

LATVIA

LEGAL BASIS

1. **Has your State signed and/or ratified the *European Convention on State Immunity* (1972) and/or the *United Nations Convention on Jurisdictional Immunities of States and Their Property* (2004)? Do the authorities of your State consider the provisions of these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

Latvia has acceded to the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004) on 14 February 2014.

However, Latvia has neither signed nor ratified the European Convention on State Immunity.

Yes, the Latvian authorities do consider the provisions on these treaties on service of process as a codification of customary international law.

Latvia, in relation with other EU member states, applies the EU Regulation of 13 November 2007 No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

Moreover, Latvia is a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965.

2. **Please provide information on:**

- a. **National legislation (in particular its title, source and content; if available, please provide official translations and/or references to Internet sources).**

The Civil Procedure Law (hereinafter - CPL) Section 1 Chapter 6 "Court Notifications, Summonses, Delivery and Service of Judicial Documents" (Articles 54 to 60), and Section 16 "International Civil Procedural Co-operation in Service of Documents" (Articles 656 to 683) of CPL. The English version of CPL is available on www.vvc.gov.lv, however, it does not contain all the latest amendments made to CPL.

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

There have only been a few cases in Latvia concerning service of process. In such cases the court shall assess the issue of territorial jurisdiction in each particular case. However, there is also a possibility that the court needs to assess not only the territorial jurisdiction, but also the applicability of state immunity.

Nevertheless, the court must assess whether there are sufficient grounds to institute court proceedings. In cases set out by Article 132 of CPL the judge must refuse to institute proceedings and therefore legal documents submitted by claimant are not forwarded to defendant.

Article 132 of CPL sets out:

- (1) A judge shall refuse to accept a statement of claim if:

- 1) the dispute is not within the jurisdiction of the court;
- 2) the action has been brought by a person who does not have the right to bring an action;
- 3) the parties have, in accordance with procedures laid down by law, agreed to transfer of the dispute for it to be adjudicated by an arbitration court;

- 31) the parties have agreed, as prescribed by law, to submit the case for settlement using mediation , and no evidence has been submitted to the court that the offer to settle the dispute using mediation is rejected , mediation agreement is not concluded or mediation is terminated without reaching a settlement as set out by “Law on Mediation”
- 4) there is already a case pending before the same court or another court, concerning a dispute between the same parties, regarding the same subject-matter, and on the same basis;
- 5) in a dispute between the same parties, regarding the same subject-matter, and on the same basis, a court judgment or decision has entered into lawful effect to terminate the court proceedings because of the withdrawal of the action by the plaintiff, or confirmation of a settlement between the parties;
- 6) the matter is not within the jurisdiction of this court;
- 7) the plaintiff has not complied with the procedures in regard to preliminary extrajudicial examination determined for the respective category of matter, or has not taken the measures prescribed by law to resolve the dispute with the defendant prior to action being brought;
- 8) the statement of claim has been submitted by a person without the civil-procedural capacity to act;
- 9) the statement of claim has been submitted on behalf of a person who does not have the authority to do so in accordance with procedures laid down by law.
- 10) the letter of attorney or other document evidencing the empowerment of a representative to bring an action before the court is not attached to the statement of claim.

(2) A judge shall take a reasoned decision to refuse to accept a statement of claim. The decision, together with the submitted statement of claim, shall be issued to the plaintiff.

(3) A decision may be appealed in accordance with procedures laid down in this Law.

(4) Refusal by a judge to accept a statement of claim on the basis of Paragraph one, Clauses 6-10 of this Article is not an impediment to the submitting of the same statement of claim to the court after the deficiencies in regard to it have been eliminated.

However, if the judge institutes court proceedings in a particular case, the copies of documents submitted to the court by plaintiff must be delivered to the defendant. After defendant has received them he/she has the right to submit to court the statement of defence, make requests, institute counter-claim, etc. If the court at this stage considers that it is not possible to adjudicate the matter on the merits, the proceedings are terminated.

Thus the Latvian courts are under an obligation to examine the grounds for the service of process.

To illustrate the aforementioned, Latvia hereby provides some examples from case-law:

- 1) In one case a legal entity brought a claim against a foreign government branch seeking to recover damages. The Court held that the case is not under the Latvian jurisdiction and terminated proceedings according to CPL Article 132 paragraph 1.
- 2) In another case an individual had brought a claim against a foreign government branch seeking the recognition of property rights to a real estate. The court concluded that the dispute shall be adjudicated in extrajudicial manner in accordance with the bilateral agreement concluded between both states which provided that all disputes shall be heard by establishing a conciliation commission or by special coordination committee.
- 3) In yet another case an individual brought a claim against an embassy of a foreign state in Latvia seeking to recover damages for the breach of lease. The Court of Appeal held that a diplomatic mission in Latvia cannot be a defendant and that Latvian courts have no jurisdiction over a foreign state in this case. The Supreme

Court annulled the judgment indicating that the Court of Appeal failed to consider the restrictive doctrine of state immunity which provides the application of the civil jurisdiction of the receiving state to the foreign embassies. The Court of Appeal re-examined the case and partially satisfied the claim brought by an individual.

PROCEDURE

3. Please describe the procedure(s) applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process.

The defendant status for a foreign State can be conferred only in civil cases if a person files a petition on a civil dispute.

In civil cases the judicial documents are served according to CPL.

The procedure of summoning a person to the court and of serving the court documents is set out by Chapter 6 of CPL "Court Notifications, Summonses, Delivery and Service of Judicial Documents" (Articles 54 to 60). This procedure applies equally to all parties involved in civil proceedings. Therefore, if one of the parties is a Latvian national the judicial documents shall be delivered in accordance with the procedure set out by this Chapter of CPL.

Nevertheless, CPL provides different rules on service of process if a person's place of residence or location is not in Latvia. Then CPL Section 16 "International Civil Procedural Cooperation in Service of Documents" (Articles 656 to 683) shall apply.

Procedure applicable to service of process differs depending on whether the country is an EU member state, or an international agreement on cooperation on service of process in civil procedure is in force between Latvia and the respective country, or there is no international agreement on cooperation on service of process. It should be noted though that there may be exceptions from the general rules established by CPL.

Also it must be emphasised that the procedure applicable to the service of process is the same for private persons, legal entities and states.

In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.

The terms for service of process are set out in Section 16 of CPL "International Civil Procedural Cooperation in Service of Documents" as well as the of 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters.

CPL Article 562 "Delivery and Service of Judicial Documents to a Person whose Place of Residence or Location is not in Latvia" provides:

(1) Judicial documents shall be delivered in the following ways to a person whose place of residence, location or legal address is not in Latvia and whose address is known:

- 1) in accordance with the procedures provided for in Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (hereinafter – Regulation No 1393/2007 of the European Parliament and of the Council) (Chapter 81);
- 2) in accordance with the procedures provided for in Article 13 of Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing

a European Small Claims Procedure (hereinafter – European Parliament and Council Regulation No 861/2007);

3) in accordance with the procedures provided for in international agreements (Chapter 82) binding on Latvia; or

4) in accordance with the procedures provided for in Chapter 83 of this Law.

(2) If judicial documents have been delivered to a person in accordance with the procedures laid down in Paragraph one of this Section, it shall be considered that the person has been notified regarding the time and place of procedural action or regarding the content of the relevant document only in such case, if the confirmation regarding service of the document has been received. Documents shall be considered as served on the date indicated in the confirmation regarding service of documents.

(2¹) If judicial documents have been delivered to a person in accordance with the procedures laid down in Paragraph one of this Section and a confirmation regarding non-delivery thereof has been received, the court shall consider the reasons for non-delivery of the documents and determine the impact of non-delivery of the documents on court proceedings in accordance with the provisions of this Law. After considering the reasons for non-delivery of the documents the court may perform repeat delivery of the documents or use another method for the issuance of documents. If repeat issuance of documents is unsuccessful, Section 59 of this Law shall be applied.

(3) This Section shall not be applied, if a person whose place of residence, location or legal address is not in Latvia conducts a matter through the mediation of a representative authorised in Latvia. In such case judicial documents shall be served only to the representative according to general procedure.

CPL Article 672 (3) sets out that the execution of a request of a foreign country for service of documents shall be commenced without delay after judge has taken a decision on the permissibility of execution of the request. If it is not possible to execute the request of a foreign country for service of documents within one month from the day it was received by the Ministry of Justice, or within the time period indicated in the request, a court shall notify the Ministry of Justice thereof in writing, specifying the reasons that preclude the execution of the referred request.

CPL Article 672 (4) sets out that if the execution of a request of a foreign country for service of documents is not possible or it has been executed partly, the court shall notify the Ministry of Justice the reasons for non-execution of the aforementioned request in writing, as well as return the documents not served.

CPL Article 680 (4) establishes that execution of a request of a foreign country for service of documents may be refused if:

- 1) Execution of the request of the foreign country for service of documents is in contradiction with the social order of Latvia;
- 2) The sufficient information has not been submitted and it is not possible to acquire additional information.

a. How are the terms „diplomatic channels“ (Article 16 § 2 of the European Convention and Article 22 § 1 c) i) of the United Nations Convention) interpreted by your national authorities?

Terms “Diplomatic channels” are interpreted as communication between Ministries of Foreign Affairs and diplomatic missions.

Please indicate whether these terms include a notification to the embassy of the State concerned in the State of forum.

Latvia holds the opinion that such method of service could be viewed as being contrary to the principle of inviolability of the diplomatic or consular premises as it has been set out by Article 22 of the 1961 Vienna Convention on Diplomatic Relations and by Article 31 of the 1963 Vienna Convention on Consular Relations.

b. How are the terms „if necessary“ (Article 16 § 2 of the European Convention and Article 22 § 3 of the United Nations Convention) interpreted by your national authorities?

The terms for international legal cooperation on the service of process are set out by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965, EU Regulation of 13 November 2007 No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) and the bilateral agreements that Latvia has concluded with the Republic of Belarus, the Republic of Moldova, the Republic of Poland, the Republic of Uzbekistan, the Russian Federation, the Kyrgyz Republic and Ukraine on Legal Assistance. Latvia has also concluded a trilateral agreement on Mutual Assistance with Estonia and Lithuania. The term “if necessary” must be read in light of the aforementioned instruments.

4. Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.

Latvia holds the opinion that such method of service could be viewed as being contrary to the principle of inviolability of the diplomatic or consular premises as it has been set out by Article 22 of the 1961 Vienna Convention on Diplomatic Relations and by Article 31 of the 1963 Vienna Convention on Consular Relations.

Therefore, documents instituting proceedings against Latvia in a foreign State or other legal documents are to be transmitted to the Ministry of Foreign Affairs as an adequate service of process.