

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 13 – FAILURE TO GIVE NOTICE OF INTENTION TO DEFEND

Remarks

1. Claim for liquidated demand (O. 13, r. 1)

(1) Where a writ is indorsed with a claim against a defendant for a liquidated demand only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter final judgment against that defendant for a sum not exceeding that claimed by the writ in respect of the demand and for costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 39)

(2) A claim shall not be prevented from being treated for the purposes of this rule as a claim for a liquidated demand by reason only that part of the claim is for interest under section 49 of the Ordinance at a rate which is not higher than that applicable to judgment debts under section 50(1)(b) of the Ordinance at the date of the issue of the writ.

2. Claim for unliquidated damages (O. 13, r. 2)

Where a writ is indorsed with a claim against a defendant for unliquidated damages only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter interlocutory judgment against that defendant for damages to be assessed and costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 40)

3. Claim for detention of goods (O. 13, r. 3)

(1) Where a writ is indorsed with a claim against a defendant relating to the detention of goods only, then, if that defendant fails to give notice of intention to defend the plaintiff may, after the prescribed time and subject to Order 42, rule 1A –

- (a) at his option enter either –
 - (i) interlocutory judgment against that defendant for delivery of the goods or their value to be assessed and costs; or
 - (ii) interlocutory judgment for the value of the goods to be assessed and costs; or
- (b) apply by summons for judgment against that defendant for delivery of the goods without giving him the alternative of paying their assessed value,

and in any case proceed with the action against the other defendants, if any.

(See Appendix A, Form 41)

(2) A summons under paragraph (1)(b) must be supported by affidavit and notwithstanding Order 65, rule 9, the summons and a copy of the affidavit must be served on the defendant against whom judgment is sought.

4. Claim for possession of land (O. 13, r. 4)

(1) Where a writ is indorsed with a claim against a defendant for possession of land only, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, and on producing a certificate by his solicitor, or (if he sues in person) an affidavit, stating that he is not claiming any relief in the action of the nature specified in Order 88, rule 1, enter judgment for possession of the land as against that defendant and costs, and proceed with the action against the other defendants, if any. (See Appendix A, Form 42)

(5) Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the land has been entered against all the defendants.

5. Mixed claims (O. 13, r. 5)

Where a writ issued against any defendant is indorsed with ~~1 or more~~ **2 or more** of the claims mentioned in the foregoing rules, and no other claim, then, if that defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim indorsed on the writ and proceed with the action against the other defendants, if any.

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6. Other claims (O. 13, r. 6)

(1) Where a writ is indorsed with a claim of a description not mentioned in rules 1 to 4, then, if any defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time and, if that defendant has not acknowledged service, upon filing an affidavit proving due service of the writ on him and, where the statement of claim was not indorsed on or served with the writ, upon serving a statement of claim on him, proceed with the action as if that defendant had given notice of intention to defend.

(2) Where a writ issued against a defendant is indorsed as aforesaid, but by reason of the defendant's satisfying the claim or complying with the demands thereof or any other like reason it has become unnecessary for the plaintiff to proceed with the action, then, if the defendant fails to give notice of intention to defend, the plaintiff may, after the prescribed time, enter judgment against that defendant for costs.

6A. Prescribed time (O. 13, r. 6A)

In the foregoing rules of this Order, “the prescribed time” (訂明的時限), in relation to a writ issued against a defendant, means the time limited for the defendant to acknowledge service of the writ or, if within that time the defendant has returned to the Registry an acknowledgment of service containing a statement to the effect that he does not intend to contest the proceedings, the date on which the acknowledgment was received at the Registry.

7. Proof of service of writ (O. 13, r. 7)

- (1) Judgment shall not be entered against a defendant under this Order unless –
 - (a) the defendant has acknowledged service on him of the writ; or
 - (b) an affidavit is filed by or on behalf of the plaintiff proving due service of the writ on the defendant; or
 - (c) the plaintiff produces the writ indorsed by the defendant’s solicitor with a statement that he accepts service of the writ on the defendant’s behalf.

- (2) Where, in an action begun by writ, an application is made to the Court for an order affecting a party who has failed to give notice of intention to defend, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party failed to give such notice.

- (3) Where, after judgment has been entered under this Order against a defendant purporting to have been served by post under Order 10, rule 1(2)(a), the copy of the writ sent to the defendant is returned to the plaintiff through the post undelivered to the addressee, the plaintiff shall, before taking any step or further step in the action or the enforcement of the judgment, either –
 - (a) make a request for the judgment to be set aside on the ground that the writ has not been duly served; or
 - (b) apply to the Court for directions.

- (4) A request under paragraph (3)(a) shall be made by producing to an officer of the Registry and leaving with him for filing, an affidavit stating the relevant facts, and thereupon the judgment shall be set aside and the entry of the judgment and of any proceedings for its enforcement made in the book kept in the Registry for that purpose shall be marked accordingly.

- (5) An application under paragraph (3)(b) shall be made *ex parte* by affidavit stating the facts on which the application is founded and any order or direction sought, and on the application the Court may –
 - (a) set aside the judgment; or
 - (b) direct that, notwithstanding the return of the copy of the writ, it shall be treated as having been duly served; or

- (c) make such other order and give such other direction as the circumstances may require.

7A. Judgment against a State (O. 13, r. 7A)

(1) Where the defendant is a foreign state, the plaintiff shall not be entitled to enter judgment under this Order except with the leave of the Court. (L.N. 217 of 2000)

(2) An application for leave to enter judgment shall be supported by an affidavit –

- (a) stating the grounds of the application;
- (b) verifying the facts relied on as excepting the State from immunity; and
- (c) verifying that the writ has been served by being transmitted to the Chief Secretary for Administration and by him to the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region for onward transmission to the State concerned, or in such other manner as may have been agreed to by the State, and that the time for acknowledging service has expired.

(3) The application may be made ex parte but the Court hearing the application may direct a summons to be issued and served on that State, for which purpose such a direction shall include leave to serve the summons and a copy of the affidavit out of the jurisdiction.

(4) Unless the Court otherwise directs, an affidavit for the purposes of this rule may contain statements of information or belief with the sources and grounds thereof, and the grant of leave to enter judgment under this Order shall include leave to serve out of the jurisdiction –

- (a) a copy of the judgment; and
- (b) a copy of the affidavit, where not already served.

(5) The procedure for effecting service out of the jurisdiction pursuant to leave granted in accordance with this rule shall be the same as for the service of the writ under Order 11, rule 7(1), except where the State has agreed to some other manner of service.

8. Stay of execution on default judgment (O. 13, r. 8)

Where judgment for a debt or liquidated demand is entered under this Order against a defendant who has returned to the Registry an acknowledgment of service containing a statement to the effect that, although he does not intend to contest the proceedings, he intends to apply for a stay of execution of the judgment by writ of fieri facias, execution of the judgment by such a writ shall be stayed for a period of 14 days from the acknowledgment of service and, if within that time the defendant issues and

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serves on the plaintiff a summons for such a stay supported by an affidavit in accordance with Order 47, rule 1, the stay imposed by this rule shall continue until the summons is heard or otherwise disposed of, unless the Court after giving the parties an opportunity of being heard otherwise directs.

9. Setting aside judgment (O. 13, r. 9)

Without prejudice to rule 7(3) and (4), the Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this Order.