

## UNITED STATES OF AMERICA

### 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 on 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)?**

The United States has not signed the European Convention on State Immunity (1972) or the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). With respect to service of process, the United States is a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil of Commercial Matters (the Hague Convention).

The United States considers customary international law to require that proper service of process on a foreign state: (1) provide notice of the suit either (a) through diplomatic channels, or (b) in accordance with an applicable international convention or other method agreed to by the State concerned; (2) afford at least sixty (60) days before an appearance or responsive pleading is required; and (3) include sufficient information about the case (e.g., proper service should include a complaint, statement of claim, or similar document, to enable the foreign state to determine what the case is about, whether it is a proper party, whether there are potential international law issues, and what steps it should take to defend the case, if any).

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).**

Section 1608 of the Foreign Sovereign Immunities Act of 1976 ("FSIA") sets forth the requirements for service of process on a foreign state in cases commenced in both federal and state courts in the United States. The FSIA is included in Title 28 of the United States Code, and a copy of section 1608 is attached.

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

The FSIA provides the sole basis for courts in the United States to assert jurisdiction over foreign states, *see Republic of Austria v. Altmann*, 541 U.S. 677 (2004), and courts resolve questions relating to whether a foreign state has been properly served under section 1608 of the FSIA. The Executive Branch, of course, may appear as *amicus curiae* in cases of significant interest to the Government, and the Executive Branch has a strong interest in the application of and adherence to the service requirements of the FSIA by state and federal courts. A number of decisions by U.S. courts of appeals have confirmed that the procedures for serving a foreign state set out in section 1608(a) may only be satisfied through strict compliance. *See, e.g., Magness v. Russian Fed'n*, 247 F.3d 609, 615 (5th Cir. 2001); *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994). Copies of the referenced cases are attached.

### 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. 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.**

Section 1608(a) of the FSIA sets forth the exclusive procedures for service of process on a foreign state, including the order in which they must be attempted. In particular, section 1608(a) contemplates four methods of serving process on a foreign state, which are ordered hierarchically: service under a special arrangement between the parties, service in accordance with an applicable international convention, service by mail from the clerk of the court to the head of the Ministry of Foreign Affairs, and service through diplomatic channels. Section 1608(c) provides the rules for when service is deemed to be made. Section 1608(d) provides the time limit for a foreign state to serve an answer or other responsive pleading after service has been made. Please refer to the attached copy of section 1608 for further details. Failure to properly serve a foreign state in accordance with the requirements of section 1608 warrants dismissal of the action for lack of jurisdiction.

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

As noted above, the United States is not a party or signatory to either of these two conventions. However, the United States can address the meaning of the term “diplomatic channels” as it appears in U.S. law. As noted above, section 1608(a) of the FSIA contemplates four methods of serving process on a foreign state. The fourth method, which applies only when service cannot be made under the first three methods, is service through diplomatic channels. To effect service through diplomatic channels, the Department of State transmits the papers to the United States Embassy in the defendant country. The U.S. Embassy then transmits the papers to the Ministry of Foreign Affairs under cover of a diplomatic note. Service through diplomatic channels does not typically include a notification to the Embassy of the defendant state in the United States.

Service through diplomatic channels on the United States as the defendant country can take two forms. If service is made on the United States by service on the Department of State directly, the United States does not expect or require notice by the foreign country to the United States Embassy in the forum state. Alternatively, the foreign court could transmit the papers to the Ministry of Foreign Affairs, which would transmit the papers to the United States Embassy in the forum state, which would transmit the papers to the Department of State.

- 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?**

Again, as a non-party, U.S. authorities do not interpret this term under these conventions. However, under Section 1608(a) of the FSIA, when documents are transmitted from the clerk of court to the Ministry of Foreign Affairs or through diplomatic channels, a summons and complaint must include “a translation of each into the official language of the foreign state.” Thus, for service through the clerk of court or through diplomatic channels, a translation would always be “necessary” unless English is an official language of the defendant state. There is no express translation requirement for service through a special arrangement between the parties or under an applicable international convention, because it is assumed that that arrangement or convention may address any translation requirement.

- 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.**

Before the United States may be requested to appear before the courts or other tribunals of another state:

(1) Notice of the suit must be provided either (a) through diplomatic channels or (b) in accordance with an applicable international convention, such as pursuant to the Hague Convention. Requests for service under the Hague Convention must be made to the Central Authority for the United States, which is the Office of International Judicial Assistance, Department of Justice, 1100 L Street, N.W., Washington, D.C. 20530. As noted above, service through diplomatic channels on the United States as the defendant country can take two forms. If service is made on the United States by service on the Department of State directly, the United States does not expect or require notice by the foreign country to the United States Embassy in the forum state. Alternatively, the foreign court could transmit the papers to the Ministry of Foreign Affairs, which would transmit the papers to the United States Embassy in the forum state, which would transmit the papers to the Department of State.

(2) The notice of suit must afford at least sixty (60) days before an appearance or responsive pleading is required.

(3) Proper service must include sufficient information about the case, usually in the form of a complaint, statement of claim, or similar document, to enable the United States to determine what the case is about, whether it is a proper party, whether there are potential international law issues, and what steps it should take to defend the case, if any.