

CAYMAN ISLANDS



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**GRAND COURT LAW (2008 REVISION) (AS AMENDED)
THE GRAND COURT (AMENDMENT) RULES 2014**

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These Rules are made by the Rules Committee pursuant to Section 19(3) of the Grand Court Law (2008 Revision) (as amended).

1. Citation, Commencement and Interpretation.

- (1) These Rules shall be referred to as the Grand Court (Amendment) Rules 2014.
- (2) These Rules shall come into operation on the 12th day of December 2014 referred to in these Rules as the "Commencement Date".
- (3) These Rules shall apply to every proceeding which is pending or commenced in the Court on or after the Commencement Date.
- (4) Words and expressions in these Rules which are also used in the Grand Court Rules 1995 (Revised Edition) shall have the same meaning in these Rules as they have in the Grand Court Rules 1995 (Revised Edition).

2. Revocation and replacement of Order 11

- (1) GCR Order 11 is hereby revoked and replaced by the Order 11 contained in the Schedule hereto.

Made by the Rules Committee on the 20th day of November 2014.

The Honourable Anthony Smellie QC, Chief Justice

The Honourable Sam Bulgin QC, Attorney General

Colin McKie QC, Legal Practitioner

Hector Robinson, Legal Practitioner

ORDER 11**SERVICE OF PROCESS, ETC. OUT OF THE JURISDICTION****Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1)**

1. (1) Provided that the writ does not contain any claim mentioned in Order 75, rule 1(3), service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ -
 - (a) relief is sought against a person who –
 - (i) has the right to reside permanently in the Islands; or
 - (ii) has a right to work in the Islands; or
 - (iii) is resident in and the nature and circumstances of his residence indicate that he has a substantial connection with the Islands;
 - (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 who has been or will be 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 the law of the Islands; or
 - (iv) contains a term to the effect that the Court shall have jurisdiction to hear and determine any action in respect of the contract;

- (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, fraud or breach of duty whether statutory at law or in equity and the damage was sustained, or resulted from an act committed, within the jurisdiction;
- (ff) the claim is brought against a person who is or was a director, officer or member of a company registered within the jurisdiction or who is or was a partner of a partnership, whether general or limited, which is governed by the laws of the Islands and the subject matter of the claim relates in any way to such company or partnership or to the status, rights or duties of such director, officer, member or partner in relation thereto;
- (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 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 for any relief or remedy in respect of any trust, whether express, implied or constructive, that is governed by or ought to be executed according to the laws of the Islands or in respect of the status, rights or duties of any trustee thereof in relation thereto;
- (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 (within the meaning of section 2(1) of the Arbitration Law 2012) or interim measure (within the meaning of Part VIII of the Arbitration Law 2012); or
- (n) the claim is brought for any relief or remedy pursuant to section 11A of the Grand Court Law (2008 Revision) (as amended by the Grand Court (Amendment) Law 2014).

- (2) Service of a writ out of the jurisdiction is permissible without the leave of the Court if every claim made in the action begun by the writ is one which by virtue of a Law or these Rules the Court 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 the jurisdiction, including, for the avoidance of doubt, applications made pursuant to sections 48, 63, 64, 67, 68, 72, 103 or 104 of the Trusts Law (2011 Revision) or Order 85.
- (3) Where a writ is to be served out of the jurisdiction pursuant to an order under paragraph (1), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall be such time as may be fixed by the Court.
- (4) 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 be 28 days.

No rules (O. 11, rr. 2 - 3)

Application for, and grant of, leave to serve writ out of jurisdiction (O. 11, r. 4)

- 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 or country the defendant is, or probably may be found;
 - (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; and
 - (e) if service is not to be effected personally the method or methods of service which are in accordance with the law of the country in which service is to be effected.
- (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.
- (3) An order granting leave to serve a writ out of the jurisdiction under rule 1 must limit a time within which the defendant to be served must acknowledge service.

Service of writ abroad; general (O. 11, r. 5)

5. (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (2), (3) and (4) 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 or in any order or direction of the Court made by virtue of it shall authorise or require the doing of anything in a country in which service is to be effected which is contrary to the law of that country.
- (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 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 6 or rule 7.
- (4) An official certificate stating that a writ as regards which rule 6 has been complied with has been served on a person personally, or in accordance with the law of the country in which service was effected, on a specified date, being a certificate -
 - (a) by a British consular authority in that country; or
 - (b) the government or judicial authorities of that country; or
 - (c) by any other authority designated in respect of that country under the Hague Convention,

shall be evidence of the facts so stated.
- (5) An official certificate by the Secretary of State 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.
- (6) A document purporting to be such a certificate as is mentioned in paragraphs (4) and (5) shall, until the contrary is proved, be deemed to be such a certificate.
- (7) In this rule and rule 6 "the Hague Convention" means the convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters signed at the Hague on November 15, 1965.

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

6. (1) Save where a writ is to be served pursuant to paragraph (3), this rule does not apply to service in –
 - (a) the United Kingdom, including the Isle of Man and the Channel Islands;
 - (b) any independent Commonwealth country;
 - (c) any associated state;
 - (d) any dependent territory of the United Kingdom; or
 - (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).
- (3) Where in accordance with these Rules a writ is to be served on a defendant in any country which is 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.
- (4) 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, the writ may be served –
 - (a) through the government of that country, where the 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.

- (5) A person who wishes to serve a writ by a method specified in paragraph (2), (3) or (4) must deliver to the Clerk of the Court 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.
- (6) Every copy of a writ delivered under paragraph (5) 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.

- (7) Every translation delivered under paragraph (6) 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.
- (8) Documents duly delivered under paragraph (5) shall be sent by the Clerk of the Court to the Governor with a request that he forward them to the Secretary of State asking the Secretary of State to arrange for the writ to be served by the method indicated in the request delivered under paragraph (5) or, where alternative methods are so indicated, by such one of those methods as is most convenient.

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

- 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, wishes to have the writ served on that State, he must deliver with the Clerk of the Court -
 - (a) a request for service to be arranged by the Secretary of State;
 - (b) a copy of the writ; and
 - (c) except where the official language of the State is, or the official languages of that State include, English, a translation of the writ in the official language or one of the official languages of the State.
- (2) Rule 6(7) shall apply in relation to a translation delivered under paragraph (1) of this rule as it applies in relation to a translation delivered under paragraph (6) of that rule.

- (3) Documents duly delivered under this rule shall be sent by the Clerk of the Court to the Governor with a request that the Secretary of State be asked to arrange for the writ to be served on the State or the government in question, as the case may be.
- (4) Where Section 12(6) of the State Immunity Act 1978 applies and the State has agreed to a method of service other than that provided by the preceding paragraph, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

Undertaking to pay expenses of Governor (O. 11, r. 8)

- 8. Every request delivered under rule 6(5) or rule 7 must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Governor in respect of the service requested including the expenses incurred by him in making any request of the Secretary of State and, on receiving due notification of the amount of those expenses, to pay that amount to the Financial Secretary and to produce a receipt for such payment to the Clerk of the Court.

Service of originating summons, petition, notice of motion, etc. (O. 11, r. 9)

- 9. (1) Subject to Order 73, rule 5, and Order 102, rule 16, 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 the service of a writ.
- (2) 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 Law be served without leave.
- (3) Rule 4(1) and (2) 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.
- (4) An order under this rule granting leave to serve an originating summons out of the jurisdiction must limit a time within which the defendant to be served with the summons must acknowledge service.
- (5) Rules 5, 6 and 8 shall apply in relation to any document in respect of which leave to serve out of the jurisdiction has been granted under this rule as they apply in relation to a writ.

