

A bank sued a foreign investor for fraud in a federal court in State A. The bank was unable to ascertain the investor's primary address for 120 days after filing its complaint, but immediately thereafter mailed the investor a copy of the summons and complaint through certified mail to that address. The investor, upon receipt of the summons and complaint, retained counsel in State A.

State A permits service of process on an individual outside its borders by mailing the summons and complaint to the individual's primary residence. The foreign country where the investor resides is not a signatory to any international agreement that provides service-of-process rules, and there is no applicable federal statute. The foreign country does not permit service by mail.

The investor has moved to dismiss the suit for improper service of process.

What is the investor's best argument in support of the motion to dismiss?

- A. The bank did not request that the federal court send a letter rogatory.
- B. The bank served the summons and complaint more than 45 days after filing its complaint with the court.
- C. The foreign country does not permit service by mail.
- D. The investor can only be served by an internationally agreed method of service.

Explanation:

Methods of serving process in foreign country

Individual or organization

- Following international agreement reasonably calculated to give notice
- If no international agreement & not prohibited by federal law:
 - following foreign country's rules
 - as foreign country directs in response to letter rogatory *or*
 - unless prohibited by foreign country, by personal delivery* or mail with request for signed return receipt
- Following court order, unless prohibited by international agreement

Foreign government

- Following special arrangement between plaintiff & foreign state
- If no special arrangement, by international convention
- If no convention, by mail to head of foreign affairs ministry with request for signed return receipt
- If service by mail cannot be made within 30 days, by sending two copies to U.S. Secretary of State via mail requiring signed receipt

*Organizations cannot be served by personal delivery in foreign countries.

A plaintiff must give a defendant notice of a lawsuit through **service of process**—ie, delivery of the [summons and complaint](#). Under Federal Rule of Civil Procedure 4(f), a **defendant** who is an individual can be served in a **foreign country** by any **internationally agreed method** of service that is reasonably calculated to give notice (**Choice D**). However, if there is no such method and no applicable federal law (as seen here), then the defendant can be served:

- by following the **foreign country's rules** for service of process
- as the **foreign country directs** in response to a letter rogatory—ie, a letter from a domestic court asking a foreign court for assistance *or*
- by delivering the summons and complaint to the defendant **personally or by mail** with a request for a signed return receipt (eg, certified mail)—**unless prohibited** by the **foreign country**.*

Here, the bank served the investor with a copy of the summons and complaint by certified mail. However, this method of service is *prohibited* by the foreign country. Therefore, this is the investor's best argument in support of the motion to dismiss.

*An individual in a foreign country can also be served by any other court-ordered method that does not violate an international agreement.

(Choice A) While asking the foreign country for assistance through a letter rogatory is one method to properly serve a foreign defendant, it is not the only method.

(Choice B) Absent good cause, a defendant located in the U.S. must be served with process within 90 days (not 45 days) after the complaint is filed. However, this 90-day deadline does not apply to a defendant located in a foreign country. Instead, most federal courts require that the plaintiff exercise due diligence in attempting to serve such a defendant.

Educational objective:

When no internationally agreed method of service or applicable federal law exists, an individual defendant in a foreign country can be served (1) by following the foreign country's service-of-process rules, (2) as the foreign country directs in response to a letter rogatory, or (3) by delivering process to the defendant personally or by mail—if permitted by the foreign country.

References

- Fed. R. Civ. P. 4(f) (service on individual in foreign country).