

Department of State

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chapter), unless the case is of such nature as to fall under the caption, "Exemption for Federal Agencies and Corporations" of the same Tariff.

§ 92.94 Replying to inquiries regarding service of process or other documents.

Officers should make prompt and courteous replies to all inquiries regarding the service of legal process or documents of like nature, and should render such assistance as they properly can to the court and to interested parties. Such assistance could include furnishing information as to the standard procedure of the locality for service of legal papers, with the name and address of the local office having a bailiff authorized to effect and make return of service; it could include furnishing a list of local attorneys capable of making necessary arrangements; or it could, where appropriate, include a suggestion that the request of the American court might be presented to the foreign judicial authorities in the form of letters rogatory (see definition, § 92.54, and procedures, § 92.66 (b)). If the person upon whom the process is intended to be served is known to be willing to accept service, or if it is clear that it would be in his interest at least to be informed of the matter, the consular officer may suggest to the interested parties in the United States the drawings up of papers for voluntary execution by such person, such as a waiver of service or a document which would be acceptable to the American court to signify the person's entering an appearance in the action pending therein.

§ 92.95 Transportation of witnesses to the United States.

Officers of the Foreign Service may at times be called upon to assist in arranging for the transportation to the United States of persons in foreign countries whose testimony is desired by the Attorney General in a case pending in a Federal court. Requests that the travel of such persons be facilitated originate in the Department of Justice, and special instructions in each case are transmitted to the appropriate Foreign Service post by the Department of State.

PART 93—SERVICE ON FOREIGN STATE

Sec.

93.1 Service through the diplomatic channel.

93.2 Notice of suit (or of default judgment).

AUTHORITY: 22 U.S.C. 2658; 28 U.S.C. 1608(a).

§ 93.1 Service through the diplomatic channel.

(a) The Director of the Office of Special Consular Services in the Bureau of Consular Affairs, Department of State ("The Managing Director for Overseas Citizen Service"), shall perform the duties of the Secretary of State under section 1608(a)(4) of title 28, United States Code.

(b) When the clerk of the court concerned sends documents under section 1608(a)(4), of title 28, United States Code, the Managing Director for Overseas Citizen Service shall promptly ascertain if the documents include the required copies of the notice of suit and of the summons and complaint (or default judgment), and any required translations. If not, he shall promptly advise the clerk of the missing items.

(c) Upon receiving the required copies of documents and any required translations, the Managing Director for Overseas Citizen Service shall promptly cause one copy of each such document and translation ("the documents") to be delivered—

(1) To the Embassy of the United States in the foreign state concerned, and the Embassy shall promptly deliver them to the foreign ministry or other appropriate authority of the foreign state, or

(2) If the foreign state so requests or if otherwise appropriate, to the embassy of the foreign state in the District of Columbia, or

(3) If paragraphs (c)(1) and (2) of this section are unavailable, through an existing diplomatic channel, such as to the embassy of another country authorized to represent the interests of the foreign state concerned in the United States.

(d) The documents, when delivered under paragraph (c) of this section, shall be accompanied by a diplomatic note of transmittal, requesting that

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the documents be forwarded to the appropriate authority of the foreign state or political subdivision upon which service is being made. The note shall state that, under United States law, questions of jurisdiction and of state immunity must be addressed to the court and not to the Department of State, and that it is advisable to consult with an attorney in the United States.

(e) If the documents are delivered under paragraph (c)(1) of this section, the Embassy of the United States shall promptly transmit by diplomatic pouch, to the Managing Director for Overseas Citizen Service, a certified copy of the diplomatic note of transmittal. If the documents are delivered under paragraph (c) (2) or (3) of this section, the Managing Director for Overseas Citizen Service shall prepare a certified copy of the diplomatic note of transmittal. In each case, the certification shall state the date and place the documents were delivered. The Managing Director for Overseas Citizen Service shall then promptly send the certified copy to the clerk of the court concerned.

(Sec. 1608(a), Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583 (28 U.S.C. 1608(a)); sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658))

[42 FR 6367, Feb. 2, 1977, as amended at 63 FR 16687, Apr. 6, 1998]

§ 93.2 Notice of suit (or of default judgment).

(a) A Notice of Suit prescribed in section 1608(a) of title 28, United States Code, shall be prepared in the form that appears in the Annex to this section.

(b) In preparing a Notice of Suit, a party shall in every instance supply the information specified in items 1 through 5 of the form appearing in the Annex to this section. A party shall also supply information specified in item 6, if notice of a default judgment is being served.

(c) In supplying the information specified in item 5, a party shall in simplified language summarize the nature and purpose of the proceeding (including principal allegations and claimed bases of liability), the reasons why the foreign state or political subdivision

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has been named as a party in the proceeding, and the nature and amount of relief sought. The purpose of item 5 is to enable foreign officials unfamiliar with American legal documents to ascertain the above information.

(d) A party may attach additional pages to the Notice of Suit to complete information under any item.

(e) A party shall attach, as part of the Notice of Suit, a copy of the Foreign State Immunities Act of 1976 (Pub. L. 94-583; 90 Stat. 2891).

ANNEX

NOTICE OF SUIT (OR OF DEFAULT JUDGMENT)¹⁾

1. Title of legal proceeding; full name of court; case or docket number.
2. Name of foreign state (or political subdivision) concerned:
3. Identity of the other Parties:

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4. Nature of documents served (e.g., Summons and Complaint; Default Judgment):
5. Nature and purpose of the proceedings; why the foreign state (or political subdivision) has been named; relief requested:
6. Date of default judgment (if any):
7. A response to a "Summons" and "Complaint" is required to be submitted to the court, not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state immunity).
8. The failure to submit a timely response with the court can result in a Default Judgment and a request for execution to satisfy the judgment. If a default judgment has been entered, a procedure may be available to vacate or open that judgment.

9. Questions relating to state immunities and to the jurisdiction of United States courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611, of Title 28, United States Code (Pub. L. 94-583; 90 Stat. 2891).

(Sec. 1608(a), Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583 (28 U.S.C. 1608(a)); sec. 4, 63 Stat. 111, as amended (22 U.S.C. 2658))

[42 FR 6367, Feb. 2, 1977]

¹Relevant only if items 4 and 6 indicate that a default judgment has occurred.