OUTLINE

HAGUE SERVICE CONVENTION

HccH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

Purpose of the Service Convention

The Service Convention provides for the channels of transmission to be used when a judicial or extrajudicial document is to be transmitted from one State party to the Convention to another State party for service in the latter.[1] The Convention deals primarily with the *transmission* of documents; it does not address or comprise substantive rules relating to the actual service of process.[2]

The **framework** provided by the Convention is both efficient and effective – statistical data shows that 66% of requests are executed within 2 months.

When does the Service Convention apply?

For the Convention to be applicable, the following requirements must be met: (i) a document is to be transmitted from one State party to the Convention to another State party for service in the latter (the law of the forum State determines whether or not a document has to be transmitted abroad for service in the other State – the Convention is *non-mandatory*), (ii) an address for the person to be served is known, (iii) the document to be served is a judicial or extrajudicial document, and (iv) the document to be served relates to a civil or commercial matter. If all these requirements are met, the transmission channels provided for under the Convention must be applied (the Convention is *exclusive*).

What are the channels of transmission provided for by the Service Convention?

The Convention provides for *one main channel* of transmission and *several alternative channels* of transmission (see the attached Explanatory Charts 1 and 2 – the paragraph-numbers refer to the Practical Handbook (2006), see below).

Under the main channel of transmission provided for by the Convention, the authority or judicial officer competent under the law of the requesting State (State where the document to be served originates) transmits the document to be served to the *Central Authority* of the requested State (State where the service is to occur).[3] The request for service transmitted to the Central Authority must comply with the *Model Form*[4] annexed to the Convention and

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[1] A comprehensive and updated list of the Contracting States of the Convention is available on the "Service Section" of the HCCH website (< www.hcch.net >).

[2] There are, however, two channels of transmission provided for by the Convention where the transmission process includes service of process upon the ultimate addressee: the direct diplomatic or consular channels and the postal channel. For all the other channels of transmission provided for by the Convention an additional step, not governed by the Convention, is required to serve process on the ultimate addressee.

[3] The Convention specifies that the forwarding authority must be an authority or judicial officer of the requesting State. It is that State's law which determines which authorities or judicial officers are competent to forward the request for service. Thus, in certain countries, attorneys, solicitors or private process servers are authorised to send such a request. Under the Convention, private persons are not entitled to send directly a request for service to the Central Authority of the requested State.

[4] The Model Form is in three parts: a *Request* for service (which is sent to the Central Authority of the requested State), a *Certificate* (which is reproduced on the reverse side of the Request and which confirms whether or not the documents have been served), and a form entitled *"Summary of the document to be served"* (to be delivered to the addressee). In addition, the Fourteenth Session of the HCCH recommended that the Summary be preceded by a *warning* relating to the legal nature, purpose and effects of the document to be served. An Active Model Form that can be completed electronically and printed is available on the "Service Section" of the HCCH website (< www.hcch.net >).

be accompanied by the documents to be served. The Central Authority of the requested State will execute the request for service or cause it to be executed either (i) by informal delivery to the addressee who accepts it voluntarily, or (ii) by a method provided for under the law of the requested State, or (iii) by a particular method requested by the applicant, unless it is incompatible with the law of the requested State. Under Article 5(3), the Central Authority of the requested State may request a translation of the documents to be served if they are to be served by a method prescribed by the internal law of the requested State for the service of documents in domestic actions upon persons who are within its territory (Art. 5(1)(a)), or if service by a particular method is requested by the applicant (Art. 5(1)(b)). A State party shall not charge for its services rendered under the Convention (Art. 12(1)). Thus, the services rendered by the Central Authority shall not give rise to any payment or reimbursement of costs. Under Article 12(2), however, an applicant shall pay or reimburse costs occasioned by the employment of a judicial officer or other competent person or by the use of a particular method of service. A Central Authority may request such costs to be paid in advance.

The alternative channels of transmission are: the *consular or diplomatic channels* (direct and indirect) (Arts. 8(1) and 9), *postal channels* (Art. 10(a)), *direct communication between judicial officers, officials or other competent persons* of the State of origin and the State of destination (Art. 10(b)), and *direct communication between an interested party and judicial officers, officials or other competent persons* of the State of destination (Art. 10(c)). The Convention entitles a State to object to the use of some of these alternative channels of transmission. There is neither a hierarchy nor any order of importance among the channels of transmission, and transmission through one of the alternative channels does not lead to service of lesser quality.

Protection of the plaintiff's and defendant's interests

Regardless of the applicable channel of transmission, the Convention contains two key provisions which protect the defendant *prior* to a judgment by default (Art. 15) and *after* a judgment by default (Art. 16). Articles 15 and 16 require the judge to stay entry of judgment (Art. 15) or allow the judge to relieve the defendant from the effects of the expiry of the time for appeal (Art. 16), subject to certain requirements (for more details, see the attached Explanatory Charts 3 and 4 – the paragraph-numbers refer to the Practical Handbook (2006), see below).

Practical Handbook (2006)

In 2006, the Permanent Bureau published a fully revised and expanded edition of the *Practical Handbook on the Operation of the Hague Service Convention*. This publication, which comes with a fully searchable and easy-to-use *e-book*, offers detailed explanations on the general operation of the Convention as well as authoritative commentaries on the major issues raised by practice over the past forty years. To order the Handbook, see the "Service Section" of the HCCH website (< www.hcch.net >). Furthermore, the "Service Section" offers a wide range of practical information relating to service of process in the States party to the Convention. The Handbook is available in English, French and Russian, and will shortly be available also in Mandarin, Standard Cantonese, Portuguese and Spanish.

Monitoring of the Convention

The Service Convention's practical operation was last reviewed by a Special Commission in 2009. The Special Commission confirmed 'wide use and effectiveness, as well as the absence of major practical difficulties'. With the aim of further enhancing cross-border judicial co-operation among Contracting States, the Special Commission set out some guidelines for the prompt execution of requests for service.

For more information, please contact the Permanent Bureau of the Hague Conference at: secretariat@hcch.net.

CHART 1
OPERATION OF THE MAIN CHANNEL OF TRANSMISSION [paras. 82 *et seq.*]

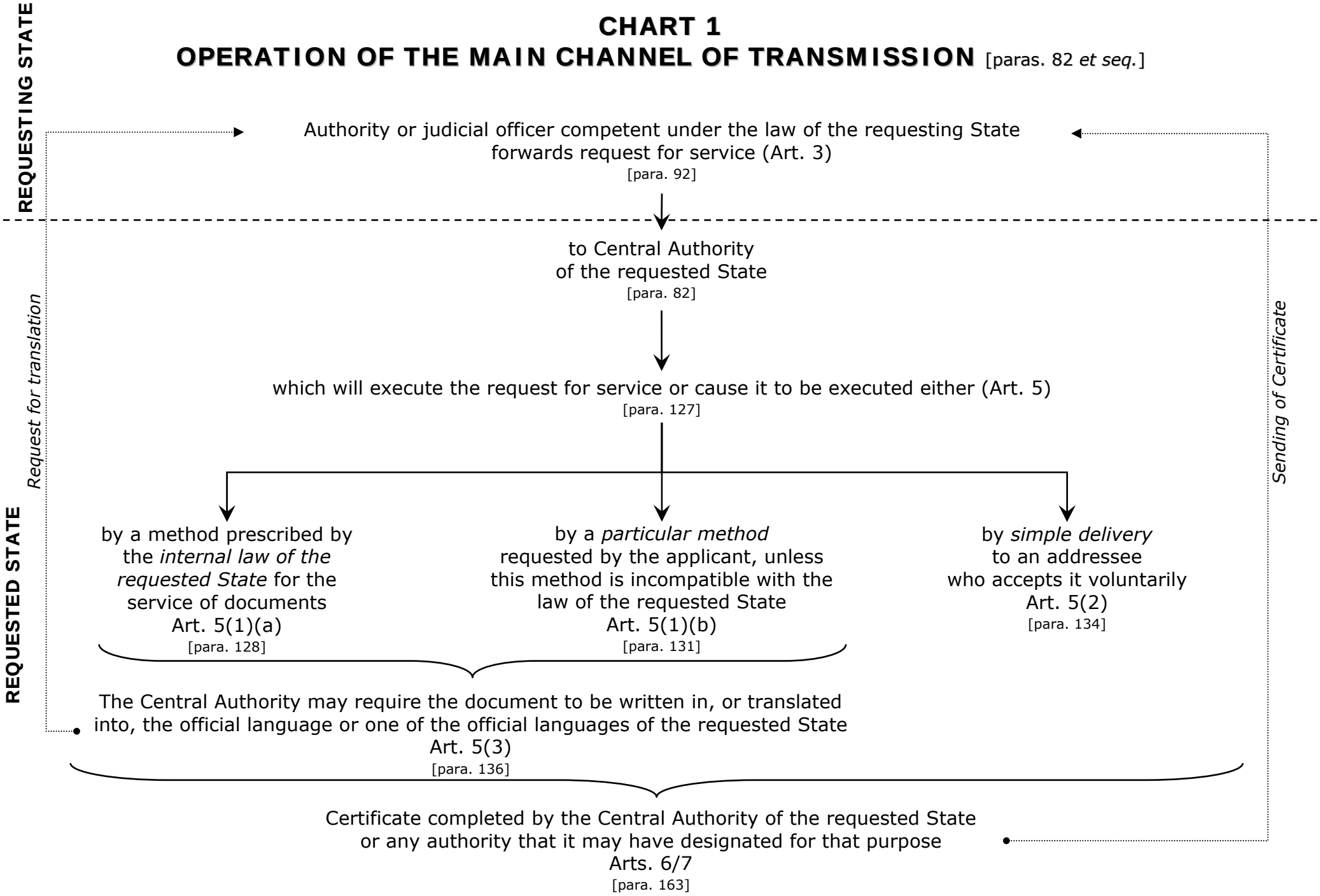

CHART 2
OPERATION OF THE ALTERNATIVE AND DEROGATORY CHANNELS OF TRANSMISSION [paras. 183 *et seq.*]

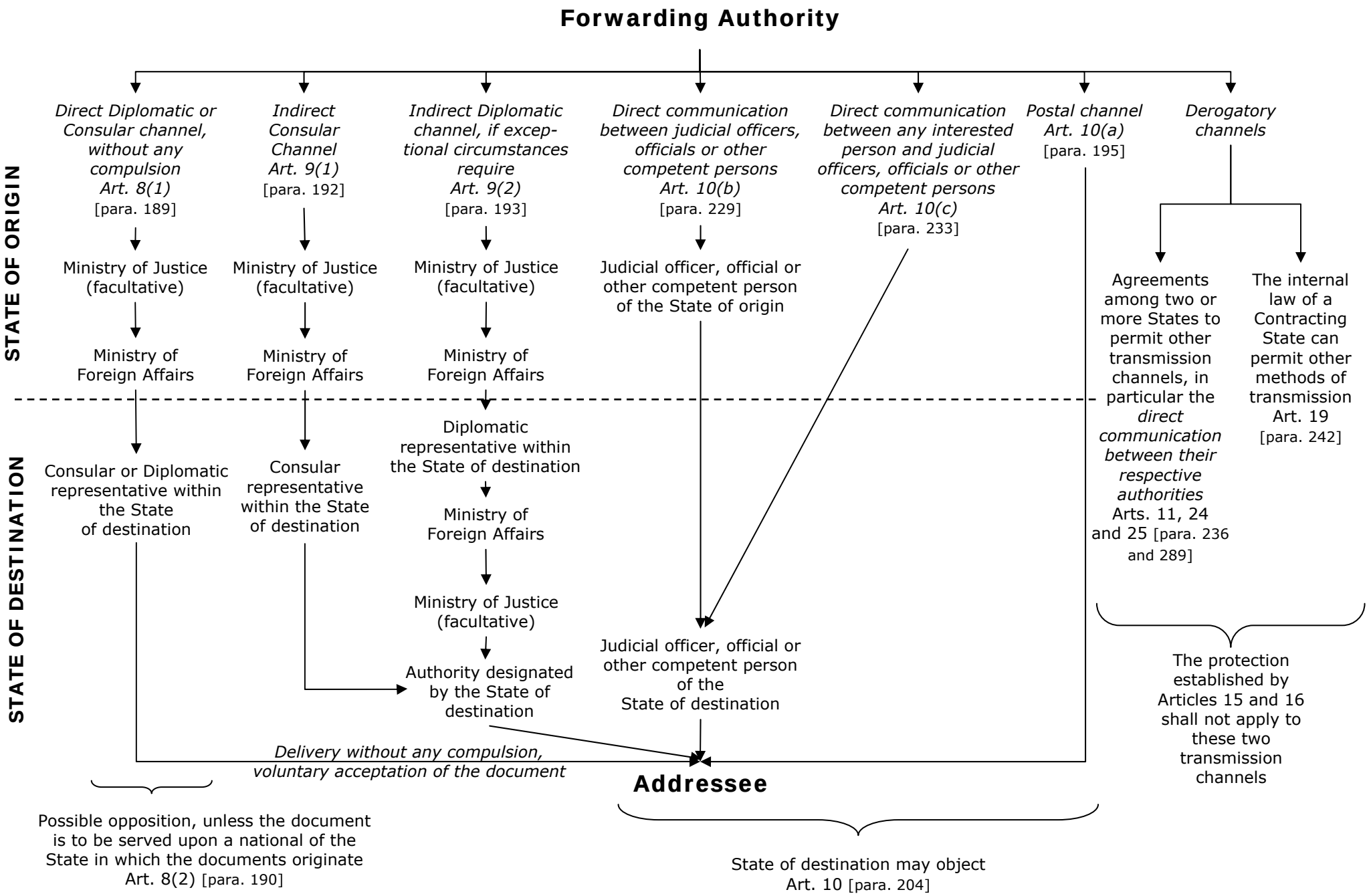

CHART 3
ARTICLE 15: DEFENDANT'S PROTECTION PRIOR TO DECISION [paras. 275 *et seq.*]

Transmission abroad for the purpose of service,
under the provision of the Convention

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If the defendant has not appeared,
judgment *shall not* be given until it is established that:

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The document was served by a method prescribed by the *internal law* of the requested State (or, in the case of an alternative channel of transmission, the State of destination)
and

The document was actually delivered to the defendant or to his/her residence *by another method provided for by the Convention*
and

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the service or delivery was effected in *sufficient time* to enable the defendant to defend

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The judge may nonetheless give judgment if all the following conditions are fulfilled:

- The Contracting State has made a declaration to this effect
- The document was transmitted by one of the methods provided for in the Convention
- 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 requested State (or, in the case of an alternative channel transmission, the State of destination)
- A period of time considered adequate by the judge, but of not less than six months, has elapsed since the date of the transmission of the document

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Judgment by default

CHART 4
ARTICLE 16: DEFENDANT'S PROTECTION AFTER A DECISION [paras. 286 *et seq.*]

Writ of summons or equivalent document had to be transmitted abroad, under the provisions of the Convention, for the purpose of service

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Judgment by default has been rendered

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The judge can relieve defendant from effects of the expiration of the time for appeal if all the following conditions are fulfilled:

- application for relief is filled *within a reasonable time* after the defendant has knowledge of the judgment or within the time fixed by the State in its declaration to the Depository to this effect (this time shall in no case be less than one year following the date of judgment)

- defendant, without any fault on his/her part, did *not have knowledge* of the document in *sufficient time to defend*, or knowledge of the judgment in sufficient time *to appeal*

- the defendant has disclosed a *prima facie* defence to the action on the merits