

Service of Claim Documents in Brazil: Overview

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A Practice Note providing an overview of the framework for service of claim documents (in relation to domestic and foreign proceedings) in Brazil. It also explains the rules which determine how service of claim documents may be effected on a defendant domiciled in an overseas jurisdiction.

Service of process is a civil procedure that gives legal notice to the defendant, respondent, or adverse party that an action is pending against them and typically contains the claim documents. It makes the defendant a party to the action, provides notice on responding to the action before the court, and is generally necessary to establish a court's personal jurisdiction over the defendant.

This Practice Note summarizes the procedure and practice of serving process on a defendant within Brazil and a defendant domiciled in an overseas jurisdiction. It outlines the permitted methods of service, including the rules on personal service, and when and where certain categories of defendants can be served. It also describes what happens when service is not complete either because of an incorrect address or the defendant refuses to accept service. In addition, it explains when a court considers service complete, whether service is allowed under a contractually agreed method, how to serve foreign companies, and what constitutes proof of service.

This Practice Note also provides guidance on key international instruments of service of claim documents abroad and the procedure to effect service in Brazil when no international instrument applies.

For information on the key issues to consider while effecting service in cross-border litigation, and an overview of the procedures followed under the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters 1965 (Hague Service Convention) and the EU Service Regulation (1393/2007), see [Practice Note, Service of Process: A Cross-Border Overview](#).

Please note that the procedures used to bring the court proceedings to the defendant's attention and create jurisdiction over the defendant are referred to as service in this Practice Note. In addition, all the legal documents used in service, for example the court notice or summons and documents containing the details of the claim (also known as the particulars of claim or statement of claim, petition, or application), are referred to as claim documents.

How Are Civil Proceedings Commenced?

Identifying the Competent Court to Start Civil Proceedings

Civil cases must be presided over and ruled on by judges within the boundaries of their jurisdiction, safeguarding the parties' right to refer the dispute to arbitral tribunals, in accordance with the law (*Article 42, Civil Procedure Code (Código de Processo Civil) (Law No. 13.105/2015)*). The requirements for determining jurisdiction are:

- Objective, taking into account the people involved and the type and value of the dispute.
- Territorial.
- Functional.

Procedural Formalities and Documents to Be Filed in the Court

A civil proceeding starts when a party claims the court's jurisdiction. This happens at the moment of filing or assigning the complaint (*Article 43, Civil Procedure Code*).

The complaint must be written and must include the following information:

- The claimant and defendant's surname, first name, marital status, profession, individual or corporate taxpayer identification number, email address, address of domicile and residence, and details of any existing civil union.
- The factual and legal grounds of the claim.
- The relief claimed and the claimant's cause of action.
- The value of the claim.
- The evidence with which the claimant intends to prove the truth of the alleged facts.
- The claimant's decision on whether or not to hold a conciliation or mediation hearing (*Article 319, Civil Procedure Code*).

The complaint must be accompanied by a power of attorney, which must include the lawyer's electronic and other addresses (*Article 287, Civil Procedure Code*) and proof of payment of the respective court costs.

Court Fee to Be Paid

Each of Brazil's member states has autonomy to legislate about court fees. For example, in the state of São Paulo, the claimant must pay court fees equal to 1% of the value of the claim. The claimant must submit payment and a payment slip from the court's website prior to filing the claim. The receipt of payment must be attached to the claim.

Filing Claim Documents in Paper Form or Electronically

Procedural acts and instruments are not subject to a specific form unless the law expressly requires it. The rules governing the form of filing documents are stated in the internal rules and regulations of each specific court. For example, the state court of São Paulo only accepts the filing of claims electronically (*Article 188, Civil Procedure Code*).

Court Seised

Jurisdiction is determined on the date of the claim is filed, with changes of state, fact, or law occurring subsequently considered irrelevant, unless the court is extinguished or its exclusive jurisdiction is altered (*Article 43, Civil Procedure Code*).

Laws on Service of Claims

The Civil Procedure Code sets out the general rules regarding the process for serving claims within the Brazilian jurisdiction and abroad (*Articles 237 and 238, Civil Procedure Code*). Brazil is also a signatory of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention), which establishes appropriate means to ensure that judicial and extrajudicial documents from abroad can be served properly.

Service Within the Jurisdiction

What Claim and Other Documents Must Be Served

All the documents that are indispensable for the filing of the claim must be presented at the same time and at the time the claim is filed (*Article 320, Civil Procedure Code*). The essential documents vary according to each case.

Service by Court or Claimant

The Civil Procedure Code does not allow the parties to effect service of claim. As a rule, the court is required to effect service.

Time Limit for Dispatching and Serving Claim Documents

There is no time limit for dispatching and serving claim documents. However, the court must ensure that the length of proceedings is reasonable (*Article 139, II, Civil Procedure Code*).

The court must send the defendant copies of the complaint and of the judge's writ, and expressly communicate the deadline by which the statement of defense must be filed, with the address of the respective court and office of the court clerk (*Article 248, Civil Procedure Code*). An exception to this rule may apply to procedures filed electronically, in which case the court may send the defendant a link to access the procedure on the court's website.

Methods of Service Within Jurisdiction

Claims can be served by:

- Mail.
- The clerk of the court.
- Publication in the official gazette.
- Electronic means.

(*Article 246, Civil Procedure Code*.)

Service Using Post Services and Electronic Means of Communication (Such as Fax or Email)

Service of claim by post is effected through a partnership between the courts and the Brazilian Post Company. Service of claim can be effected by electronic means (*Article 246, Civil Procedure Code*). However, the use of electronic means to serve process remains infrequent and is just beginning.

Personal Service

Personal service is required in the following situations:

- Family actions.
- When the defendant lacks legal capacity.
- When the defendant is a legal entity governed by public law.
- When the defendant resides in a place that does not receive mail delivery.

(Article 247, Civil Procedure Code.)

The claimant can request personal service if it is justified in doing so.

Personal Service on Different Categories of Defendant

Entity to Be Served	Means of Effecting Service
An individual	By the clerk of the court, by mail, by electronic means.
A minor	By the clerk of the court that will serve the process on the minor's legal representative.
A public officer or government/state body	By the clerk of the court that will serve the process before the Attorney General's Office. Service of process on the government, states, Federal District, and municipal districts, and their respective public agencies and foundations must be performed before the Attorney General's Office responsible for their legal representation (<i>Article 269, Civil Procedure Code</i>).
A sole proprietor	By mail, by the clerk of the court, by electronic means.
A domestic partnership	By mail, by the clerk of the court, by electronic means.
A domestic registered company or corporation	By mail, by the clerk of the court, by electronic means.
A domestic unregistered company	By mail, by the clerk of the court, by electronic means.
A domestic limited liability partnership	By mail, by the clerk of the court, by electronic means.

Authorized Process Servers

The use of private process servers is not permitted in Brazil.

Service on the Defendant's Agent or Solicitor

Service of process can be effected on the defendant's legal representative or attorney if the representative has received specific powers to accept service of process on their behalf (*Article 242, Civil Procedure Code*). There is no need for the court's permission.

Service Under a Contractually Agreed Method

There is no specific provision in the Civil Procedure Code on whether parties may contractually agree on a method or place of service. However, the Civil Procedure Code generally provides that, when the action deals with rights that permit the resolution

of the dispute by the parties themselves, the parties concerned can lawfully stipulate changes in the procedure to adapt it to the specific requirements of the action and to agree on their burden, powers, procedural rights and obligations, before or during the proceedings (*Article 190, Civil Procedure Code*). Therefore, clauses by which the parties appoint an agent to receive service on their behalf will be considered valid by the Brazilian courts. However, since service is a prerogative of the courts, parties cannot be allowed to contract for it to be performed by a private agent.

Standard Clause, Service of legal proceedings: Cross-border is valid. However, note that the Brazilian courts tend to declare such clauses ineffective if a party's capacity to negotiate was reduced (for example, in the case of consumer relations and adhesion contracts).

Service on Foreign Companies Within the Jurisdiction

The service of process on an overseas company will be effective if it is addressed to that company's representative in court (its manager, or the administrator of its subsidiary, agency, or branch office open or established in Brazil). A manager of a branch or agency is deemed to be authorized by the foreign legal entity to receive service of process for any action (*Article 75, Civil Procedure Code*).

There is no other effective way to serve a foreign company within the Brazilian jurisdiction. Therefore, the only alternative would be to issue a rogatory letter to the country where the company is headquartered.

Address for Service

Rules on Address

The service of claim can be carried out wherever the defendant, the judgment debtor, or the interested party may be (*Article 243, Civil Procedure Code*). The claimant should indicate the defendant's last known address in its complaint. However, service will only be effective if this address is the defendant's domicile.

The service of claim must be signed by the defendant to be valid. In the case of residential condominiums and housing estates with access control, the delivery of the service of claim can be signed by the person responsible for the receipt of mail. Those persons can refuse receipt if they declare in writing, under penalty of the law, that the addressee is absent (*Article 248, Civil Procedure Code*).

Difficulties in Service

The defendant will be deemed to be at an unknown or uncertain location if attempts to locate them have been unsuccessful following judicial requests for information regarding their address in public authorities or public utility companies' records. In this case, service of process can be effected by publication (*Article 256, Civil Procedure Code*).

If service by post is impossible, service of claim must be effected by a court's clerk (*Article 249, Civil Procedure Code*).

If a court's clerk has been to the defendant's place of domicile or residence twice and not found them there, the court's clerk must, if there is suspicion of concealment, notify any member of the family, or in their absence, any neighbour that they will return on the next working day to carry out the service of process, at the designated time (*Article 252, Civil Procedure Code*).

If the identity or location of the defendant is unknown or uncertain, service of claim may be effected by publication (*Article 256, Civil Procedure Code*).

Date of Service

Deemed Service

The interested party is deemed to have been served when they sign the letter of notice/service of process. If they refuse to do so and this is certified in writing by the mail carrier or court's clerk (as applicable), then the court will rule over the presumed service of claim. This procedure is the same for both electronic and physical cases. Certification by the mail carrier or court's clerk is the only valid method of certification. Electronic notifications, for example email, are not recognized.

Date of Service and Limitation Period for Starting Court Proceedings

The effective service of process is relevant for the limitation period, but the specific date of service is not. In Brazil, the limitation period for starting court proceedings will start from the date of the filing of the action once the service of process is deemed effective (*Article 240, Civil Procedure Code*).

Date of Service and Defendant's Response or Defense

The time for the defendant to file its statement of defense commences on the date of filing of the return receipt of notice into the case records (*Article 231, Civil Procedure Code*). In general, the legal deadline for filing a statement of defense is 15 business days.

Statutory Time Limit

Time Limit to Serve Defendant Within Jurisdiction and Abroad

No time limit is applicable to service of claims within the Brazilian jurisdiction. When the claimant is unable to serve the claim documents, the service of process can be effected by publication (see *Difficulties in Service*).

Extension of Time Limit

See *Time Limit to Serve Defendant Within Jurisdiction and Abroad*.

Grounds for Extension

Before the defendant is summoned, there are no grounds for extension. If the identity or location of the defendant is unknown or uncertain, service of claim can be effected by publication (*Article 256, Civil Procedure Code*) (see *Difficulties in Service*). After the defendant has been summoned, they must present their statement of defense within 15 business days, under penalty of being considered in default and the claimant's allegations of fact being presumed true. It is not possible to extend the time limit for the defendant to present their defense.

Proof of Service

Service by the claimant or by private process servers is not permitted in Brazil.

Service of Domestic Proceedings Abroad

Service Without the Permission of the Court

Service of process outside of Brazil is not valid without the court's permission. It can be achieved by issuing a letter rogatory, which is a formal request to a foreign court for international legal co-operation for judicial assistance in the service of process. It is governed by the Civil Procedure Code (*Article 40, Civil Procedure Code*).

Along with the letter rogatory, the parties must file:

- A complaint demonstrating that the requirements of the applicable procedural law have been met.
- The certificate or authentic copy of the full text of the foreign judgment, if applicable.
- Other essential documents. The essential documents vary from case to case. For example, if the rogatory letter is to summon the defendant, it must be attached with a copy of the claim and a decision duly translated into the official language of the requested state.

Where a country refuses to execute letters rogatory, or this process is deemed to be inaccessible, service of process can be effected by publication.

Where No International Instrument Applies

Where no international instrument applies, service of process is effected by publication in the official gazette. The requirements for service by publication are as follows:

- The claimant's affirmation or the court clerk's affidavit declaring the fulfilment of the circumstances that authorize it.
- The publication of the summons on the website of the respective court.
- The determination of a deadline by the court for a response from the defendant. The deadline will vary from 20 to 60 days, running from the date of the sole publication or, if there is more than one, from the first publication.
- A warning that a curator will be appointed in case of default.

(*Article 257, Civil Procedure Code*.)

Service of Foreign Proceedings

International Instruments on Service of Claims

Brazil is a party to the Inter-American Service Convention and Additional Protocol (IACAP) and the Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention).

Brazil has been a member of the International Court of Justice since 2009.

Where No International Instrument Applies

Where no international instrument applies, the service of process is effected by publication. The requirements for service by publication are as follows:

- The claimant's affirmation or the court clerk's affidavit declaring the fulfilment of the circumstances that authorize it.
- The publication of the summons on the website of the relevant court.
- The determination by the court of a deadline for the defendant to respond. The deadline will vary from 20 to 60 days, running from the date of the sole publication or, if there is more than one, from the first publication.
- A warning that a curator will be appointed in case of default.

(Article 257, Civil Procedure Code.)

Time Frame to Serve Foreign Proceedings

The time frame mainly depends on whether the foreign court's request to serve process is challenged before the Superior Court of Justice by an interested party or by the Public Prosecutor's Office. If it is, the proceeding may take from one to three years. If no challenges are filed, the Superior Court of Justice may grant the *exequatur* (enforcement) within three months to one year.

The time frame will be the same for requests under the IACAP, since Brazil has not established another central authority for matters of service of process.

The Hague Service Convention

Central Authority

For contact details of the designated Central Authority and the additional authorities, see *Authorities, Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.

Reservations, Declarations, and Notifications

See *Status table, Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* for a complete list of reservations, declarations and notifications made by the member states in relation to:

- Submission of request to serve process (Article 3).
- Service by diplomatic or consular agents (Article 8).
- Service by postal channels (Article 10).
- Direct service by judicial officers, officials or other competent persons (Article 10).
- Certificate of evidence as proof of service (Article 15).

National Rules

Articles 26 to 34 of the Civil Procedure Code set out the rules for service of claims in accordance with the Hague Service Convention:

- Articles 26 and 27 provide general provisions on international co-operation and that the service will be conducted in accordance with the treaty to which Brazil is a party.
- Articles 28 to 34, provide the rules for direct assistance, that is, when the remedy does not arise directly from the decision of the foreign court submitted to the Brazilian court for analysis.

In addition, Article 36 provides the rules and process for rogatory letters. Articles 37 to 40 relate to general and final provisions, for example, a request for international co-operation and its requirements.

Email Service

To be valid in the Brazilian jurisdiction, service of process must be effected by the court. If the court effects it by email to a defendant in a member state, the email service is considered part of the Brazilian jurisdiction.

Sufficient Time for a Default Judgment

There is no time limit for filing an application for an ex-parte judgment in the Brazilian jurisdiction. However, if the interested party and the court make the necessary attempts to locate the defendant without success, and the defendant is deemed to be at an unknown or uncertain location, then an ex-parte judgment can be obtained.

Reasonable Time to Vacate a Default Judgment

There is no time limit for a defendant to file an application for relief from the effects of the expiration of time to appeal a judgment, where the defendant, without fault, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and the defendant has disclosed a prima facie defense on the merits.

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