

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap 4A)

Order 10 – SERVICE OF ORIGINATING PROCESS: GENERAL PROVISIONS

Remarks

1. General provisions (O. 10, r. 1)

- (1) A writ must be served personally on each defendant by the plaintiff or his agent.
- (2) A writ for service on a defendant within the jurisdiction may, instead of being served personally on him, be served –
 - (a) by sending a copy of the writ by registered post to the defendant at his usual or last known address, or
 - (b) if there is a letter box for that address, by inserting through the letter box a copy of the writ enclosed in a sealed envelope addressed to the defendant. (L.N. 404 of 1991)
- (3) Where a writ is served in accordance with paragraph (2) –
 - (a) the date of service shall, unless the contrary is shown, be deemed to be the seventh day (ignoring Order 3, rule 2(5)) after the date on which the copy was sent to, or as the case may be, inserted through the letter box for, the address in question;
 - (b) any affidavit proving due service of the writ must contain a statement to the effect that –
 - (i) in the opinion of the deponent (or, if the deponent is the plaintiff's solicitor or an employee of that solicitor, in the opinion of the plaintiff) the copy of the writ, if sent to, or as the case may be, inserted through the letter box for, the address in question, will have come to the knowledge of the defendant within 7 days thereafter; and
 - (ii) in the case of service by post, the copy of the writ has not been returned to the plaintiff through the post undelivered to the addressee.
- (4) Where a defendant's solicitor indorses on the writ a statement that he accepts service of the writ on behalf of that defendant, the writ shall be deemed to have been duly served on that defendant and to have been so served on the date on which the indorsement was made.
- (5) Subject to Order 12, rule 7, where a writ is not duly served on a defendant but he acknowledges service of it, the writ shall be deemed, unless the contrary is shown, to have been duly served on him and to have been so served on the date on which he acknowledges service.

(6) Every copy of a writ for service on a defendant shall be sealed with the seal of the High Court and shall be accompanied by a form of acknowledgment of service in Form No. 14 in Appendix A in which the title of the action and its number have been entered. (25 of 1998 s. 2)

(7) This rule shall have effect subject to the provisions of any Ordinance and these rules and in particular to any enactment which provides for the manner in which documents may be served on bodies corporate.

2. Service of writ on agent of overseas principal (O. 10, r. 2)

- (1) Where the Court is satisfied on an ex parte application that –
- (a) a contract has been entered into within the jurisdiction with or through an agent who is either an individual residing or carrying on business within the jurisdiction or a body corporate having a registered office or a place of business within the jurisdiction, and
 - (b) the principal for whom the agent was acting was at the time the contract was entered into and is at the time of the application neither such an individual nor such a body corporate, and
 - (c) at the time of the application either the agent’s authority has not been determined or he is still in business relations with his principal,

the Court may authorize service of a writ beginning an action relating to the contract to be effected on the agent instead of the principal.

(2) An order under this rule authorizing service of a writ on a defendant’s agent must limit a time within which the defendant must acknowledge service.

(3) Where an order is made under this rule authorizing service of a writ on a defendant’s agent, a copy of the order and of the writ must be sent by post to the defendant at his address out of the jurisdiction.

3. Service of writ in pursuance of contract (O. 10, r. 3)

- (1) Where-
- (a) a contract contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of a contract or, apart from any such term, the Court of First Instance has jurisdiction to hear and determine any such action, and (25 of 1998 s. 2)
 - (b) the contract provides that, in the event of any action in respect of the contract being begun, the process by which it is begun may be served on the defendant, or on such other person on his behalf as may be specified in the contract, in such manner, or at such place (whether within or out of the jurisdiction), as may be so specified,

then, if an action in respect of the contract is begun in the Court and the writ by which it is begun is served in accordance with the contract, the writ shall, subject

to paragraph (2), be deemed to have been duly served on the defendant.

(2) A writ which is served out of the jurisdiction in accordance with a contract shall not be deemed to have been duly served on the defendant by virtue of paragraph (1) unless leave to serve the writ out of the jurisdiction has been granted under Order 11, rule 1(1) or service of the writ is permitted without leave under Order 11, rule 1(2).

4. Service of writ in certain actions for possession of premises or land

(O. 10, r. 4)

(1) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, the Court may –

- (a) if satisfied on an ex parte application that no person appears to be in possession of the premises or land and that service cannot be otherwise effected on any defendant, authorize service on that defendant to be effected by affixing a copy of the writ to some conspicuous part of the premises or land;
- (b) if satisfied on such an application that no person appears to be in possession of the premises or land and that service could not otherwise have been effected on any defendant, order that service already effected by affixing a copy of the writ to some conspicuous part of the premises or land shall be treated as good service on that defendant.

(HK)(2) Where a writ is indorsed with a claim for the recovery, or delivery of possession, of premises or land, in addition to, and not in substitution for any other mode of service, a copy of the writ shall be posted in a conspicuous place on or at the entrance to the premises or land recovery or possession of which is claimed.

5. Service of originating summons, notice of motion, or petition (O. 10, r. 5)

(1) The foregoing rules of this Order shall apply, with any necessary modifications, in relation to an originating summons (other than ex parte originating summons or an originating summons under Order 113) as they apply in relation to a writ, except that an acknowledgment of service of an originating summons shall be in Form No. 15 ~~in Appendix A~~ **or 15A in Appendix A, whichever is appropriate.**

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(2) Rule 1(1), (2), (3) and (4) shall apply, with any necessary modifications, in relation to a notice of an originating motion and a petition as they apply in relation to a writ.

(Enacted 1988)