

**ANSWERS OF THE MACAO SPECIAL ADMINISTRATIVE REGION (MSAR) OF THE PEOPLE'S REPUBLIC OF CHINA (PRC) TO THE QUESTIONNAIRE ON THE OPERATION OF THE HAGUE CONVENTION OF 15 NOVEMBER 1965 ON THE SERVICE ABROAD OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS**

**Introduction**

The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Convention) was extended to Macao with effect from 12/04/1999.

After the Reunification, some of the previous treaties in force in Macao have continued to apply to the MSAR. On 10 December 1999, the PRC notified the Netherlands' Ministry of Foreign Affairs that it would assume the responsibility for the international rights and obligations arising from the application of the Convention to the MSAR.

Considering some of the questions raised in the questionnaire, it is relevant to mention that the MSAR legal system is a civil law system.

**The Questionnaire**

**I – Questions addressed to Non-Party States**

N/A.

**II – Administrative information and updates**

***3. Central Authority***

***3.1. The administrative information relating to the Central Authority is, and shall remain, accessible on the Conference's website. Updating this information is essential. For such purpose, could you check whether the contact information for the Central Authority or Authorities in your State as it appears on the site at <http://www.hcch.net/e/status/stat14e.html> is accurate, and if necessary, provide us with your corrections and supplementary information? This contact information includes the postal address, telephone number, fax number, and if possible, the Central Authority's e-mail address.***

The information that appears on the site is correct, but the information concerning the telephone number, fax number and e-mail address is missing.

The telephone number is +853 7978272 / + 853 786666 (Ms. Lao Ian Chi), the fax number is +853 727621 and the e-mail address is info@mp.gov.mo.

***3.2. An indication of the languages used by those authorities' staff should also be very helpful***

The languages used are, mainly, Chinese and Portuguese.

***3.3. Do you have at your disposal statistical information relating to the number and source of requests directed at your State's Central Authority? If so, could you provide it to us?***

Until now, very few requests have been received and sent for service abroad, under the Convention. There are no available statistics, however from January 2000 to August 2003, it is roughly estimated that a total of 27 requests have been received and sent for service abroad.

***4. Case-law and reference works***

***4.1. The Permanent Bureau invites the States and Observers to provide it with copies of significant Court rulings issued pursuant to the 1965 Convention since 1992 and not cited in the provisional version of the Handbook. Insofar as the text of ruling is drafted in a language other than English or French, a summary in the English or French language of the facts and grounds for the ruling would be very helpful.***

Most of the existing case-law were issued before the Reunification. After Reunification, no recent significant rulings have been delivered pursuant to the Convention, as there have not been relevant practical difficulties in the application of the Convention.

***4.2. Likewise, the Permanent Bureau invites the Contracting States to forward to it a list of bibliographical references of works and articles published in those States since 1992 in connection with the 1965 Convention.***

As previously stated, most of the works and articles on the Convention were published before the Reunification. After the Reunification, as there have not been relevant practical difficulties in the application of the Convention, no works or articles specifically dedicated to the Convention have been published in the MSAR. Nevertheless, it is worth mentioning an article on the application, in the MSAR, of the Hague Conventions in general - "Evolution of Private International

Law of Macao”, Huang Jin and Guo Huacheng, in “Journal of Chinese and Comparative Law”, volume 2, number 2, December 1996.

## **5. Handbook**

**5.1. In connection with redesign of the Hague Conference’s website, the Permanent Bureau is considering the desirability and feasibility of providing access on its site to the information contained in the second and third parts of the former Handbook relating to forwarding Authorities, the principal and alternative transmission channels and the methods for execution of requests for service, for each State party to the Convention. The provisional version of the new Handbook provides information and useful explanations relating to the Convention’s operation; more specific information by country, however, would require regular updates, which the Handbook, even if revised, cannot in practice provide adequately. It being specified that a decision in favour of the Conference’s website would have implications in terms of resources, would you be in favour of such a proposal? If so, could you specify the information that you would consider useful to have appear on the site?**

The possibility of acceding to various types of information on the Hague Conference’s website is considered very useful. It would be advantageous that the Handbook would be accessible through the Hague website.

**5.2. Does the structure (headings, sub-headings) of the Handbook’s provisional version seem satisfactory to you? Do you have any suggestions?**

Yes, the structure of the Handbook’s provisional version is very good. The Handbook contains very thorough information on the practical operation of the Convention in several States, comprising a series of important issues.

**5.3. Would you wish to see in the Handbook other items that are not contained in the provisional version? If so, which?**

Please refer to the preceding answer.

**5.4. The Handbook seems to be a very useful tool for practitioners, in applying the Convention. Regular and continuous updating would be desirable, therefore. How would you contemplate such an updating of the Handbook, both in terms of frequency and in terms of resources?**

It seems desirable that the Handbook is updated regularly and continuously, at least from two to two years.

**5.5. Could you provide a list of useful links to Internet sites containing information concerning application of the Convention in your State, or more generally regarding service in your State?**

On the following websites, you can find information concerning legislation applicable to the MSAR, namely in what concerns service: [www.imprensa.macao.gov.mo](http://www.imprensa.macao.gov.mo); [www.mp.gov.mo](http://www.mp.gov.mo); [www.court.gov.mo](http://www.court.gov.mo); [www.al.gov.mo](http://www.al.gov.mo).

### **III – Information relating to application of the Convention**

#### **6. Scope of the Convention (Article 1) (cf. I, 5 of the Handbook)**

**6.1. Have you noted a change since 1992 in interpretation of the Convention’s scope?**

No significant change on the interpretation of the Convention’s scope has been registered.

**6.2. More particularly, has the scope of the phrase “in civil or commercial matters” given rise to difficulties (cf. I, 5, D)? Have the Courts interpreted it autonomously?**

The phrase “in civil or commercial matters” has not given rise to any difficulties. In the legal system of the MSAR, the difficulties that arise in other countries do not exist, as the only matters that are excluded from the phrase “civil and commercial matters” are administrative matters.

**6.3. Have you noticed a change since 1992 regarding the interpretation that the 1965 Convention is not mandatory and that it is up to the *lex fori* to determine whether a document should be transmitted abroad (cf. I, 5, B, c))?**

No significant change has been registered on the interpretation that the Convention is not mandatory and that it is up to the *lex fori* to determine whether a document should be transmitted abroad.

**6.4. Have you noticed a change since 1992 regarding the Convention’s exclusive character (cf. I, 5, B, c))?**

No change has been noticed. When the Convention is applicable, only the methods provided for in the Convention apply, since the Convention prevails over internal law.

**6.5. Does the terminology used in the Convention (e.g. “acte introductive d’instance” or “writ of summons”) give rise to interpretation difficulties in connection with changes in your domestic law?**

The terminology used in the Convention has not given rise to any difficulties.

**7. Forwarding authority (cf. II, 1, B, a))**

**7.1. Which are in your country the Authorities or persons competent to forward a request for service to the foreign Central Authority under Article 3?**

According to the MSAR Civil Procedure Code, any request to foreign authorities is made through means of rogatory letter which is signed by the judge in charge of the process in question. Nevertheless, the PRC has designated, by letter of notification of 1 November 2000, the Procuratorate of the MSAR as the Other Authority in the MSAR, which will undertake to receive and transmit requests for service coming from other Contracting States.

**7.2. Do you consider that cooperation between Central Authorities to determine the competence of the forwarding authority should remain subject to “special circumstances”, or on the contrary, that it should be encouraged in broader circumstances?**

Yes, it is considered that cooperation between Central Authorities to determine the competence of the forwarding authority should remain subject to “special circumstances”.

**8. Methods for service used by the Central Authority (cf. II, 1, E)**

**8.1. In the former version of the Handbook, Part III described the methods for service used in each Contracting State. It seems important to us to bring this information up to date. For this purpose, could you summarize the methods that are or may be used by the Central Authority in your country for:**

- **Formal service of the documents within the meaning of Article 5(1)(a) (e.g., service through a huissier or official)?**
- **Informal delivery within the meaning of Article 5(2) (e.g. use of the police service or officials)?**
- **A special request by the applicant, within the meaning of Article 5(1)(b) (e.g., postal service by the Central Authority)?**

Upon the receipt of a request for service, the Central Authority forwards the request to the MSAR competent authorities.

According to the Civil Procedure Code, service can be made through means of registered letter with reception notice or of personal contact of a judicial officer with the addressee.

The service through means of personal contact of a judicial officer with the addressee is only used if the service through means of registered letter fails. The judicial officer delivers to the addressee the relevant documents. A certificate attesting that the documents have been delivered is signed by the addressee.

In certain cases, the attorney can request that service is performed by him. The attorney may declare that another person duly registered to render forensic services or another attorney (appointed by that same attorney) will serve the document.

**8.2. In connection with these descriptions, please specify the extent and scope of requirements for translation, if any (translation of the document to be served, translation of the document's summary, translation of evidence to be served, etc.). Please specify whether your State has entered into particular agreements with other Contracting States in this respect, within the meaning of Article 20(b).**

In accordance with paragraph 3 of Article 5 of the Convention, the PRC has declared that the documents to be served in the MSAR under the first paragraph of Article 5 shall be written in either Chinese or Portuguese, or be accompanied by a translation in either Chinese or Portuguese.

In fact, according to the MSAR Civil Procedure Code, one of the official languages (Chinese and Portuguese) must be used in the performance of procedural acts. Only in case of founded doubts on the authenticity of the translation must an authenticated translation be presented.

No particular agreements in this respect are applicable to the MSAR.

***8.3. Have administrative or other forms of action, such as the setting of periods to process applications or the use of outsourcing to perform the Central Authority's duties, been taken in order to expedite the service procedures? If so, which, and have they proved effective?***

No such actions have been taken.

***8.4. Please specify also whether charge are incurred for one method for service or another and if applicable, the nature of such costs (flat-rate or proportional costs), and the method for their reimbursement.***

The costs to forward a request are accounted for within the procedure from which they arise and such costs are proportional. In the end of the procedure, the defeated party will pay for the costs of the winning party.

In what regards the receipt of a request for service, no charge is incurred.

***9. Translation requirements (Article 5(3)) (cf. II, 1, E, (b))***

***9.1. The issue arises whether a general declaration by a State that its authorities will perform formal service only if the document to be served is drafted in or translated into its official language or languages, thereby depriving in advance its Central Authorities of the discretion conferred by the Convention, is consistent with the spirit of Article 5(3). Does such a declaration make judicial assistance substantially more cumbersome in practice?***

It is not considered that such a declaration makes judicial assistance more cumbersome in practice. Moreover, it is considered that the issue of translation is an essential question of juridical security, as well as a fundamental principle of public order mainly for two reasons. The first reason relates to the principle of use of the official languages of the place where a procedural act must be performed. The second reason is related to the fundamental right of the person to be served with a document in a language that he / she understands.

In fact, in practice, it is very difficult for the Central Authority of the State addressed to know if the document is drafted in a language understandable to the addressee as they do not have knowledge of the process that gave rise to the request for service.

Besides, there is the need for translation in order for the requested State to know, according to Article 13 of the Convention, if there are any reasons for refusal.

***9.2. Do you consider that it might be appropriate to adopt a Recommendation that the Central Authority of the State addressed should not call for a translation if it has reasons to believe that a document drafted in a language of the requesting State is understandable to the addressee?***

No, for the reasons already stated above. Please refer to the preceding answer.

***9.3. Could you state your suggestions regarding implementation of such a recommendation in connection with mutual assistance between authorities?***

Please refer to the preceding answer.

***9.4. Do you believe that the requirement of full translation of the document to be served is always appropriate, and could it not be restricted to the document's summary?***

Please refer to the preceding answers. A summary could raise more difficulties and doubts leading to delays.

***9.5. Do such translations need to be legalized or to bear an apostille?***

There is not the need for legalization or apostille. Only in case of founded doubts on the authenticity of the translation must an authenticated translation be presented.

***10. Timing (cf. II, 1, E, d))***

***10.1. What is the average time required for performance of requests for service?***

The average time required for performance of requests for service is around 1 month and in certain cases it can go up to 5 months.

**10.2. Are there substantial differences between States addressed?**

There are no substantial differences between States addressed.

**10.3. How could the procedure for mutual assistance be improved?**

Perhaps the use of an acknowledgment of receipt could improve and expedite the procedure for mutual assistance.

**11. Alternative transmission channels (cf. II, 2)**

**11.1. Consular and diplomatic channels (Articles 8 and 9) (cf. II, 2, B). Are these forwarding channels frequently used in practice?**

No, consular and diplomatic channels are not frequently used.

**11.2. Postal channels (Article 10(a)) (cf. II, 2, C). Have the interpretation and application of this provision given rise to difficulties?**

The interpretation and application of this provision have not given rise to difficulties.

**11.3. Judicial officers, officials or other competent persons (Article 10(b)) (cf. II, 2, D)**

– **States are invited to specify whether the transmission method described under Article 10(b) is used frequently.**

No, it is not used frequently.

– **If your State uses transmission between huissiers, can you specify: (i) with which States this procedure is used? (ii) how this system operates?**

Please refer to the preceding answer.

– **Information relating to the costs of forwarding and reimbursement of the costs would also be useful.**

Please refer to the preceding answers.

– *Contracting States are invited to provide to the Permanent Bureau the contact information for the national bodies governing huissiers de justice. This contact information includes the postal address, telephone number, fax number and if possible, the national organization's e-mail address.*

Please refer to the preceding answers.

– *Are your country's lawyers or solicitors authorized to perform service from abroad?*

Please refer to answer to question number 8.1.

**11.4. Interested persons (Article 10(c)). *Have the interpretation and application of this provision given rise to difficulties?***

The interpretation and application of this provision have not given rise to difficulties.

**12. *Judicial and extrajudicial documents* (cf. I, 5, E)**

**12.1. *Does your country's legislation make a distinction between judicial documents producing procedural effects and those that do not? If so, do the authorities in your country apply the Convention to these two classes of judicial documents or only to those judicial documents producing procedural effects?***

No distinction is made and the Convention is applicable to both classes of documents.

**12.2. *Could you provide us with the statistics at your disposal, if any, relating to the volume of extrajudicial documents forwarded abroad under the Convention?***

Until the present moment, the MSAR competent authorities have not forwarded or received any request for service of extrajudicial documents under the Convention.

**13. *Date of service – double date* (cf. II, 1, E, f))**

**13.1. *What is your view of the dual-dating system?***

The dual-dating system does not exist in the MSAR legal system. Therefore, even if in theory some of the benefits arising from the implementation of such a system can be recognized, in practice, it would be very difficult to implement such a system as it implies modification of our domestic procedural rules.

**13.2. Does your country's domestic law provide for a system to determine, in event of transmission abroad, the date of service for the application (as in Belgium, when the applicant has carried out the formalities required by Belgian law)?**

No, please refer to the preceding answer.

#### **14. Exequatur**

**14.1. In your country, would it be possible to deny enforcement of a foreign judgment on grounds of breach of public policy based on the service procedure applied, even though that service has been performed by methods provided for under the Convention? If so, in what circumstances?**

*We are thinking, for instance, of the following situation: the addressee's (contracting) State has not objected to postal channels. The requesting State sends the service to the addressee without performing a translation (which is not required by the Convention in this particular instance). After receipt of the certificate of service, a judgment is entered. In your view, may the addressee's State refuse enforcement of the foreign judgment on the grounds that the service has not been translated?*

In the MSAR legal system, for a foreign sentence to be effective, and therefore enforceable, it has to be revised and confirmed meeting determined requirements expressly stated in the MSAR Civil Procedure Code. Namely, there must be no doubt on the authenticity and intelligibility of the decision; the decision must have acquired *res judicata* force according to the law from which it was rendered; fraud to the law must not have been used for the determination of the competence of the court that rendered the decision; the decision has to have been rendered on matters not befalling on the exclusive competence of the MSAR courts; there must be no *litispendens*; the defendant must have been properly served according to the law of the court of origin; the principles of equality and due process of law must have been observed and the decision must not be against public policy.

As one of the specific requirements for revision and confirmation of foreign decisions concerns service, it is hard to envisage a situation whereby a decision based on a service that has been performed by methods provided for under the Convention would be denied enforcement on grounds of breach of public policy based only on the lack of translation.

**15. Exclusion of application of the Convention between the parties (cf. I, 5, B, 5))**

**15.1. Have rulings been issued in your country permitting the parties to exclude application of the Convention between themselves by agreement or contract?**

The MSAR legal system does not allow the exclusion by the parties of the application of the Convention between themselves by agreement or contract.

**16. Fax and electronic mail (cf. II, 3)**

**16.1. Form of the request**

- a) *Would the Central Authority of your country, as State addressed, be willing to accept requests forwarded to it by fax or e-mail? If so, subject to what requirements?*
- b) *Are e-mail and fax used in your country, as requesting State, to forward request for service?*

According to the MSAR Civil Procedure Code, requests for service can be transmitted by any means, including fax and e-mail, under the terms foreseen in specific legislation.

In what concerns the use of fax, the existing law requires the original request and documents attached to be presented to the court afterwards. In what concerns e-mail, no law has been enacted yet.

Until the present moment, the MSAR competent authorities have not received or forwarded any requests by e-mail or fax.

**16.2. Form of service**

- a) *In your State, may service from aboard be performed by e-mail or fax? If so, subject to what requirements?*
- b) *If your State allows postal channels for service from aboard, might the use of e-mail instead of postal channels be contemplated? If so, subject to what requirements?*
- c) *As requesting State, does your domestic law accept service performed by e-mail or fax in the State addressed?*

The MSAR Civil Procedure Code does not allow service to be performed by e-mail or fax.

### **16.3. Form of certificate**

- a) *Does the Central Authority or any other competent authority in your country use or seek to use e-mail or fax for the sending of the certificate of due performance of service? If so, in what circumstances?*
- b) *As requesting State, would you accept receipt by e-mail or fax of a certificate of service abroad? If so, in what circumstances?*

Please refer to answer to question 16.1.

The MSAR competent authorities do not use e-mail or fax for the sending of the certificate of due performance of service.

### **16.4. Could you provide us with the statutes or case-law in your country, if any, permitting or ruling out the use of e-mail or fax in service procedure, whether domestic or international?**

No rulings have been issued in the MSAR concerning this issue

### **16.5. Is the use of e-mail or fax in service procedures subject to specific security requirements?**

See answer to question number 16.

### **16.6. Is the clause for service whereby parties to a contract agree in advance to receipt of service of any document by electronic channels used in practice (cf. II, 3, B, 2)? Does your domestic law recognize it as being valid?**

The MSAR legal system does not recognize such clauses as being valid.

## **17. Model forms**

### **17.1. Do you consider that the model forms ought to be revised? If so, how?**

The need for simplicity must always be taken into account. It should also be taken into account that the model form is mainly intended for the judicial authorities of the requested State, as the addressee will be served with a document that, in principle, should contain all the necessary and relevant information to him.

### **17.2. In particular, do you consider that information for the addressee, such as the amount due, the place and period for payment, the manner in which a defense may**

*be exercised and the consequences for the defendant of failure to enter a defense, ought to be added to them?*

Please refer to the preceding answer.

*17.3. Amendment of the Request Form, to provide for a specific box for a description and declaration of the capacity and competence of the forwarding authority, might be contemplated. Such a solution would allow ascertainment that the request has indeed been forwarded by an authority or officer competent under the requesting State's law. Would you be in favour of such a change?*

Yes. Such a change would contribute to juridical security and certainty as well as to expedite the procedures.

*17.4. As the form is technically a part of the Convention, any proposed amendment requires in principle a formal revision of the Convention, and probably the drafting of a Protocol to which a State would subsequently have to decide to become a party for a new Request Form to become effective in that State. As such a procedure seems very formalistic and fairly cumbersome, adoption of a new Form by way of Recommendation, as in 1980, might be contemplated. Does this solution indeed seem more appropriate to you?*

The final solution should take into account the kind of amendments that are going to be made. If they are only small amendments, most probably, a recommendation would be the proper way of doing them. On the other hand, if significant changes are to be introduced, the solution cannot be the adoption of a simple recommendation.

*17.5. Would an electronic version of the model forms be useful?*

Yes, it would be useful as it could contribute to accelerate the domestic procedure for adoption of legislation on the use of electronic means.

**18. Reservations and reciprocity**

*18.1. Do Contracting States not opposing direct service through postal channels in accordance with Article 10 assert reciprocity against Contracting States having stated their opposition to this transmission method, or do they accept direct service through postal channels from such States?*

The MSAR Civil Procedure Code does not stipulate the reciprocity in these cases.

**18.2. Do Contracting States not opposing transmission through consular channels within the meaning of Article 8 assert reciprocity against Contracting States having stated their opposition to this transmission method?**

Please refer to the preceding answer.

**19. Article 25: Bilateral and multilateral agreements (cf. IV)**

**19.1. Could you provide us with a list of bilateral or multilateral agreements binding your country and other Contracting States with respect to international service?**

Besides the Hague Conventions, no other multilateral or bilateral agreements specifically on international service are applicable to the MSAR.

**19.2. For States Parties to the 1965 Convention and to the Interamerican Convention (Interamerican Convention on Letters Rogatory): how does the use in practice of such two instruments operate (cf. IV, 1)? More specifically, what is the relationship between them?**

N/A.

**19.3. For State Parties to the 1965 Convention and bound by EU Regulation No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters: how does the use of such two instruments operate in practice? Under its Article 20(1), the Regulation prevails over the Convention. How is the relationship between the two instruments managed in practice (cf. IV, 3)?**

N/A.

**19.4. For State parties to the 1965 Convention and members of the AALCO (African Asian Legal Consultative Organisation): what has been the impact of the AALCO model during bilateral negotiations conducted by your State (cf. IV, 2)?**

N/A.