



Dispute Resolution in the Middle East

SERVICE

Service

General overview

In essence, service is the notification to a party of documents relating to proceedings in accordance with the rules of the jurisdiction. This could mean complying with one of, or a combination of, the rules and procedures of:

- the jurisdiction where the proceedings are brought;
- the jurisdiction in which the person (or entity) that is being served is domiciled; and/or
- the relevant arbitral institution or arbitration law.

In addition to the above, and where a dispute arises out of a contract between the parties, the contractual notice requirements (such as method and addresses for delivery of notices) will also need to be considered.

The requirement for service arises at various stages of proceedings. A party involved in a dispute will encounter the requirement to serve process from the beginning of a claim (such as service on a defendant/respondent of a claim form or a request for arbitration) all the way to the enforcement of a judgment, order or arbitral award (such as service on a judgment debtor of the judgment or order to be enforced).

This volume summarizes how service takes place in the context of civil and commercial disputes. It does not consider service in the context of any other proceedings including, but not limited to, criminal and constitutional proceedings and matters of personal status.

Furthermore, this volume does not deal with service of legal proceedings on government or related entities. It is often the case in Gulf Cooperation Council (GCC) countries that proceedings involving the government or related entities will have their own rules and considerations.

WHY IS SERVICE SO IMPORTANT?

Where service does not take place in accordance with the relevant rules, it is usually described as being defective. There are a range of consequences of defective service: some may be considered minor in that proceedings are delayed because a party has to be re-served, whereas others are more serious and might result, for example, in the annulment of an arbitral award. For example, the New York Convention provides that courts may refuse to recognize and enforce an arbitral award where a party was not given proper notice of the appointment of an arbitrator or arbitration proceedings.

Onshore litigation

The rules and procedures of the onshore courts of the GCC states as to service appear in their respective civil procedure laws (CPL or CPLs), save for Saudi Arabia where they appear in the law of procedure before the Sharia Courts. The common thread of these procedures is demonstrated by the Manama Document on Uniform Civil Procedure of 2002 (the "Manama Document"), which has been approved by the relevant authorities of all of the GCC states. The purpose of the Manama Document is to harmonize rules of civil procedure in the GCC states, including the rules of service.

Service in the onshore courts of the GCC states is a court driven process, in that where a party files a claim or application, the court will make an order (or effectively give directions) as to the service of that claim or application. Furthermore, the service takes place through officers of the court (ie court bailiffs). The court officer will serve the relevant claim or application and report back to the court on the conduct of such service. There has been some development in this regard in the United Arab Emirates (UAE) where, with the permission of the court, the UAE CPL now allows for service to take place through voice or video recorded calls, "smart applications", SMS, e-mail, fax, or any other means of modern technology.

If the defendant cannot be served for whatever reason, service may be effected through notification, which usually involves the court officer seeking to effect notice at the defendant's last known address. If this fails, the court will serve on the defendant by publication. A notice is published in two widely circulated newspapers, one in English and the other in Arabic. Notice is deemed to be served upon the defendant after this publication, and the case may proceed.

Offshore litigation

For offshore courts, the rules for service are enshrined in the relevant court rules. In the region, the Rules of the Dubai International Financial Centre (DIFC) Courts (RDC) and the Abu Dhabi Global Market (ADGM) Courts are currently the most extensive.

Service under the rules of the offshore courts of the GCC (being the courts of the DIFC, ADGM and the Qatar Financial Centre (QFC)) is a party-driven process. The party filing a claim or application will need to effect service in accordance with the relevant court rules and then confirm such service to the court, for example by filing a certificate of service. In that certificate, the serving party will confirm the relevant rule under which it effected service and when such service occurred.

There are also some unique features in relation to the service of process in the offshore courts. For example, the RDC makes special provision for the service in the DIFC of any civil or court process which is ongoing before another court or tribunal. The process involves a competent authority providing a written request to the DIFC Court Registrar, along with the documents for service and a translation in English. The translation requirement can be dispensed with if the court or tribunal seized of the matter certifies that the person to be served does not require a translation. Following this, process will be served by a DIFC Court Officer, unless the DIFC Court Registrar directs otherwise.

That said, the DIFC Court has demonstrated that it is willing to waive certain requirements in relation to service where there cannot be any doubt that the party being served fully understood the documentation served on it and was fully aware of the steps it had to take as result of receiving such documentation. Notwithstanding this, parties should seek to comply with all rules of service and should not rely on any potential waiver.

Arbitration

Generally, where an arbitration is conducted under the auspices of an institution or specific rules, service is conducted in accordance with those procedures and rules. These rules and procedures are generally less stringent and parties will not have to comply with formal requirements. Service in this regard can be effected through a number of practical methods, including:

- the method(s) agreed in the contract between the parties;
- the last known address of a party;
- a place at which the relevant documents may reasonably be expected to come to a party's attention; or
- any other method(s) which the parties have agreed.

Cross-border / cross-jurisdiction service of court proceedings

It is not unusual to have a cross-border or cross-jurisdictional element to a dispute. An example of this is where proceedings are filed in the DIFC Courts and the party to be served is located onshore in Dubai. Both the DIFC Court and the party to be served, as a matter of geography, are located in Dubai. However, the difference lies in the jurisdiction. The proceedings are filed with the DIFC Courts, which are subject to the RDC, and the party to be served is located onshore in Dubai, which is subject to the UAE CPL. As a result, the following questions arise: what rules of service apply? The RDC? The UAE Civil Procedure Law? Both?

Similar questions will arise where proceedings are, for example, filed with the Kuwaiti Courts and the party to be served is located in Bahrain. The question once again is which rules of service apply? Must the party in Bahrain be served in accordance with the Kuwaiti CPL requirements? The Bahraini CPL requirements? Both?

This section identifies the matters that should be taken into consideration where cross-jurisdiction service of court proceedings is taking place. Appendix 1 provides a summary of the considerations explained in this section in the form of a flowchart.

CONSIDERATION 1 - LOCATION: WHERE IS THE PARTY TO BE SERVED?

This is the first question to be asked as it will determine which jurisdictions are potentially involved and whether other rules need to be considered. If the party to be served is located in the same jurisdiction where the proceedings are filed, service takes place in accordance with the rules of the jurisdiction in which the proceedings are filed.

CONSIDERATION 2 - TREATIES: ARE THERE ANY APPLICABLE TREATIES?

It is often useful to consider whether there are any treaties or conventions (whether international, regional or bi-lateral) in place that would override the rules of the relevant jurisdictions which would otherwise apply.

In particular, when considering proceedings that involve more than one jurisdiction in the GCC or the Middle East, there are two treaties that have this effect:

- the GCC Convention for the Execution of Judgments, Delegations and Judicial Notifications of 1997 (the "GCC Convention"), which is a regional convention and applies to GCC states; and
- the Riyadh Arab Agreement for Judicial Cooperation of 1983 (the "Riyadh Convention"), which is an international convention and applies to the wider Middle East and certain African states.

In essence, both conventions apply the same rules for cross-jurisdictional service, namely that the court in the jurisdiction in which the proceedings are filed entrusts service to its counterpart court in the jurisdiction in which service is to take place.

For example, where proceedings are filed in the commercial division of the Omani Courts and the party is to be served in Qatar, the commercial division of the Omani Courts would send the documents and information required for service to the commercial division of the Qatari Courts. The Qatari Courts would effect service and confirm this to the Omani Courts.

Although this is the position at law, in practice there is a risk that the courts that are party to these conventions may apply their own rules (whether as to service or otherwise) and not the rules of the relevant treaty or convention. It would be for the party conducting the service through this method to prove to the relevant court(s) that service should take place through the method identified in a treaty or convention.

CONSIDERATION 3 - ADDITIONAL RULES: (1) DO THE RULES OF THE JURISDICTION WHERE THE PROCEEDINGS ARE FILED PROVIDE RULES FOR SERVICE OUTSIDE THE JURISDICTION? (2) DOES THE JURISDICTION WHERE THE PARTY IS TO BE SERVED HAVE RULES FOR SERVICE FROM OTHER JURISDICTIONS?

Where there are no treaties or conventions in place that govern cross-jurisdiction service, two final questions will need to be addressed:

- What do the rules of the jurisdiction where the proceedings are filed provide regarding service outside the jurisdiction?
- What do the rules of the jurisdiction of the party to be served provide as to service from other jurisdictions?

Appendix

APPENDIX 1: CONSIDERATIONS FLOWCHART FOR SERVICE IN CONNECTION WITH COURT PROCEEDINGS A





