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Service of Judicial Proceedings Outside Ireland

The process by which a party can serve a document on a person within the EU from Ireland, has been greatly simplified by the introduction of Regulation (EC) No 1393/2007 ('The 2007 Regulation').

In Ireland, Rule 11D of the Rules of the Superior Courts was introduced to comply with the 2007 Regulation and this rule governs how applications to have a document served on a person within the EU are dealt with. Rule 11D details the specific method of serving a document on another EU member. The term 'documents' includes summonses, notices, pleadings, petitions, affidavits, orders, and other documents used in civil litigation.

Under the 2007 Regulation, each EU Member State was required to nominate a designated Transmission Agency and a Receiving Agency. The Transmitting Agencies send the documents to be served to the Receiving Agency in the other Member State, who will then serve the documents. In Ireland, the Transmission Agencies are the 26 County Registrars who are attached to the Circuit Court Office in each county. Ireland's Receiving Agencies are also the County Registrars. Each member state must also designate a central body to provide information and deal with any queries from the agencies. In Ireland, the Master of the High Court is that central body.

Transmission of the Documents

If a party wants to serve a document on someone within the EU but outside of Ireland, you must first make an application to your local County Registrar. This involves lodging:

For further information on any of the issues discussed in this article please contact:



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- ▣ Two copies of each document to be served, along with an additional copy for each person to be served
- ▣ A completed request for service of documents form , which includes information such as details of the Transmitting and Receiving Agencies, the applicant, the method of service, the nature of the document to be served, and,
- ▣ You must give an undertaking to pay the costs arising from employment of a competent person in the Member State to serve the documents, where such costs may arise.

If any request which is made does not conform to any of the above requirements, the County Registrar will inform the party applying of this and inform them of their specific objections to the request.

It is important that the documents be either in a language which the addressee understands, accompanied by a translation, or in the official language of the state where the document is being served. If one of these requirements is not met, the addressee may refuse to accept the documents until they are presented with a translation of the documents.

If all requirements of the application are in order, the Transmitting Agency will communicate the service request to the Receiving Agency of the country to which the object of the service is resident. Under the terms of the 2007 Regulation, the judicial documents must be transmitted directly to the Receiving Agency and as quickly as possible.

The 2007 Regulation also allows for each Member State to directly effect service of judicial documents without an application directly through its diplomatic or consular agents, by registered post, or direct service. However, many Member States have limited this service to nationals of the country from which the document originated. Ireland permitted service of documents through diplomatic or consular agents under the earlier Regulation 44/2001. Article 23 of the Regulation allows countries to indicate whether they will adhere to this Article. Ireland has indicated to the EU that they will not effect direct service.

The Receiving Agency

Upon receipt of the document, the Receiving Agency is obligated to send confirmation of receipt to the Transmitting Agency within seven days, and where the request for service cannot be fulfilled due to inadequacy of documents transmitted; they should also swiftly contact the Transmitting Agency to inform them about missing information or documents. If the documents have been sent to a Receiving Agency in the wrong country, the Receiving Agency will forward the request on to the correct Receiving Agency. This co-operation helps to ensure service requests do not end up in limbo when mistakenly sent to the wrong countries Receiving Agency.

The Receiving Agency must arrange and take all necessary steps to effect the service of the document within one month of receipt. If they have not been served within a month, they must inform the Transmitting Agency and continue to take the necessary steps to effect the service of the document.

When the documents have been successfully served, the Receiving Agency will forward a certificate confirming service to the Transmitting Agency.

Default of Appearance

The 2007 Regulation also deals with the granting of a judgment in the country transmitting the documents where the defendant has failed to enter an appearance after being served. In Ireland, a court may grant judgment where:

- ▣ The document was transmitted by one of the methods provided for in the 2007 Regulation
- ▣ Time exceeding 6 months, which the judge deems adequate, has elapsed since the transmission of the document, and,
- ▣ No certificate of any kind has been received after reasonable efforts to obtain it through the receiving bodies of the Member State.

A defendant may be permitted to appeal this judgement even after the 6 month period has expired if they can show that through no fault of their own they did not know about the service of the document in sufficient time to defend the matter

Service outside of the EU

The Hague Convention's ('the Convention') main purpose was to simplify the procedures for serving judicial and extra-judicial documents in civil and commercial matters within the signatory countries. It applies between each of the Contracting States, but the 2007 Regulation supersedes the Convention between EU Member States. Therefore, the Convention is relevant today in Ireland only when serving a document on someone outside of the EU in a country which is signatory to the Convention. The Convention has 68 signatories which include countries in Europe, North and South America and Russia, China, India and Australia.

Under the Convention, each country has a central authority that can receive requests for service of documents within that country from judicial officers of another contracting country. In Ireland, the Master of the High Court is the designated central authority. The Master of the High Court, practicing solicitors, county registrars and the District Court Clerks are also judicial officers.

The plaintiff's solicitor can either effect service of proceedings through the Master of the High Court or by submitting the correct documentation directly to the Central Authority of the country in which the defendant is to be served.

The convention also allows service to be effected through a state's diplomatic or consular agents.

After service has been effected under the terms of the Convention, the plaintiff's solicitor receives from the Central Authority a certificate of service. This document is important as it will be required for an application for a judgement in default of appearance.

Conclusion

The process by which a document can be served, while simplified by the 2007 Regulation, still is a process with which the utmost of care should be taken to ensure no delay in service through errors in the application process. This article has given a brief overview of what is required, but if you are attempting to serve someone, we can assist you to ensure your application is in order.

If you would like any more information on this topic or would like advice from us regarding the same, please contact us and we can help to assist you.

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