

Private International Law

Service of Documents Abroad - Antilles and Aruba

Relevant conventions / treaties / agreements

The applicable agreement between Australia and Antilles and Aruba is the *Convention between the United Kingdom and the Netherlands on Legal Proceedings in Civil and Commercial Matters* (London, 31 May 1932). This Convention was extended by the Netherlands to the Netherlands Antilles and Aruba on 29 June 1934.

The Netherlands Antilles and Aruba are territories of the Netherlands. They are self-governing on all internal matters but still defer to the Netherlands on issues of foreign policy and some judicial functions. The islands consist of the Leeward Islands and the Windward Islands.

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/cgi-bin/disp.pl/au/other/dfat/treaties/1935/4.html>

The Netherlands has acceded to the *Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters* 1965, and extended this Convention to Aruba. However, Australia has not acceded to the Hague Service Convention.

Process to follow

Diplomatic channel

Under the applicable convention, the *Convention between the United Kingdom and the Netherlands 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 Antilles and Aruba should send a formal letter of request through the diplomatic channel seeking the assistance of the competent authorities in Antilles and Aruba 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 Antilles and Aruba for engaging a person to serve documents received through the diplomatic channel.

Private agent

The position in the Netherlands Antilles and Aruba is service of Australian process by a private agent is permitted. This method of private service should generally be through a local attorney in the Netherlands Antilles or Aruba (article 4(a), 1932 Convention).

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

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 **Dutch** 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 Algeria and Australia in relation to the recognition or enforcement of judgments in civil matters.

Before obtaining a judgment in Australia for enforcement in Antilles and Aruba, Australian litigants should seek legal advice from a legal practitioner familiar with the requirements for enforcement in Antilles and Aruba.
