

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
41ST CONSTITUTION REGULAR SESSION, 2020



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

HAGUE SERVICE CONVENTION (IMPLEMENTATION)
ACT, 2020.

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**HAGUE SERVICE CONVENTION (IMPLEMENTATION)
ACT, 2020.**

AN ACT to provide for the implementation of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, as amended by certain Republic of the Marshall Islands objections, reservations, declarations, and notifications, by giving it the force and effect of law.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short title.

This Act may be cited as the Hague Service Convention (Implementation) Act, 2020..

§102. Interpretation.

In this Act, the term:

- (a) "Convention" shall mean the Hague Service Convention or the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, as amended by certain Republic of the Marshall Islands objections, reservations, declarations, and notifications.
- (b) "Republic" shall mean the Republic of the Marshall Islands.
- (c) "State" shall mean a contracting state which has adopted the Convention.
- (d) "TCMI" shall mean The Trust Company of the Marshall Islands, Inc.

§103. Implementation of the Convention.

- (a) The Convention shall have the force and effect of law as set forth in this Act.
- (b) The Convention shall be construed and applied in a manner consistent with the provisions of the Hague Service Convention Resolution 16 and this Act.

§104. Application.

- (a) The Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.
- (b) The Convention shall not apply where the address of the person to be served with the document is not known.

§105. Service of Judicial Documents.

- (a) The Attorney-General is designated as a central authority which shall undertake to receive requests for service of legal documents coming from other States and to send requests for service of legal documents to other States.
- (b) TCMI is designated as an additional authority only to receive service as the registered agent for the Republic's active non-resident domestic entities and foreign maritime entities.
- (c) The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Attorney-General, or TCMI as appropriate, a request conforming to the model annexed to the present Convention without any requirement of legalization or other equivalent formality.
- (d) The document to be served or a copy thereof shall be annexed to the request; and the request and the document shall both be furnished in duplicate.
- (e) The Attorney-General, or TCMI as appropriate, shall promptly inform the applicant and specify its objections to the request if it determines that the request does not comply with the provisions of the present Convention.

- (f) The Attorney-General shall serve the document or shall arrange to have it served by an authorized process server:
 - (1) by a method prescribed by the Republic's laws or rules of procedure for the service of documents in domestic actions upon persons who are within the territory of the Republic; or
 - (2) by a particular method requested by the applicant, unless such a method is incompatible with the Republic's law;
 - (3) except that subject to sub-section (f) (2), above, the document may always be served by delivery to an addressee who accepts it voluntarily.
- (g) That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.
- (h) All documents to be served herein must be written in, or translated into, the English language.

§106. Certificate of Service.

- (a) The Attorney-General, or any authority or authorized process server which he may have designated for that purpose, or TCMI as appropriate, shall complete a certificate in the form of the model annexed to the present Convention.
- (b) The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered.
- (c) If the document has not been served, the certificate shall set out the reasons which have prevented service.
- (d) The applicant may require that a certificate not completed by the Attorney-General, a judicial authority, or TCMI as appropriate, shall be countersigned by one of these authorities.
- (e) The certificate shall be forwarded directly to the applicant.
- (f) The standard terms and the corresponding blanks in the model annexed to the present Convention shall in all cases be written in the English language.

§107. Other Methods of Service of Judicial Documents.

- (a) A State shall be free to effect service of judicial documents upon persons within the territory of the Republic, without application of any compulsion, directly through its diplomatic or consular agents only if such documents are to be served upon a national of the State in which the documents originate.
- (b) A State may use consular or diplomatic channels to forward documents for the purpose of service to the Attorney-General or TCMI as appropriate.
- (c) The Secretary of Foreign Affairs and Trade shall be the receiving authority for documents sent through consular or diplomatic channels.
- (d) The Republic authorizes the central authority of the State of origin or any person interested in a judicial proceeding to effect service of judicial documents directly through the Attorney-General, or TCMI as appropriate, or other authorized process server in the Republic; and such transmission of the documents may be made by postal channels or courier.
- (e) Nothing herein shall prevent the Republic and another State from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for herein and, in particular, directs communication between their respective authorities.
- (f) The service of judicial documents coming from a State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the Republic, except that the applicant shall pay or reimburse the costs occasioned by:
 - (1) the employment of a judicial officer or of a person authorized to serve process under the law of the Republic; or
 - (2) the use of a particular method of service.

§108. Refusal to Serve.

- (a) Where a request for service complies with the terms of the present Convention, the Republic may refuse to comply only if it deems that compliance would infringe its sovereignty or security.
- (b) The Republic may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action, or that its internal law would not permit the action upon which the application is based.
- (c) The Attorney-General, or TCMI as appropriate, shall in case of refusal promptly inform the applicant and state the reasons for the refusal.
- (d) Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

§109. Effect Following Service.

- (a) Where a writ of summons or an equivalent document is transmitted abroad for the purpose of service under the provisions of the present Convention, and the defendant has not appeared, (1) judgment shall not be given until it is established that:
 - (i) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory; or
 - (ii) the document was actually delivered to the defendant or to his residence by another method provided for by the Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.
 - (iii) Notwithstanding the provisions above, the judge may give judgment even if no certificate of service or delivery has been received if all the following conditions are fulfilled:

- (A) the document was transmitted by one of the methods provided for in the Convention;
 - (B) a period of time of at least six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document; and
 - (C) 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.
- (iv) Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.
- (2) the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled:
- (i) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal; and
 - (ii) the defendant has disclosed a prima facie defense to the action on the merits.
- (b) An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment and will not be entertained if it is filed after one year following the date of the judgment.
- (c) This Section shall not apply to judgments concerning status or capacity of persons.

§110. Extrajudicial Documents.

Extrajudicial documents emanating from authorities and judicial officers of a State may be transmitted for the purpose of service in the Republic by the methods and under the provisions of the present Convention.