

Convention between the United Kingdom and Germany respecting Legal Proceedings in Civil and Commercial Matters.

Department of Justice,
Wellington, 13th November, 1929.

IT is hereby notified for general information that the Convention between the United Kingdom and Germany regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 20th March, 1928, and in respect of which ratifications were exchanged at Berlin on 15th February, 1929, has been extended to the Dominion of New Zealand and to the mandated territory of Western Samoa, pursuant to the provisions of Article 17 of the said Convention, as from the 1st day of January, 1930.

The Registrar of the Supreme Court of New Zealand, at Wellington, and the Registrar of the High Court of Samoa will act as the authorities to whom judicial and extra-judicial documents and "Letters of Request" should be addressed in New Zealand and Western Samoa respectively, and it is requested that communications and translations may be made in the English language.

The text of the said Convention is set out hereunder.

THOMAS M. WILFORD, Minister of Justice.

CONVENTION.

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, and the President of the German Reich, being desirous to facilitate the conduct of legal proceedings between persons resident in their respective territories, have resolved to conclude a Convention for this purpose and have appointed as their Plenipotentiaries—

His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India:—

For Great Britain and Northern Ireland, all British Colonies and Protectorates and territories under His suzerainty and all mandated areas administered by His Government in Great Britain—

The Right Honourable Sir Austen Chamberlain, K.G., M.P., His Majesty's Principal Secretary of State for Foreign Affairs;

The President of the German Reich—

His Excellency Dr. Friedrich Sthamer, Ambassador Extraordinary and Plenipotentiary of the German Reich in London;

who, having communicated their full powers, found in good and due form, have agreed as follows:—

I.—PRELIMINARY.

Article 1.

This Convention applies only to civil and commercial matters including non-contentious matters.

II.—SERVICE OF JUDICIAL AND EXTRA-JUDICIAL DOCUMENTS.

Article 2.

When judicial or extra-judicial documents drawn up in the territory (to which this Convention applies) of one of the Contracting Parties are to be served on persons, partnerships, corporations, or companies in the territory (to which this Convention applies) of the other, such documents may, without prejudice to the provisions of Articles 6 and 7 hereof, be served on the recipient in either of the ways provided in Articles 3 and 5.

Article 3.

(a) The request for service shall be transmitted:

In England by a German diplomatic or consular officer to the Senior Master of the Supreme Court of Judicature in England.

In Germany by a British consular officer to the President of the German "Landgericht."

(b) The request, containing the name of the authority from whom the document transmitted emanates, the names and descriptions of the parties, the address of the recipient and the nature of the document in question shall be drawn up in the language of the country in which the documents are to be served. If in a particular case the judicial authority applied to shall express a desire to that effect to the diplomatic or consular officer by whom the request is transmitted, such officer shall furnish a translation of the document to be served.

(c) Service shall be effected by the competent authority of the country applied to. Such authority, except in the cases provided for in paragraph (d) of this article, may limit his action to effecting service by the transmission of the document to the recipient if he is willing to accept it.

(d) If the document to be served is drawn up in the language of the country applied to, or is accompanied by a translation in that language, the authority applied to (should a wish to that effect be expressed in the request) shall serve the document in the manner prescribed by the law of his own country

for the service of similar documents or in a special form which is not incompatible with such law.

(e) The translation provided for in this article shall be certified as correct by a diplomatic or consular officer of the Contracting Party making the request or by an official or sworn translator of one of the two countries concerned.

(f) The execution of the request for service can only be refused if the Contracting Party in whose territory it is to be effected considers it such as to compromise his sovereignty or safety.

(g) The authority who receives the request shall send to the diplomatic or consular officer by whom it was transmitted the document proving the service or explaining the reason which has prevented such service. Proof of service shall be furnished by a certificate from the authority of the country applied to setting forth the fact, the manner and date of such service. If any document to be served is transmitted in duplicate, the certificate of service shall be placed on one of the duplicates or attached thereto.

Article 4.

No fees of any description shall be payable by one Contracting Party to the other in respect of the service.

Nevertheless, in the cases provided for in Article 3, the Contracting Party making the request must pay to the other Contracting Party any charges and expenses which are payable under the local law to the persons employed to effect service and any charges and expenses incurred in effecting service in a special manner. These charges and expenses shall be such as are usually allowed in such cases in the Courts of the Contracting Party applied to. Repayment of these charges and expenses shall be claimed by the judicial authority by whom the service has been effected when sending the certificate provided for in Article 3 (g) to the diplomatic or consular officer by whom the request was transmitted.

Article 5.

The document to be served may also be served on the recipient, unless he is a subject or citizen of the Contracting Party in whose territory the document is to be served, without the intervention of the authorities of the country in which service is to be effected:—

(a) By a diplomatic or consular officer of the Contracting Party from whose territory the document emanates; or

(b) By an agent appointed, either generally or in any particular case, by a tribunal of the country from which the document emanates, or by the party on whose application the document was issued, provided that the validity of any service effected by any such agent shall, in the Courts of the country where such service is effected, be determined by the law of that country.

Article 6.

Documents may also be transmitted by post in cases where this method of transmission is permitted by the law of the country from which the document emanates.

Article 7.

The provisions of Articles 2, 3, 4, 5, and 6 do not prevent the persons concerned from effecting service directly through the competent officials or officers of the country in which the document is to be served.

III.—TAKING OF EVIDENCE.

Article 8.

When a Court in any territory (to which the Convention applies) of one of the Contracting Parties orders that evidence should be taken in any territory (to which this Convention applies) of the other Contracting Party, this may be done in any one of the ways prescribed in Articles 9, 11, and 12.

Article 9.

(a) The Court may, in accordance with the provisions of its own law, address itself by means of "Letters of Request" to the competent authority of the other Contracting Party, requesting it to take the evidence within its jurisdiction.

(b) The "Letters of Request" shall be drawn up in the language of the authority to whom they are addressed, or be accompanied by a translation in such language, certified as correct by a diplomatic or consular officer of the Contracting Party making the request, or by an official or sworn translator of one of the two countries concerned.

(c) The "Letters of Request" shall be transmitted—

In England by a German diplomatic or consular officer to the Senior Master of the Supreme Court of Judicature in England;