

# Client Alert

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## I Live in Shanghai And Received a Complaint From the United States. Do I Have to Respond?

The Hague Service Convention (also known as the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil or Commercial Matters) was ratified in 1965 to streamline and improve service of process abroad. It creates formal procedures regarding service of process between signatory states.

On May 22, 2017, the US Supreme Court answered this question by saying, “maybe.”

In its approach, the Supreme Court held in *Water Splash, Inc. v. Menon*, No. 16-253, 581 U.S. \_\_\_\_ (2017) that the Hague Service Convention does not prohibit service of process by mail. However, the Court made it clear that service by mail is not affirmatively authorized by the Hague Service Convention either. Instead, such service is only permitted if (1) the receiving state has not objected to service by mail and (2) service by mail is also authorized under the sender’s applicable law.

### The Supreme Court’s Analysis

Water Splash, Inc., brought a lawsuit in Texas state court against a former employee, Tara Menon. It alleged common law business torts against Menon for beginning work for a competitor while still working for Water Splash. Because Menon was a resident of Quebec, Canada, Water Splash was unable to complete service of process on her. Instead, it sought leave from the court to serve her by mail. Menon was served by mail, but then failed to appear in court. In response, the trial court issued a default judgment. She appealed on the grounds that the service by mail did not comport with the requirements of the Hague Service Convention. After the Texas Court of Appeals held in Menon’s favor, the US Supreme Court granted *certiorari*.

In the case, the Supreme Court primarily reviewed Article 10 of the Hague Service Convention, which the parties agreed was the controlling provision. Article 10 states that, “provided that the State of destination does not object,” the Hague Service Convention should not interfere with “the freedom to send judicial documents, by postal channels, directly to persons abroad.” Menon emphasized that, unlike other provisions of the Hague Service Convention, Article 10 used the word “send” as opposed to “service.” She argued that “send” was purposefully used to indicate that Article 10 applied only to post-answer judicial documents, not to service of process documents.

Justice Samuel Alito, writing for the Court, rejected Menon’s argument. He explained that “send” is a broad term that includes service of process documents within its scope. Further, because the purpose of the Hague Service Convention is to regulate “service abroad,” it would not make sense for “send” to mean something else. Even assuming Article 10 was ambiguous, the Court found extratextual support from a 1991 US State Department letter and from foreign courts’ interpretations that the Hague Convention does not prohibit service by mail. It remanded the case back to Texas to consider whether state law allowed for service by mail.

## The Practical Implications of the Decision

It is crucial to understand that the Supreme Court held only that the Hague Service Convention does not prohibit service by mail, not that it blankly authorizes it. A plaintiff wishing to effect service by mail must ensure that the conditions set forth by the Court are met: (1) the receiving state must not have objected to service by mail and (2) the laws of the local jurisdiction must independently authorize service by mail. Even if a foreign country allows service by mail, such service would only be permitted if the governing state law also allowed it.

For example, in Florida, service of process by mail is not an option under the service of process statute. FLA. STAT. § 48.031. Florida virtually always requires service of process by in-person delivery to the recipient or by leaving copies at the intended recipient's place of abode with a person that resides therein. *Id.* For service on persons in foreign countries, *in addition* to conforming to the provisions of the Hague Service Convention, and with the exception of *in rem* or *quasi in rem* foreclosure proceedings, the same rules apply. FLA. STAT. § 48.194.

On the other hand, states like California, New York and Texas do allow service of process by mail, with some limitations. Cal. Civ. Proc. Code § 415.30(a); C.P.L.R. §312-a; Tex. R. Civ. P. 106(a)(2). Crucially, Texas only allows persons authorized to serve process under Tex. R. Civ. P. 103 to effect service by mail. *Id.* It is also significant that in all three states merely mailing the service of process would not deem it complete. Specifically, Texas requires another authorized person to return the service, New York requires that a recipient affirm and return an "acknowledgement of receipt" and California requires that the recipient sign the acknowledgment. Tex. R. Civ. P. 107; C.P.L.R. §312-a(c); Cal. Civ. Proc. Code § 415.30(c).

On a foreign recipient's end, the countries that allow for service by mail include, among others, France, Canada, Portugal, Spain, the United Kingdom and Italy. Conversely, the countries that do not allow for service by mail include, among others, Germany, China, Mexico, India, Belgium and Argentina.

To search for other countries' laws on service by mail, use the United States Department of State website's [Country Information Search Feature](#).

## Other Guiding Resources

For a full listing of the status of countries that have adopted portions of the Hague Service Convention as of April 26, 2017, see this [Status Table](#) provided by the Hague Conference on Private International Law. The list includes, among others, countries such as Germany, China, Mexico, France and India.

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