

*Extension to New Zealand of Convention between the United Kingdom and Austria respecting Legal Proceedings in Civil and Commercial Matters.*

Department of Justice,  
Wellington, 5th January, 1934.

IT is hereby notified for general information that the Convention between the United Kingdom and Austria regarding Legal Proceedings in Civil and Commercial Matters, signed at London on the 31st day of March, 1931, and in respect of which ratifications were exchanged at Vienna on the 12th day of January, 1932, has been extended to the Dominion of New Zealand pursuant to the provisions of Article 15 of the said Convention, as from the 25th day of July, 1932.

The authority to which requests for service or for the taking of evidence are to be transmitted is the Supreme Court of New Zealand, and communications should be addressed to the Registrar of the Supreme Court at Wellington in the English language.

The text of the said Convention is set out hereunder.

JOHN G. COBBE, Minister of Justice.

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

The Federal President of the Republic of Austria:

Being desirous to render mutual assistance in the conduct of legal proceedings, in their respective territories, in civil and commercial matters which are being dealt with or which it is anticipated may be dealt with by their respective judicial authorities, 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:

The Right Honourable Arthur Henderson, M.P., His Majesty's Principal Secretary of State for Foreign Affairs; and

The Federal President of the Republic of Austria:

Herrn Georg Franckenstein, His Envoy Extraordinary and Minister Plenipotentiary in London;

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

I.—PRELIMINARY.

Article 1.

(a) This Convention applies only to civil and commercial matters, including non-contentious matters.

(b) In this Convention the words—

(1) "Territory of one (or of the other) High Contracting Party" shall be interpreted as meaning at any time any of the territories of such High Contracting Party to which the Convention at that time applies;

(2) "Subject of one (or of the other) High Contracting Party" shall in relation to His Majesty the King of Great Britain, Ireland, and the British Dominions beyond the Seas, Emperor of India, mean all subjects of His Majesty wherever domiciled.

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

Article 2.

When judicial or extra-judicial documents drawn up in the territory of one of the High Contracting Parties are required by a judicial authority situated therein to be served on persons, partnerships, companies, societies, or other corporations in the territory of the other High Contracting Party, such documents may be served on the recipient whatever his nationality, in any of the ways provided in Articles 3 and 4.

Article 3.

(a) A request for service shall be addressed by a Diplomatic or Consular Officer of the High Contracting Party from whose territory the documents to be served emanate, to the competent authority of the country where the documents are to be served, requesting such authority to cause the documents to be served. The request shall be sent by such Diplomatic or Consular Officer to such authority.

(b) The request for service shall be drawn up in the language of the country where service is to be effected.

The request for service shall state the names and descriptions of the parties, the name, description, and address of the recipient, and the nature of the document to be served, and shall enclose the documents to be served in duplicate.

(c) The document to be served shall either be drawn up in the language of the country in which it is to be served, or be accompanied by a translation in such language. Such translation shall be certified as correct by a Diplomatic or Consular Officer of the High Contracting Party from whose territory the document emanates.

(d) Requests for service shall be addressed and sent—

In England, to the Senior Master of the Supreme Court of Judicature.

In Austria, to the Federal Ministry of Justice.

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If the authority to whom a request for service has been sent is not competent to execute it, such authority shall of his own motion transmit the document to the competent authority of his own country.

(e) Service shall be effected by the competent authority of the country where the document is to be served, who shall serve the document in the manner prescribed by the municipal law of such country for the service of similar documents, except that, if a wish for some special manner of service is expressed in the request for service, such manner of service shall be followed in so far as it is not incompatible with the law of that country.

(f) The execution of the request for service duly made in accordance with the preceding provisions of this Article shall not be refused unless (1) the authenticity of the request for service is not established, or (2) the High Contracting Party in whose territory it is to be effected considers that his sovereignty or safety would be compromised thereby.

(g) The authority by whom the request for service is executed shall furnish a certificate proving the service or explaining the reason which has prevented such service, and setting forth the fact, the manner, and the date of such service or attempted service, and shall send the said certificate to the Diplomatic or Consular Officer by whom the request for service was made. The certificate of service or of attempted service shall be placed on one of the duplicates or attached thereto.

Article 4.

(a) Any of the following methods of service may be used in the territory of either High Contracting Party, without any request to or intervention of the authorities of the country where service is to be effected in connection with judicial or extra-judicial documents drawn up in the territory of the other High Contracting Party:—

(1) Service by a Diplomatic or Consular Officer of the High Contracting Party from whose territory the document emanates;

(2) Service by an agent appointed for the purpose either by the judicial authority by whom service of the document is required, or by the party on whose application the document was issued;

(3) Service through the postal channel;

(4) Any other mode of service recognized by the law existing at the time of service in the country from which the documents emanate.

(b) It is understood—

(1) That in none of the methods of service provided for in this article shall any measures of compulsion be employed;

(2) That the validity and effect of any such service will remain a matter for the determination of the respective Courts of the High Contracting Parties in accordance with their law.

(c) The High Contracting Parties agree that in principle it is desirable that documents served by any of these methods should, unless the recipient is a subject of the High Contracting Party from whose territory the document to be served emanates, either be drawn up in the language of the country in which service is to be effected or accompanied by a translation into such language. Nevertheless, in the absence of any legislation in their respective territories making translations obligatory in such cases, the High Contracting Parties do not accept any obligation in this respect.

Article 5.

(a) In any case where documents have been served in accordance with the provisions of Article 3, the High Contracting Party, by whose Diplomatic or Consular Officer the request for service is addressed, shall pay to the other High Contracting Party any charges and expenses which are payable under the law of the country where the service is effected 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 not exceed such as are usually allowed in the Courts of that country.

(b) Repayment of these charges and expenses shall be claimed by the competent authority by whom the service has been effected from the Diplomatic or Consular Officer by whom the request was addressed when sending to him the certificate provided for in Article 3 (g).

(c) Except as provided above, no fees of any description shall be payable by one High Contracting Party to the other in respect of the service of any documents.

III.—TAKING OF EVIDENCE.

Article 6.

When a judicial authority in the territory of one of the High Contracting Parties requires that evidence should be taken in the territory of the other High Contracting Party, such evidence may be taken, whatever the nationality of the parties, in any one of the ways prescribed in Articles 7 and 8.