these judicial documents upon an addressee, have been executed by using electronic means (*e.g.*, by fax or e-mail):
- YES
- NO – why not?

#### Article 9 – Indirect Channels

- 38) In the past five years, has your State used consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which were designated by the latter for this purpose in accordance with Article 9(1)?

NO – why not?

YES – please specify:

- a. on how many occasions this channel has been used in the past five years:
- b. in which States these diplomatic and consular agents were based:
- c. the average time taken between the first transmission of the documents to be served and the execution of service:
- d. whether your State considers this channel to be efficient and effective?
- YES
- NO – why not?

- 39) In the past, have there been “exceptional circumstances” in accordance with Article 9(2) that required your State to use diplomatic channels to forward documents to another State Party for the purpose of service?

NO

YES – please describe what these exceptional circumstances were that warranted the use of diplomatic channels to forward documents for the purpose of service in another State Party. In particular, did any exceptional circumstances relate to the service of a claim on a foreign State, head of State, a government entity, member of government, consular or diplomatic agent or any other official acting for a State or a State-owned company (see para. 193 of the Service Handbook):

- 40) Has the transmissions of documents to either diplomatic agents or consular officers of your State located abroad for the purpose of service in the State in which they are based, or the actual service on these documents upon the addressee, occurred via electronic means (*e.g.*, by fax or e-mail)?

YES

NO – why not?

**D. Article 10 a) – Postal Channel**

41) If your State has opposed “the freedom to send judicial documents, by postal channels, directly to persons abroad” (Art. 10 a)), please indicate:

- a. the reason(s) that motivated this opposition:
  
- b. whether your State uses this channel of transmission to send judicial documents abroad for service by mail despite having filed an opposition under Article 10 a) (see paras 206-210 of the Service Handbook):
  - NO
  - YES – please explain:

*Please go to Question 45).*

42) Has the interpretation and application of Article 10 a) given rise to any difficulties in your State?

YES – please specify / comment:

NO

43) If possible, please comment upon how frequently judicial documents are sent for service upon persons abroad, by parties in your State, via postal channels:

44) In Conclusion and Recommendation No 56, the 2003 Special Commission concluded that for the purposes of Article 10 a), the use of a private courier was the equivalent of using the postal channel under the Service Convention.

a. Does the law of your State, as a State of origin, allow for private courier services to be used under Article 10 a), *i.e.*, are judicial documents sent from your State for service abroad via private courier services:

YES

NO – why not?

b. Does the law of your State, as a State of destination, allow for private courier services to be used under Article 10 a), *i.e.*, are judicial documents received from abroad and served within your State by private courier services:

YES

NO – why not?

**E. Article 10 b) – Judicial Officers, Officials or Other Competent Persons**

45) If your State has opposed “the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination” (Art. 10 b)), please indicate the reason(s) that motivated this opposition:

*If your State does hold an opposition, please go to Question 47).*

46) Provided the application of Article 10 *b*) has not been objected to by your State and that the law of your State presumably allows for service to be effected by “judicial officers, officials or other competent persons”, please answer the following:

a. Which of the following would be considered to be “judicial officers, officials or other competent persons” under the law of your State (please tick all relevant boxes)? Please also note whether these categories differ depending on whether your State is a State of origin or a State of destination:

- Attorneys or solicitors
- Bailiffs
- Huissiers*
- Process servers
- Court officials
- Notaries
- Officials of the executive branch
- Other – please specify

b. How does this channel of transmission operate in practice – in particular, do (any of) the judicial officers, officials or other competent persons mentioned above send (or receive) the judicial documents *directly* to (or from) their counterparts abroad, or do they have to use some other channel? Please also indicate whether these channels differ depending on whether your State is a State of origin or a State of destination.

c. Are there any costs associated with the use of this alternative channel of transmission in your State, either in terms of sending or receiving judicial documents?

d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?

e. May any transmission between the judicial officers, officials or other competent persons be done via electronic means (*e.g.*, by fax or e-mail)?

- YES
- NO – why not?

#### **F. Article 10 *c*) – Interested Persons**

47) If your State has opposed “the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination” (Art. 10 *c*)), please indicate the reason(s) that motivated this opposition:

*If your State does hold an opposition, please go to Question 49).*



48) Provided the application of Article 10 c) has not been objected to by your State, please answer the following:

a. Which of the following would be considered to be “any person interested in a judicial proceeding” under the law of your State (please tick all relevant boxes):

- Attorneys or solicitors
- Bailiffs
- Huissiers*
- Process servers
- Court officials
- Notaries
- Officials of the executive branch
- Other – please specify

b. How does this channel of transmission operate in practice – in particular is any person interested in a judicial proceedings able to send the judicial documents *directly* to the judicial officers, officials or other competent persons of the State of destination or does another channel have to be used?

c. Are there any costs associated with the use of this channel of transmission in your State, either in terms of sending or receiving judicial documents?

d. How frequently is this channel of transmission used in your State (either as a State of origin or as a State of destination)?

e. May any transmission between a person interested in a judicial proceeding and the judicial officer, official or other competent person be done via electronic means (*e.g.*, by fax or e-mail):

- YES
- NO – why not?

## V. Final refusal to execute the request (Art. 13)

49) According to Article 13 of the Service Convention a requested State may refuse to execute a request for service when this would infringe the “sovereignty or security” of the requested State.

a. In the past five years, has your State, as a requested State, rejected the execution of any request for service under Article 13?

- YES – please specify the grounds upon which your State rejected the execution. Please specify whether there is case law in your State that relates to this issue:

NO

- b. In the past five years, is your State aware of whether a(ny) request(s) for service forwarded by your State has(have) been refused by a requested State under Article 13?

YES – please specify the precise grounds upon which the(se) request(s) for service were rejected:

NO

## **VI. Protection of the interests of the Plaintiff and Defendant (Arts 15 and 16)**

- 50) When a writ of summons or an equivalent document has been transmitted abroad for the purpose of service under the Service Convention, and the defendant has not appeared, Article 15(1) requires States not to give judgment unless certain requirements have been met. Nonetheless, and subject to States' declarations on this matter, a judge may give judgment if the conditions specified in Article 15(2) are fulfilled. One of these conditions is Article 15(2) *c*) which states that "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" [emphasis added]. Please comment on the interpretation in your State of the expression "no certificate *of any kind*". In particular, would your State, as a requesting State, consider that the receipt of a certificate that stated that *no service* has occurred could nevertheless trigger the application of Article 15(2)?

YES, the receipt of a certificate that states that no service has occurred may trigger the application of Article 15(2) (if all the other conditions are fulfilled).

NO, the receipt of a certificate that states that no service has occurred may not trigger the application of Article 15(2) – please explain why:

- 51) If a requesting State has made a declaration in accordance with Article 15(2) and considers that all conditions of Article 15(2) have been fulfilled and accordingly enters a default judgment, would your State, as a requested State, recognise and enforce the resulting judgment in these circumstances (assuming that all other conditions for the recognition and enforcement of the judgment are fulfilled)?

YES

NO – please indicate the grounds upon which your State would refuse to enforce a judgment in these circumstances:

- 52) If your State has not made a declaration under Article 15(2), please explain:

a. why your State has not made such a declaration:

b. whether or not your State is assessing the possibility of making such a declaration:

- 53) If your State has *not* made a declaration under Article 15(2), what actions would a judge in your State take (as a requesting State) if your State has not received a certificate of service and the defendant has not appeared? For example, would the

law of your State enable a judge to enter a default judgment, despite the absence of a declaration under Article 15(2)? Upon what grounds would such a judgment be made? If there were some evidence that service had actually been effected, would this change the options that may be available to a judge?

Not applicable (my State made a declaration under Art. 15(2))

54) If your State has not made a declaration under Article 16(3), please explain:

- a. why your State has not made a declaration:
- b. whether or not your State is assessing the possibility of making a declaration:

## VII. Date of service

55) The Service Convention does not include a provision that determines the date of service (*i.e.*, the precise moment when the documents have actually been or are deemed to have been served). As a result, it is for the domestic law of the State(s) involved to determine the date of service.

- a. How is the date of service of documents determined in your State:
  - (i) in relation with the execution of a request for service forwarded under the main channel of transmission (please also specify whether your State relies on the date mentioned under point 1 of the Certificate to determine the actual date of service)?
  - (ii) when one of the alternative channels of transmission has been used?
- b. When the law of your State requires that documents be served within a specific period, does the law of your State also provide effective means to protect the interests of the applicant when the documents have to be served abroad and are thus subject to the effective operation of authorities or professionals abroad (*e.g.*, does the law of your State provide for extended periods of service or for fictitious dates of service based on the date when the documents are sent or ready to be sent abroad, etc.; see Conclusion and Recommendation No 75 of the 2003 Special Commission)?

YES – please specify:

NO

c. Has the absence of an explicit rule on the date of service in the Convention caused any practical difficulties in your State?

YES – please specify:

NO

## PART THREE – OTHER OPERATIONAL ISSUES

### I. Model Form annexed to the Service Convention

#### A. Fillable PDF versions of the Model Form

- 56) The Permanent Bureau has made the Model Form annexed to the Convention available as a fillable PDF document on the HCCH website. This fillable version of the Model Form is currently available in English, French and in two trilingual versions (English / French / Ukrainian and English / French / Russian). These fillable forms have proven to be very useful. The Permanent Bureau would be pleased to make available other trilingual Model Forms in the same format (English / French / one of the official languages of a State Party). States that are interested in producing a Model Form with (one of) their official language(s) available as fillable PDF documents are invited to send to the Permanent Bureau a document in MS-Word with the text of the Model Form in the relevant official language. The Permanent Bureau will then create the fillable version and upload it onto the HCCH website.

Please feel free to comment further on the above:

#### B. Request Form (Art. 3)

- 57) The first box on the Model Form asks for the “[i]dentity and address of the *applicant*” [emphasis added]. The Permanent Bureau’s interpretation of the word “applicant” is that it refers to the *forwarding authority* referred to in Article 3(1) (see Service Handbook, paras 112-114). Does your State agree with this interpretation?

YES

NO – what then is the interpretation of this word in your State?

The plaintiff in the proceedings

Counsel representing the plaintiff (if different from the forwarding authority)

The court where the proceeding is taking place in the requesting State

Other – please specify:

- 58) In Conclusion and Recommendation No 48, the 2003 Special Commission unanimously approved the suggestion that the information regarding the forwarding authorities and their competences be included in the Model Form. Does your State systematically follow this Conclusion and Recommendation when sending a request for service?

YES

NO – why not?

**C. Certificate (Art. 6)**

59) Article 6(4) indicates that the Certificate shall be “forwarded directly to the *applicant*” [emphasis added]. The Permanent Bureau’s interpretation of the word “applicant” is again that it refers to the *forwarding authority* referred to in Article 3(1). Does your State agree with this interpretation?

YES

NO – to whom then do(es) the Central Authority(ies) of your State or the authority designated for this purpose forward the Certificate:

The plaintiff in the proceedings

Counsel representing the plaintiff (if different from the forwarding authority)

The court where the proceedings are taking place in the requesting State

The nearest Embassy representing the requesting State

Other – please specify:

**II. E-service**

**A. In strictly domestic situations**

60) Does the law of your State, in strictly domestic situations, allow for documents to be served by fax, e-mail, SMS, the posting of a message on a website, or by a similar modern technology?

NO – are there plans to introduce service by using such technologies?

YES – please specify:

NO

YES – please specify:

a. the legal framework and practical circumstances in which such technologies may be used (please describe for each if necessary):

b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:

c. if and how service upon the addressee is acknowledged or proven in such circumstances:

**B. In cross-border situations outside of the Service Convention**

61) Have the relevant authorities of your State served documents by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology in cross-border situations that did not fall within the scope of the Service Convention?

YES – please specify:

a. the legal framework and practical circumstances in which this occurred – in particular, whether the terms of a regional or bilateral instrument

provided for or otherwise allowed this (please describe for each if necessary):

- b. whether a secured transmission has to be used for any / each of these technologies, and if so, which kind of secured transmission is used in practice:
- c. if and how service upon the addressee was acknowledged or proven in such circumstances:

NO

**C. E-service and the main channel of transmission under the Service Convention**

62) Has the / a Central Authority of your State received requests for service that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by a similar modern technology?

NO – please indicate how the Central Authority would respond if it were to receive such requests:

YES

a. From which State(s) did these requests emanate?

b. Did the requests for service provide any particular circumstances or explanations as to why the execution of using such technologies was requested?

YES – what were these circumstances or explanations? (please tick all relevant boxes)

Urgency

Failure of previous attempts to serve process by traditional means

Use of such technologies approved by judicial authority of the forum or the domestic law of the forum

All parties involved gave their (prior or subsequent) consent

Other – please specify:

NO

c. Did your State in fact execute any of these requests for service by using any of these modern technologies?

NO – why not?

YES – please specify:

(i) the legal basis upon which these requests for service were executed:

(ii) whether a secured transmission was used or required or requested to be used, and if so, which kind:

(iii) if and how service upon the addressee was acknowledged or proven in such circumstances:

63) Has your State, as a requesting State under the Service Convention, sent requests for service abroad that expressly asked for documents to be served by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?

NO

YES

a. To which State(s) were these requests sent?

b. Did the requests for service provide any particular circumstances or otherwise provide explanations as to why the execution of service using such technologies was requested?

YES – what were these circumstances or explanations? (please tick all relevant boxes)

Urgency

Failure of previous attempts to serve process by traditional means

Use of such technologies approved by the relevant judicial authority or the domestic law of your State

All parties involved gave their (prior or subsequent) consent

Others – please specify:

NO

c. Were these requests for service in fact executed by using any of these modern technologies?

YES

NO – please provide any information you may have as to why these requests were not executed:

64) How likely is it that your State would recognise and execute a foreign judgment if the related writ of summons was served abroad by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (all other conditions for recognition being of course fulfilled)?

Very likely

Likely

Very unlikely

It depends on the technology used – please indicate which modern technology method of service your State would accept:

65) How likely is it that your State would recognise and enforce an agreement made by parties to a contract to the effect that they agree in advance to serve documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology?

Very likely

Likely

Very unlikely

Please explain / comment:

**D. E-service and the alternative channels of transmission under the Service Convention**

66) Does your State interpret the expression "postal channels" in Article 10 a) as including transmissions by:

a. Fax

YES

NO

*Comments:*

b. E-mail

YES

NO

*Comments:*

c. SMS

YES

NO

*Comments:*

d. The posting of a message on a website

YES

NO

*Comments:*

**E. Miscellaneous**

67) Have there been any other recent developments in your State in relation to the service of documents by fax, e-mail, SMS, the posting of a message on a website or by using a similar modern technology (including in situations involving one of the alternative channels of transmission under the Service Convention where applicable)? Please describe below and provide the citations for and / or a copy of any relevant decision or article in this regard (if this information is not in English or French, a summary into one of these languages would be appreciated):

*NO*

68) In Conclusions and Recommendations Nos 60 to 62, the 2003 Special Commission noted, amongst other matters, that the Service Convention does not on its terms prevent or prescribe the use of modern technologies to assist in further improving



its operation and that States Parties to the Service Convention should explore all ways in which they could use modern technology. Does your State think that the use of modern technologies under the Service Convention should be further encouraged by the adoption of:

- a. Specific Conclusions and Recommendations to that effect by the 2009 Special Commission

YES

NO

*Comments:*

- b. A Protocol to the Service Convention:

YES

NO

*Comments:*

*Thank you!*

\* \* \*