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## E-Service in Brazil Deemed Insufficient

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Proper service is essential to getting a lawsuit in motion; when there are international parties, adherence to formalities is critical, as *Fingermotion, Inc. v. Capybara Research* shows.<sup>i</sup> In that case, Fingermotion alleged that Capybara committed securities fraud, tortious interference, and defamation by publishing a report advising investors to sell their Fingermotion shares. It alleged that Capybara made false statements regarding the company's income reports and other key financials, resulting in a 34% drop in share price.

Fingermotion wished to serve Capybara, a domiciliary of Brazil, by email, citing Federal Rule of Civil Procedure 4(f) as authority for service in a foreign country.<sup>ii</sup> This rule gives effect to the Hague Convention on service abroad.<sup>iii</sup> Compliance with the convention is mandatory when a party resides in a country that is a signatory.<sup>iv</sup> The only potential exception allowing a plaintiff to skirt the convention's restrictions would have been if the defendant's address is unknown, which was not the case here. As such, Fingermotion's request to serve by email was denied. The court held that Fingermotion must first obtain the defendant's waiver of service before requesting alternate forms of service.

Standards and regulations of service in foreign countries vary widely, as Articles 8 and 10 of the convention permit signatory countries to regulate the means of serving process. Brazil is one of the most restrictive countries, requiring service to be made through its "central authority" – *i.e.*, its judiciary<sup>v</sup> – pursuant to Article 5.<sup>vi</sup> Service by mail and email are not acceptable. The documents to be served must be translated into Portuguese by a certified translator, and served through the judicial system. If a certified translation is not provided, the central authority will deny the request, and the process would have to be begun anew.

Once a request is received by the central authority, it is processed for compliance, then forwarded to the Superior Court of Justice (Superior Tribunal de Justiça) for formal approval. The court then sends the request to a judge for effectuation of service. Whether the request is successful or not, the court informs the central authority, which in turn informs the applicant of the results. This process may take nine to eighteen months.<sup>vii</sup>

Given Brazil's strict rules and the length of time it takes to effectuate Hague service in Brazil, diligent adherence to the rules is required, lest a meritorious lawsuit might be delayed for years before the defendant is even haled before the U.S. court.

## Notes

i *Fingermotion, Inc. v. Copybara Research*, 2024 WL 81818 (SDNY Jan. 8, 2024).

ii *Id.* at \*1.

iii Hague Conference on Private Int'l Law, 14. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,

<https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (last visited January 8, 2024); see also Florida Bar Journal, Serving Process in Brazil, <https://www.floridabar.org/the-florida-bar-journal/serving-process-in-brazil-nascent-use-of-the-hague-convention-on-the-service-abroad-of-documents-in-civil-or-commercial-matters/#u6e20> (Jan. 22, 2024).

iv *Id.* at \*2.

v In some countries, the central authority is within the executive branch, in others the central authority is within the judicial branch.

vi Brazil – Central Authority and Practical Information: *Central Authority – Ministry of Justice and Public Security*. <https://www.hcch.net/en/states/authorities/details3/?aid=1113> (Jan. 22, 2024).

vii Hague Conference on Private Int'l Law, Brazil – Central Authority & practical information, *supra*.