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## 在华诉讼中如何收到法院文书？——涉外送达方式详解

### How Are Court Documents Served in China? A Detailed Guide to Cross-border Service of Documents

在涉外民商事诉讼中，司法文书的送达是保障当事人知情权、答辩权和参与权的重要机制。对于在中国领域内没有住所的当事人，中国法院在审理涉外案件时，将根据案件具体情况，依法采用可行的送达方式，以确保程序的公正和有效。本文将围绕中国法院在涉外诉讼中采用的送达路径进行系统梳理，并结合境外当事人常见的实际问题予以回应，旨在为境外企业和个人参与在华诉讼提供参考。

In foreign-related civil and commercial litigation in China, the service of judicial documents is essential to protecting the parties' rights to notice, defense, and participation. For parties residing outside China, the courts will, depending on the circumstances of the case, adopt legally appropriate methods of service to ensure fairness and procedural integrity. This article provides an overview of the service methods commonly used by Chinese courts in cross-border proceedings and addresses practical questions frequently raised by foreign parties, with the aim of assisting overseas businesses and individuals involved in litigation in China.

#### I. 你是否曾遇到过或顾虑过以下情形？

##### Common Situations You May Have Faced or Been Concerned About

- (1) 我人在国外，根本没收到中国法院文件，但法院却说已经“公告送达”，这是合法的吗？我还能补救吗？

I am living abroad and never received any court papers from a Chinese court, but the court claims to have effected “service by public notice”. Is this legal? Are there any remedies available to me?

- (2) 我的公司在中国设有代表处，中国法院是否可以直接把诉讼材料送给代表处的员工？

My company has a representative office in China. Can the Chinese court directly serve litigation documents to employees at the representative office?

- (3) 我收到一封来自中国法院的电子邮件或快递文件，这种方式合法吗？我必须回应吗？

I received an email or a courier package from a Chinese court. Is such service valid? Do

I have to respond?

- (4) 我曾经在中国短暂居住，但现在已经离开中国，法院会向我曾经在中国的居住地址送达吗？

I once lived in China for a short period of time, but have since left. Can the court serve documents to my former address in China?

- (5) 我一直居住在国外，但是与中国的企业有业务合作，近期可能会在中国产生诉讼纠纷，我应该如何提前操作，以确保法院文件能准确传达给我？

I have always resided overseas but do business with Chinese companies. Litigation may arise in China soon—what proactive steps can I take to ensure court documents are served to me accurately?

## II. 中国法院涉外送达的九种方式

### Nine Methods of Cross-Border Service by Chinese Courts

#### A. 依照国际条约规定的方式送达

##### Service in Accordance with International Treaties

若受送达人所在国与中国缔结或者共同参加国际条约的，应依其规定方式送达。例如：

If the recipient's country has entered into or jointly acceded to an international treaty with China, service shall be effected in accordance with the provisions of such treaty. For example:

- 若双方签订有司法协助协定，可按协定规定送达；  
If China and the recipient's country have entered into a judicial assistance agreement, service may be effected in accordance with that agreement;
- 若该国是《关于向国外送达民事或商事司法文书和司法外文书公约》（以下简称《海牙送达公约》）的成员国，可依照该公约规定送达。

If the country is a contracting state to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention"), service may be effected under the Convention.

依照国际条约送达的，应依《最高人民法院关于依据国际公约和双边司法协助条约办理民商事案件司法文书送达和调查取证司法协助请求的规定》办理。

Service of judicial documents effected pursuant to international treaties must comply with the Provisions of the Supreme People's Court on Requests for Judicial Assistance in the Service and Taking of Evidence in Civil and Commercial Matters under International Conventions and Bilateral Judicial Assistance Treaties.

#### B. 通过外交途径送达

##### Service Through Diplomatic Channels

当受送达人所属国家与我国不存在适用的国际条约时，需通过外交途径送达。

If no applicable international treaty exists between China and the recipient's country,

service shall be effected through diplomatic channels.

按照司法协助协定、《海牙送达公约》或者外交途径送达司法文书，自我国有关机关将司法文书转递受送达人所在国有关机关之日起满六个月，如果未能收到送达与否的证明文件，且根据各种情况不足以认定已经送达的，视为不能用该种方式送达。

Where service is attempted pursuant to a judicial assistance agreement, the Hague Service Convention, or diplomatic channels, and no certificate confirming service or non-service is received within six months from the date on which the relevant documents were transmitted by the competent Chinese authority to the authority of the recipient's country — and the circumstances are insufficient to deem service completed — such method shall be deemed ineffective.

### C. 通过驻外使领馆代为送达

#### **Service via Chinese Diplomatic Missions Abroad**

对具有中国国籍的受送达人，可以委托中国驻受送达人所在国的使领馆代为送达。

For recipients who are Chinese nationals, the Chinese court may entrust Chinese embassies or consulates in the recipient's country to serve the documents.

### D. 向委托的诉讼代理人送达

#### **Service on Appointed Litigation Agents**

若受送达人在本案中已委托诉讼代理人，且未在授权委托书中明确排除送达权限的，法院可直接向其代理人送达。

Where the recipient has appointed a litigation representative in the case and has not explicitly excluded the representative's authority to receive service in the power of attorney, the court may serve documents directly on the agent.

因此，如果已经聘请中国律师作为诉讼代理人，中国法院将视代理人为合法送达对象，本人无需再被直接送达。

Accordingly, if the recipient has engaged a Chinese lawyer as litigation counsel, the court will consider the lawyer as an authorized recipient for service, and the party itself need not be served personally.

### E. 向境内关联主体送达

#### **Service on Related Entities within China**

- 向受送达人在中国境内设立的独资企业、代表机构、分支机构或者有权接受送达的业务代办人送达；

Service may be effected on the wholly foreign-owned enterprise, representative office, branch, or business agent authorized to accept service, that has been established by the recipient within China;

- 受送达人为外国人、无国籍人，其在中国设立的法人或者其他组织担任法定代表人或

者主要负责人，且与该法人或者其他组织为共同被告的，向该法人或者其他组织送达；  
Where the recipient is a foreign national or a stateless person, and serves as the legal representative or principal officer of a legal person or other organization established in China, and such legal person or other organization is a co-defendant in the case, service shall be effected on that legal person or organization;

- 受送达人为外国法人或者其他组织，其法定代表人或者主要负责人在中华人民共和国领域内的，向其法定代表人或者主要负责人送达。

Where the recipient is a foreign legal person or other organization, and its legal representative or principal officer is located within the territory of the PRC, service shall be effected on such legal representative or principal officer.

因此，在前述问题 2 中，法院可以将代表处认定其为境内关联主体，依法将文件送达。

Therefore, in Scenario 2 above, the court may deem the representative office to constitute a related entity within China, and effect service accordingly.

## F. 邮寄送达 Service by Mail

受送达人所在国的法律允许邮寄送达的，可以邮寄送达：

Where the laws of the recipient's country permit service by mail, such method may be adopted:

- 自邮寄之日起满三个月，送达回证没有退回，但根据各种情况足以认定已经送达的，期间届满之日视为送达；

If three months have passed since the date of mailing and the return receipt has not been returned, but the circumstances are sufficient to determine that service has been effected, the date of expiry of the three-month period shall be deemed the date of service;

- 邮寄送达时应附有送达回证。受送达人未在送达回证上签收但在邮件回执上签收的，视为送达，签收日期为送达日期；

A return receipt shall be attached when serving by mail. If the recipient does not sign the return receipt but does sign the postal delivery receipt, the service shall be deemed effected, and the date of that signature shall be the date of service;

- 邮寄送达司法文书后，如邮件被退回，且注明原因为“该地址查无此人”“该地址无人居住”等情形的，或者自邮寄之日起满三个月，如果未能收到送达与否的证明文件，且根据各种情况不足以认定已经送达的，视为不能用邮寄方式送达；

If the judicial documents are returned after being mailed, with reasons such as “no such person at this address” or “no one residing at this address” indicated, or if three months have passed since the date of mailing and no confirmation of service has been received, and the circumstances are insufficient to deem service completed, it shall be considered that service by mail has failed;

因此，如果国外当事人曾经在中国短暂居住，后离开中国，需要及时注销相关的居留信息和证件，尤其是在已经涉诉的情况下，如果未向法院更新地址或指定代理人，法院可能将文书邮寄至其在中国的原居住地，若该邮件未被退回，且存在合理认定已收悉的情形，可能会被视为有效送达。

Therefore, if a foreign individual once temporarily resided in China and has since left, they should promptly cancel any relevant residence registration and identification documents. This is particularly important in situations where legal proceedings have already been initiated. If the individual fails to update their address with the court or designate an agent for service, the court may mail judicial documents to their former residence in China. If the mail is not returned and there are reasonable grounds to presume that it was received, such service may be deemed valid.

#### G. 电子送达

##### **Service by Electronic Means**

电子送达的前提：能够确认收悉，且不违反受送达人所在国法律及国际条约。

The electronic service is permissible only where the recipient's receipt can be confirmed, and the method does not violate the laws of the recipient's country or applicable international treaties.

受送达人所在国系《海牙送达公约》成员国，并在公约项下声明反对邮寄方式送达的，应推定其不允许电子送达方式，人民法院不能采用电子送达方式。

Where the recipient's country is a member of the Hague Service Convention and has declared opposition to service by postal channels under the Convention, it shall be presumed that electronic service is not permitted, and the people's court may not adopt electronic service.

因此，如果所在国法律允许此类送达方式，且受送达人签收快递或通过邮件确认收悉，则具有法律效力，应依法应诉。

Therefore, if the law of the recipient's country permits such method of service, and the recipient acknowledges receipt by signing for a courier or confirming via email, the service shall have legal effect and the party shall respond in accordance with the law.

#### H. 其他方式

##### **Other Agreed Methods**

以受送达人同意的其他方式送达，但是受送达人所在国法律禁止的除外。

Service may also be effected by other methods agreed upon by the recipient, unless such methods are prohibited by the laws of the recipient's country.

#### I. 公告送达

##### **Service by Public Notice**



- 在前述所有方式均无法完成的情形下，法院可依法采取公告送达：自发出公告之日起，经过六十日，即视为送达。如果未穷尽上述送达方式就公告送达，可能导致送达无效；Where all the aforementioned methods fail, the court may, in accordance with the law, adopt service by public notice: sixty days after the publication of the notice, service shall be deemed completed. If public notice is used without exhausting the above methods, the service may be deemed invalid.
- 采用公告送达时，公告内容应在国内外公开发行的报刊上刊登；When service by public notice is adopted, the content of the notice shall be published in publicly circulated newspapers or periodicals in China or abroad.
- 经用公告方式送达诉讼文书，公告期满不应诉，人民法院缺席判决后，仍应当将裁判文书依照民事诉讼法的规定公告送达。自公告送达裁判文书满三个月之日起，经过三十日的上诉期当事人没有上诉的，一审判决即发生法律效力。Where litigation documents are served by public notice and the recipient fails to respond upon expiration of the notice period, the people's court shall render a default judgment, and the judgment shall also be served by public notice in accordance with the Civil Procedure Law. If no appeal is filed within thirty days after a period of three months from the date of service of the judgment by public notice, the first-instance judgment shall become legally effective.

因此，如果法院已穷尽其他送达方式，公告送达可能生效。在获悉上述情形后，应尽快向法院说明情况，及时获取相关法律意见并采取救济程序。

Therefore, if the court has exhausted all other methods of service, service by public notice may be deemed effective. Upon learning of such circumstances, the individual should promptly contact the court to explain their situation, seek timely legal advice, and take appropriate remedial actions without delay.

如果已经陷入纠纷，并了解到对方极有可能在中国提起诉讼，则可以主动指定在中国的代理人接受送达，并向对方披露有效的送达地址，以降低后期因送达失败而错失应诉机会的风险。

If you are already involved in a dispute and it is highly likely that the other party will initiate proceedings in China, you may proactively designate an agent in China to accept service and provide the opposing party with a valid service address to reduce the risk of missing the opportunity to respond due to service failure later on.

了解并正确应对中国法院在涉外诉讼中采用的司法文书送达方式，是境外企业和个人在华参与诉讼、维护自身权益的重要前提。不同送达方式的适用条件和法律效果各不相同，建议境外当事人密切关注自身在华事务的法律动态，必要时通过授权代理人、指定送达渠道等方式，确保信息及时获取，避免因送达问题影响诉讼结果。随着跨境法律事务日益复杂，理解并尊重中国法律制度，有助于实现更高效、更稳妥的商业与法律安排。

Understanding and properly responding to the service methods used by Chinese courts in foreign-related litigation is an essential prerequisite for overseas enterprises and individuals to participate in litigation in China and safeguard their legitimate rights and interests. The

applicable conditions and legal effects of different methods of service vary. Foreign parties are advised to closely monitor the legal developments concerning their affairs in China, and, where necessary, authorize agents or designate service channels to ensure timely receipt of information, thereby avoiding adverse impacts on litigation outcomes caused by service-related issues. As cross-border legal matters become increasingly complex, understanding and respecting China's legal system will facilitate more efficient and secure commercial and legal arrangements.

如您对本文有任何问题，请联系：

**If you have any questions about this article, please contact us via:**



陈祥龙，执行合伙人

Erex Chen, Managing Partner

Tel: +86 21 68556511

Email: [erexchen@mylinklaw.com](mailto:erexchen@mylinklaw.com)