

Client Alert

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Government of Japan declares opposition to Article 10(a) of the Hague Service Convention

On December 21, 2018, the Government of Japan gave notice of its declaration of opposition to Article 10(a) of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention").

The Hague Service Convention stipulates primary and alternative methods of service for judicial documents. Each contracting state is encouraged to designate an authority (a "Central Authority") to receive requests for service of judicial documents from other contracting states. The Central Authority then serves the documents or arranges for them to be served by an appropriate agency.

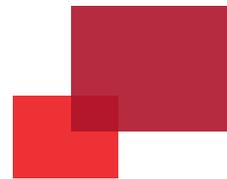
Japan has designated its Ministry of Foreign Affairs as its Central Authority under the Hague Convention. For example, when a plaintiff sues a defendant residing or located in Japan before a US court, the plaintiff would send the complaint to the defendant via the Ministry of Foreign Affairs of Japan and a Japanese court. This process is complicated. Japan also requires Japanese translations to accompany documents served under the Hague Service Convention — an onerous and time consuming obligation for plaintiffs.

The Hague Service Convention does, however, allow judicial documents to be served via alternate methods. Article 10(a) permits service to be effected on overseas persons or entities by mail. This accords with the general practice in Japan, where plaintiffs usually serve complaints by mail in judicial proceedings because Japanese courts are empowered under the civil procedure law to entrust service to mail carriers.

In the US, by contrast, a plaintiff can directly effect service of a complaint on a defendant by mail, allowing a plaintiff suing a defendant in Japan before a US court to directly effect service of the complaint on the defendant by international mail. This process was far simpler and easier for plaintiffs than service via the Central Authority under the Hague Service Convention. In practice, plaintiffs in US class actions and PL suits generally served complaints directly on defendants in Japan by mail to avoid the complexities of using the Central Authority.

US courts had differed on whether the term "send" in Article 10(a) should be interpreted to include the service of a complaint and on whether sending a complaint by mail is a valid method of service under Article 10(a). The US Supreme Court in *Water Splash, Inc. v. Menon* largely resolved this by holding on May 22, 2017 that Article 10(a) includes service by mail. In the wake of this decision, mail service of complaints submitted before a US court on defendants in Japan was more likely to be found legally valid.

The Government of Japan declared its opposition to Article 10(a) of the Hague Convention using language in Article 10 that allows a state to declare opposition to alternative service methods. This is thought to be a response to the controversial scope of Article 10(a), as stated above, and to resolve



ambiguity as to whether service by mail was legally valid in a state like Japan that had previously not declared opposition to Article 10(a).

Service can now be legally effected on defendants in Japan only via the Central Authority under the Hague Service Convention. The declaration will likely cause plaintiffs to be more circumspect about suing defendants in Japan before overseas courts, and thus will be favorable to Japanese companies.

The Government of Japan has also given notice of its declaration of opposition to Article 8 of the Hague Convention, which provides that service of judicial documents can alternatively be effected through a state's diplomatic or consular agents.