

GC Agenda: July/August 2018

PRACTICAL LAW THE JOURNAL

LITIGATION & ADR: ALTERNATIVE SERVICE ARRANGEMENTS WITH FOREIGN PARTIES

A recent decision by the California Court of Appeal casts doubt on private parties' ability to contract for alternative service arrangements with foreign parties.

US courts have routinely held that private parties can contract out of, or for, alternative service arrangements. In *Rockefeller Technology Investments (Asia) VII v. Changzhou Sinotype Technology Co., Ltd.*, however, the court ruled that the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention) does not permit parties to set their own terms of service by contract. Rather, service on a foreign party must be carried out according to the terms of the Hague Service Convention, as ratified by that party's country.

The plaintiff in *Rockefeller* obtained a sizable US arbitration award by default and successfully moved to confirm the arbitration award. The plaintiff served the summons and petition on the defendant by mail, as permitted by the parties' contract. The defendant challenged the service on the grounds that its country, the People's Republic

of China (PRC), objected to service by mail on its ratification of the Hague Service Convention. The trial court denied the defendant's motion to set aside the judgment, agreeing with the plaintiff that the parties' agreement permitted service by mail.

The Court of Appeal reversed, holding that the judgment against the defendant was void because the US court never obtained personal jurisdiction over the defendant. The court drew a bright-line rule that the Hague Service Convention neither permits service by mail on PRC citizens nor allows parties to set their own terms of service.

Counsel should consider including an express waiver of Hague Service Convention service in foreign contracts, as most courts are likely to take a practical approach and follow the majority rule that permits waiver. Additionally, while many factors influence the parties' choice of an arbitral seat, this case highlights the benefit of investigating local courts' views of Hague Service Convention service requirements.

GC Agenda is based on interviews with Advisory Board members and leading experts in their fields. Practical Law would like to thank Jonathan K. Chang from Davis Polk & Wardwell for participating in this month's issue.

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.

Search the [Resource ID numbers in blue](#) on Westlaw for more.



the answer company™
THOMSON REUTERS®