

Rules of the High Court (Amendment) Rules 2008

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

Order 46 – WRITS OF EXECUTION: GENERAL

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

Remarks

1. Definition (O. 46, r. 1)

In this Order, unless the context otherwise requires, “writ of execution” (執行令狀) includes a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration and any further writ in aid of any of the aforementioned writs. (See App. A, Form No. 69)

2. When leave to issue any writ of execution is necessary (O. 46, r. 2)

(1) A writ of execution to enforce a judgment or order may not issue without the leave of the Court in the following cases, that is to say –

- (a) where 6 years or more have elapsed since the date of the judgment or order;
- (b) where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order;
- (c) where the judgment or order is against the assets of a deceased person coming to the hands of his executors or administrators after the date of the judgment or order, and it is sought to issue execution against such assets;
- (d) where under the judgment or order any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled;
- (e) where any goods sought to be seized under a writ of execution are in the hands of a receiver appointed by the Court or a sequestrator.

(2) Paragraph (1) is without prejudice to any written law or rule by virtue of which a person is required to obtain the leave of the Court for the issue of a writ of execution or to proceed to execution on or otherwise to the enforcement of a judgment or order.

(3) Where the Court grants leave, whether under this rule or otherwise, for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting such leave, the order shall cease to have effect, without prejudice, however, to the making of a fresh order.

3. Leave required for issue of writ in aid of other writ (O. 46, r. 3)

A writ of execution in aid of any other writ of execution shall not issue without the leave of the Court.

4. Application for leave to issue writ (O. 46, r. 4)

- (1) An application for leave to issue a writ of execution may be made ex parte unless the Court directs it to be made by summons.
- (2) Such an application must be supported by an affidavit –
 - (a) identifying the judgment or order to which the application relates and, if the judgment or order is for the payment of money, stating the amount originally due thereunder and the amount due thereunder at the date of the application;
 - (b) stating, where the case falls within rule 2(1)(a), the reasons for the delay in enforcing the judgment or order;
 - (c) stating where the case falls within rule 2(1)(b), the change which has taken place in the parties entitled or liable to execution since the date of the judgement or order;
 - (d) stating, where the case falls within rule 2(1)(c) or (d), that a demand to satisfy the judgment or order was made on the person liable to satisfy it and that he has refused or failed to do so;
 - (e) giving such other information as is necessary to satisfy the Court that the applicant is entitled to proceed to execution on the judgment or order in question and that the person against whom it is sought to issue execution is liable to execution on it.
- (3) The Court hearing such application may grant leave in accordance with the application or may order that any issue or question, a decision on which is necessary to determine the rights of the parties, be tried in any manner in which any question of fact or law arising in an action may be tried and, in either case, may impose such terms as to costs or otherwise as it thinks just.

5. Application for leave to issue writ of sequestration (O. 46, r. 5)

- (1) Notwithstanding anything in rules 2 and 4, an application for leave to issue a writ of sequestration must be made to a judge by ~~motion~~ **summons**.
- (2) Subject to paragraph (3), the ~~notice of motion~~ **summons**, stating the grounds of the application and accompanied by a copy of the affidavit in support of the application, must be served personally on the person against whose property it is sought to issue the writ.
- (3) Without prejudice to its powers under Order 65, rule 4, the Court may dispense with service ~~of the notice of motion~~ under this rule if it thinks it just to do so.

Rule 38
Rec 14

(4) The judge hearing an application for leave to issue a writ of sequestration may sit in private in any case in which, if the application were for an order of committal, he would be entitled to do so by virtue of Order 52, rule 6, but, except in such a case, the application shall be heard in open court.

6. Issue of writ of execution (O. 46, r. 6)

(1) Issue of a writ of execution takes place on its being sealed by the Registrar.

(2) Before such a writ is issued a praecipe for its issue must be filed.

(3) The praecipe must be signed by or on behalf of the solicitor of the person entitled to execution or, if that person is acting in person, by him.

(4) No such writ shall be sealed unless at the time of the tender thereof for sealing –

(a) the person tendering it produces –

(i) the judgment or order on which the writ is to issue, or an office copy thereof;

(ii) where the writ may not issue without the leave of the Court, the order granting such leave or evidence of the granting of it; and

(b) the Registrar is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

(5) Every writ of execution shall bear the date of the day on which it is issued.

8. Duration and renewal of writ of execution (O. 46, r. 8)

(1) For the purpose of execution, a writ of execution is valid in the first instance for 12 months beginning with the date of its issue.

(2) Where a writ has not been wholly executed the Court may by order extend the validity of the writ from time to time for a period of 12 months at any one time beginning with the day on which the order is made, if an application for extension is made to the Court before the day next following that on which the writ would otherwise expire or such later day, if any, as the Court may allow.

(3) Before a writ the validity of which has been extended under paragraph (2) is executed either the writ must be sealed with the Seal of the Court showing the date on which the order extending its validity was made or the applicant for the order must serve a notice (in Form No. 71 in Appendix A), sealed as aforesaid, on the bailiff to whom the writ is directed informing him of the making of the order and the date thereof.

(L.N. 363 of 1990)

(4) The priority of a writ, the validity of which has been extended under this rule, shall be determined by reference to the date on which it was originally delivered to the bailiff.

(5) The production of a writ of execution, or of such a notice as is mentioned in paragraph (3), purporting in either case to be sealed as mentioned in that paragraph, shall be evidence that the validity of that writ or, as the case may be, of the writ referred to in that notice, has been extended under paragraph (2). (L.N. 363 of 1990)

(6) If, during the validity of a writ of execution, an interpleader summons is issued in relation to an execution under that writ, the validity of the writ shall be extended until the expiry of 12 months from the conclusion of the interpleader proceedings. (L.N. 404 of 1991)

9. Return to writ of execution (O. 46, r. 9)

(1) Any party at whose instance or against whom a writ of execution was issued may serve a notice on the bailiff to whom the writ was directed requiring him, within such time as may be specified in the notice, to endorse on the writ a statement of the manner in which he has executed it and to send to that party a copy of the statement. (L.N. 363 of 1990)

(2) If a bailiff on whom such a notice is served fails to comply with it the party by whom it was served may apply to the Court for an order directing the bailiff to comply with the notice.

(3) (Repealed L.N. 404 of 1991)

(Enacted 1988)