

Private International Law

Service of Documents Abroad - Sao Tome e Principe

Relevant conventions / treaties / agreements

The applicable agreement between Australia and Sao Tome e Principe is the *Convention between the United Kingdom and Portugal regarding Legal Proceedings in Civil and Commercial Matters* (London, 9 July 1931). This Convention was extended by Portugal on 4 December 1937 to Portuguese territories which include the now independent Republic of Sao Tome e Principe.

A copy of the Convention is available on the Austlii 'treaties library' website (<http://www.austlii.edu.au/au/other/dfat/treaties>). The specific link for the Convention is: <http://www.austlii.edu.au/au/other/dfat/treaties/1933/8.html>

Process to follow

Diplomatic channel

Under the applicable convention, the *Convention between the United Kingdom and France on Legal Proceedings in Civil and Commercial Matters*, a party in Australia who wishes to serve documents issued by an Australian court in civil proceedings on a party in Sao Tome e Principe should send a formal request through the diplomatic channel seeking the assistance of the competent authorities in Sao Tome e Principe to serve the documents.

Delays

The diplomatic channel procedure can result in some delay. The time taken to process a request for service will vary in each case and it is difficult to estimate how long it may take. However, normally delays of at least three months can be expected, and sometimes they are substantially longer.

Fees and Charges

Charges may be imposed by the local authorities in Sao Tome e Principe for engaging a person to serve documents received through the diplomatic channel.

Private agent

Service on Sao Tome e Principe citizens

Under article 4 of the 1931 Convention service through a private agent may not be used for service on Sao Tome e Principe citizens in Sao Tome e Principe unless they are willing to accept such service.

Service on non-Sao Tome e Principe citizens (including Australian citizens)

Under article 4 of the 1931 Convention a private agent should be used where a party in Australia wishes to serve documents issued by an Australian court on a party in Sao Tome e Principe who is not a citizen of Sao Tome e Principe.

Service on non-Sao Tome and Principe citizens may also be effected through the diplomatic channel, however, private service should be used whenever possible because delays can be expected in using the diplomatic channel.

Unless the person to be served is an Australian citizen, the documents should be accompanied by a translation in the Portuguese .

Letter of Request

All requests for assistance in serving documents should use the template letter provided on this web site. This provides a guide to the type of information to be provided and to the way to set out the information.

The model letter of request is based on one developed by the Hague Conference on Private International Law for use under the *Hague Convention on the Service of Judicial and Extra Judicial Documents Abroad 1965* and the *Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters 1970*. Neither Convention is applicable here, however, the model letter provides a good starting point for the information which should be included in most letters of request. To the extent that the information required by the model letter is not applicable, disregard those requirements and provide the information that you do have.

The model letter of request can be accessed from the main index. Return to the main index and click on 'Model Letter of Request'.

In addition to the information required by the model letter of request, please ensure the following is provided.

- The original and two copies of the documents to be served in the English language certified by the requesting court.
- Translations in **Portuguese** of the request for service and the documents to be served (the translations should include a statement by the translator attesting to the authenticity of the translation), and
- An undertaking to pay fees associated with the service of the documents.

The request must be sent by the Australian court issuing the process. This is usually, but not always, a service provided by the court registry. You may not know the name of the relevant foreign authority. In such circumstances letters of request should be addressed to 'The Competent Authority'.

Address for transmittal of request

For service of process issued by federal courts (the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court) the request for service should be sent to:

Secretary
Commonwealth Attorney-General's Department
Attention: Private International Law Section
Robert Garran Offices
National Circuit
BARTON ACT 2600
Australia

For service of process issued by State or Territory courts the request for service should be sent to the relevant State or Territory law Department. To access the contact details return to the main menu and click on 'State and Territory Contact List'.

Enforcement of Judgments

Australian litigants should be aware that there is no treaty or reciprocal arrangement between San Tome e Principe and Australia in relation to the recognition or enforcement of judgments in civil matters.

Before obtaining a judgment in Australia for enforcement in San Tome e Principe, Australian litigants should seek legal advice from a legal practitioner familiar with the requirements for enforcement in Sao Tome e Principe.
