

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 11 – SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Remarks

1. Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1)

- (1) Provided that the writ is not a writ to which paragraph (2) of this rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ – (L.N. 363 of 1990)
- (a) relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
 - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
 - (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
 - (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which-
 - (i) was made within the jurisdiction, or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) is by its terms, or by implication, governed by Hong Kong law, or
 - (iv) contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of the contract; (25 of 1998 s. 2)
 - (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
 - (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
 - (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
 - (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate

Remarks

- within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
- (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to Hong Kong law and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;
- (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
- (l) the claim is brought in a probate action within the meaning of Order 76;
- (m) the claim is brought to enforce any judgment or arbitral award;
- (n) the claim is brought under the Carriage by Air Ordinance (Cap. 500). (13 of 1997 s. 20)
- (o) (Repealed L.N. 296 of 1996)
- (oa) the claim is made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525); (87 of 1997 s. 36)

(ob) the claim is for an order for the costs of and incidental to a dispute under section 52B(2) of the Ordinance;

Rule 6
Rec 9

(oc) the claim is for interim relief or appointment of a receiver under section 21M(1) of the Ordinance;

Rule 126
Rec 49

(od) the claim is for a costs order under section 52A(2) of the Ordinance against a person who is not a party to the relevant proceedings;

Rule 259

- (p) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction. (L.N. 404 of 1991)

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is –

- (b) a claim which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction. (25 of 1998 s. 2)

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall –

- (c) be limited in accordance with the practice adopted under rule 4(4).

(HK)(4) This rule shall not apply to a writ –

- (a) to enforce a claim for damage, loss of life or personal injury arising out of –
 - (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of 2 or more ships; or
 - (iii) non-compliance, on the part of one or more of 2 or more ships, with the regulations made under section 93, 100 or 107 of the Merchant Shipping (Safety) Ordinance (Cap. 369);
- (b) for the limitation of liability in a limitation action as defined in Order 75, rule 1(2); or
- (c) to enforce a claim under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 (1971 c. 59 U.K.) or section 4 of the Merchant Shipping Act 1974 (1974 c. 43 U.K.)[Ⓟ]. (L.N. 363 of 1990)

4. Application for, and grant of, leave to serve writ out of jurisdiction

(O. 11, r. 4)

- (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating –
 - (a) the grounds on which the application is made;
 - (b) that in the deponent’s belief the plaintiff has a good cause of action;
 - (c) in what place the defendant is, or probably may be found; and
 - (d) where the application is made under rule 1(1)(c), the grounds for the deponent’s belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.
- (4) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must acknowledge service.

5. Service of writ out of jurisdiction: general (O. 11, r. 5)

- (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (4) and (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.
- (2) Nothing in this rule, rule 5A or any order or direction of the Court made by virtue of it shall authorize or require the doing of anything in a country or place in

which service is to be effected which is contrary to the law of that country or place. (L.N. 39 of 1999)

- (3) A writ which is to be served out of the jurisdiction-
- (a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country or place in which service is effected; and
 - (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 5A, rule 6 or rule 7. (L.N. 39 of 1999)

(5) An official certificate stating that a writ as regards which rule 5A or rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country or place in which service was effected, on a specified date, being a certificate –

- (a) by a British consular authority in that country or place, or
- (b) by the government or judicial authorities of that country or place, or
- (c) by any other authority designated in respect of that country or place under the Hague Convention,

shall be evidence of the facts so stated. (L.N. 39 of 1999)

(6) An official certificate by the Chief Secretary for Administration stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact. (L.N. 362 of 1997)

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) In this rule and rule 6 “the Hague Convention” means the Convention on the service abroad of judicial or extra-judicial documents in civil or commercial matters signed at The Hague on 15 November 1965.

5A. Service of writ in the Mainland of China through judicial authorities
(O. 11, r. 5A)

(1) Where in accordance with these rules, a writ is to be served on a person to be served in the Mainland of China, the writ shall be served through the judicial authorities of the Mainland of China.

(2) A person who wishes to serve a writ under paragraph (1) must lodge in the Registry a request for such service, together with 2 copies of the writ and 2 additional copies thereof for the person to be served.

- (3) The request lodged under paragraph (2) must contain-
- (a) the full name and address of the person to be served;
 - (b) a description of the nature of proceedings; and
 - (c) if a particular method of service by the judicial authorities of the Mainland of China is desired by the person making the request, an

indication of that particular method.

(4) Every copy of a writ lodged under paragraph (2) must be in Chinese or accompanied by a Chinese translation.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (2) shall be sent by the Registrar to the judicial authorities of the Mainland of China with a request that they arrange for the writ to be served or, where a particular method of service is indicated under paragraph (3)(c), to be served by that method.

(L.N. 39 of 1999)

6. Service of writ abroad through foreign governments, judicial authorities and British consuls (O. 11, r. 6)

(1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in –

- (HK)(a) The United Kingdom of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;
- (b) any independent Commonwealth country;
- (HK)(c) any British protectorate;
- (HK)(d) any British colony;
- (e) the Republic of Ireland.

(2) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served –

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2A) Where in accordance with these rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served –

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits –
 - (i) through the judicial authorities of that country, or
 - (ii) through a British consular authority in that country.

(3) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court of First

Instance, the writ may be served – (25 of 1998 s. 2)

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (2), (2A) or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualification for making the translation.

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Chief Secretary for Administration with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient. (L.N. 362 of 1997)

7. Service of process on a foreign State (O. 11, r. 7)

(1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in section 14 of the State Immunity Act 1978 (1978 c. 33 U.K.), wishes to have the writ served on that State, he must lodge in the Registry –

- (a) a request for service to be arranged by the Chief Secretary for Administration; and (L.N. 362 of 1997)
- (b) a copy of the writ; and
- (c) except where the official language of the State is, or the official languages of that party include, English, a translation of the writ in the official language or one of the official languages of the State.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the State or the government in question, as the case may be. (L.N. 362 of 1997)

(4) Where section 12(6) of the State Immunity Act 1978 (1978 c. 33 U.K.) applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

7A. Service of writ in certain actions under Carriage by Air Ordinance
(O. 11, r. 7A)

(HK)(1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party certified under section 4 of Carriage by Air Ordinance (Cap. 500), being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the writ served on that Party, he must lodge in the Registry – (13 of 1997 s. 20)

- (a) a request for service to be arranged by the Chief Secretary for Administration; and
- (b) a copy of the writ; and
- (c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of the High Contracting Party.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the High Contracting Party.
(L.N. 362 of 1997)

8. Undertaking to pay expenses of service by the Chief Secretary for Administration (O. 11, r. 8)

Every request lodged under rule 6(4), rule 7 or rule 7A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Chief Secretary for Administration in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the

payment to the Registrar.

(L.N. 362 of 1997)

8A. Undertaking to pay expenses of service by the Registrar (O. 11, r. 8A)

Every request lodged under rule 5A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Registrar in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 39 of 1999)

9. Service of originating summons, petition, notice of motion, etc.

(O. 11, r. 9)

(1) Subject to Order 73, rule 7, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(4) Subject to Order 73, rule 7, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any written law be served out of the jurisdiction without leave.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(7) Rules 5, 5A, 6, 8 and 8A shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ. (L.N. 39 of 1999)

(Enacted 1988)