

# RULES OF COURT (FOREIGN CONVENTIONS), 1926.<sup>(1)</sup>

It is ordered by the Honourable Sir John Hubert Plunkett Murray, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, and the Honourable Charles Edward Herbert, Judges of the Central Court of the Territory of Papua, in pursuance and execution of all powers and authorities enabling them in that behalf that the Rules of the said Court for regulating the practice and procedure in respect to the service of documents and the examination of witnesses in and the service of documents in the Territory of Papua of foreign countries with which a Convention in that behalf has been or shall be made shall be as follows:—

### CITATION.

1. These Rules may be cited as the *Rules of Court (Foreign Conventions)*, 1926.<sup>(1)</sup>

### SERVICE OF DOCUMENTS ABROAD.

2. Where leave is given in a civil or commercial cause or matter to serve any writ or summons, originating summons, notice or other document in France, or in any other foreign country with which a Convention<sup>(2)</sup> in that behalf has been or shall be made, the following procedure shall, subject to any special provisions contained in the Convention,<sup>(2)</sup> be adopted:—

(1) The party bespeaking such service shall file in the Registry a Request in the Form No. 1 in the Schedule which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used. Such

(1) The *Rules of Court (Foreign Conventions)*, 1926 (made under *The Courts and Laws Adopting Ordinance of 1888*, as affected by the *Central Court Ordinance, 1925*), comprises the original *Rules of Court (Foreign Conventions)*, 1926, as amended by the other Rules referred to in the following Table:—

RULES MADE BY JUDGES OF THE CENTRAL COURT.

Description and number and year.	Date on which made by Judges of Central Court.	Date on which approved by Legislative Council.	Date on which published in Papua Govt. Gaz.	Date on which took effect.
<i>Rules of Court (Foreign Conventions)</i> , 1926 (S.R. 1927, No. 7)	16.9.1926	13.6.1927	6.7.1927	6.7.1927 (Papua Govt. Gaz. of 6.7.1927)
<i>Amending Rules</i> (S.R. 1935, No. 13)	13.11.1933	18.7.1935	6.11.1935	6.11.1935 (Papua Govt. Gaz. of 6.11.1935)

(2) A Table containing particulars of Legal Proceedings in Civil and Commercial Matters Conventions between the United Kingdom and foreign States, the provisions of which extend to the Territory of Papua, is printed on p. 667.

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Request shall state the medium through which it is desired the service shall be effected, i.e., whether (a) directly through the British Consul or (b) through the foreign judicial authority, and shall be accompanied by the original document and a translation thereof in the language of the country in which service is to be effected, certified by or on behalf of the person making the request and a copy of each for every person to be served and any further copies which the Convention<sup>(2)</sup> may require, unless the service is required to be made on a British subject directly through the British Consul in which case the translation and copies thereof need not accompany the Request unless the Convention<sup>(2)</sup> expressly requires that they should do so.

- (2) The documents to be served shall be sealed with the seal of the Central Court<sup>(3)</sup> for use out of the jurisdiction and shall be forwarded by the Registrar of the Central Court<sup>(3)</sup> to the Lieutenant-Governor<sup>(3)</sup> for transmission to the foreign country.
- (3) An official certificate, transmitted through the diplomatic channel by the foreign judicial authority, or by a British Consular authority, to the Central Court,<sup>(3)</sup> establishing the fact and the date of the service of the document, shall be deemed to be sufficient proof of such service, and shall be filed of record as, and be equivalent to, an Affidavit of Service within the requirements of the Rules in that behalf.
- (4) In cases where a Writ of Summons or notice thereof is served pursuant to this Rule and an official certificate of service is produced, no endorsement of service under Rule 20 of the "Rules of Civil Procedure" shall be required.

3. Rule 2 shall not apply to or render invalid or insufficient any mode of service in any foreign country with which a Convention<sup>(2)</sup> has been or shall be made which is otherwise valid or sufficient according to the procedure of the Central Court<sup>(3)</sup> and which is not expressly excluded by the Convention<sup>(2)</sup> made with such foreign country.

### SERVICE OF FOREIGN DOCUMENTS IN THE TERRITORY OF PAPUA.

4. Where in any civil or commercial cause or matter pending before a Court or Tribunal in France, or in any foreign country with which a Convention<sup>(2)</sup> in that behalf has been or shall be made, a

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(2) See footnote (2) printed on p. 659 and the Table printed on p. 667.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

Request for service of any document on a person in the Territory of Papua is received by the Registrar of the Central Court<sup>(3)</sup> from the Consular or other authority of such country, the following procedure shall, subject to any special provisions contained in the Convention,<sup>(2)</sup> be adopted:—

- (1) The service shall be effected by the delivery of the original or a copy of the document, as indicated in the request, and the copy of the translation, to the party or person to be served in person by the person whom a Judge of the Central Court<sup>(3)</sup> may from time to time appoint for the purpose, or by the authorized agent of such person.
- (2) No Court fees shall be charged in respect of the service. The particulars of charges of the person or agent employed to effect service shall be submitted to the Taxing Officer of the Central Court<sup>(3)</sup> who shall certify the amount properly payable in respect thereof.
- (3) The Registrar of the Central Court<sup>(3)</sup> shall transmit to the Consular or other authority making the Request a certificate establishing the fact and the date of the service in person, or indicating the reasons for which it has not been possible to effect it, and at the same time shall notify to the said Consular or other authority the amount of the charges certified under Paragraph (2) hereof.

#### EXAMINATION OF WITNESSES ABROAD.

5. Where an order is made for the issue of a Request to examine a witness or witnesses in France, or in any other foreign country with which a Convention<sup>(2)</sup> in that behalf has been or shall be made, the following procedure shall be adopted:—

- (1) The party obtaining such order shall file in the Registry an undertaking in the Form No. 3 in the Schedule which form may be varied as may be necessary to meet the circumstances of the particular case in which it is used.
- (2) Such undertaking shall be accompanied by—
  - (a) a request in the Form No. 4 in the Schedule with such variation as may be directed in the order for the issue thereof, together with a translation of such Request in the language of the country in which the same is to be executed;
  - (b) a copy of the interrogatories (if any) to accompany the request, and a translation thereof;
  - (c) a copy of the cross-interrogatories (if any), and a translation thereof.

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(2) See footnote (2) printed on p. 659 and the Table printed on p. 667.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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6. Where an order is made for the examination of a witness or witnesses before the British Consular authority in France, or in any other foreign country with which a Convention<sup>(2)</sup> in that behalf has been or shall be made, such order shall be in the Form No. 2 in the Schedule which form of order may be varied as may be necessary to meet the circumstances of the particular case in which it is used.

### OBTAINING EVIDENCE FOR FOREIGN TRIBUNALS.

Rule 7  
ad. by S.R.  
1935, No. 13,  
r. 1.

7.—(1.) Where it is made to appear to a Judge of the Central Court<sup>(3)</sup> by Letter of Request or such other evidence as the Judge may require, that a judicial authority in a foreign country with which a Convention<sup>(2)</sup> in that behalf has been or shall be made, is desirous of obtaining, for the purposes of any civil or commercial cause or matter which is pending before that authority, the testimony of any witness or witnesses within the Territory of Papua, the Judge may, on the *ex parte* application of any person shown to be duly authorized to make the application and on production of a Letter of Request, or upon application made in such other manner as is provided in the Convention, make such order or orders as may be necessary to give effect to the intention of the Convention.<sup>(2)</sup>

(2.) An order made under the last preceding paragraph shall be in accordance with Form No. 5 in the Schedule, with such variations as circumstances may require.

(3.) The examination may be ordered to be taken before any fit and proper person nominated by the person applying, or before such other person as the Judge from time to time appoints for the purpose.

(4.) Unless otherwise provided for in the Order for Examination, the person before whom the examination is taken shall, on its completion, forward the same to the Registrar of the Central Court<sup>(3)</sup> and on receipt thereof the Registrar shall append thereto a Certificate in accordance with Form No. 6 in the Schedule, with such variations as circumstances may require, and shall forward to the proper authority the depositions so certified, and the Letter of Request, if any, for transmission to the judicial authority desirous of obtaining the said testimony in accordance with the terms of the Convention.<sup>(2)</sup>

(5.) An order made under paragraph (1) of this Rule may, if the Judge thinks fit, direct the said examination to be taken in such manner as may be requested by the Letter of Request from the foreign judicial authority or therein signified to be in accordance with the practice or requirements of that judicial authority, or which may, for the same reason, be requested by the applicant for the order, but in the absence of any such special directions, the examination shall be

(2) See footnote (2) printed on p. 659 and the Table printed on p. 667.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

taken in the manner prescribed by *The Courts and Laws Adopting Ordinance of 1888* as from time to time amended and the Rules and Practice of the Central Court<sup>(3)</sup> in relation to civil proceedings.

(6.) Where a Letter of Request is transmitted to the Registrar of the Central Court<sup>(3)</sup> with an intimation that it is desirable that effect should be given to the same without requiring an application to the Court by the agents of any of the parties to the action or matter in the foreign country, a Judge of the Central Court<sup>(3)</sup> shall take such steps as may be necessary to give effect to the Letter of Request in accordance with these Rules.

(7.) No fees of Court shall be payable in respect to the execution of the Commission rogatoire.

(8.) The Rules of Court for obtaining evidence for Foreign Tribunals made on the twelfth day of August, 1915,<sup>(4)</sup> shall so far as circumstances will admit and not being inconsistent with these Rules apply to the execution of Commissions rogatoires received by the Registrar of the Central Court<sup>(3)</sup> with respect to obtaining evidence for a foreign country with which a Convention in that behalf has been or shall be made.

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## THE SCHEDULE.

### No. 1.

(Title, etc.)

I [or we] hereby request that a notice of a writ of summons [or as the case may be, describing the document] in this action be transmitted through the proper channel to <sup>(a)</sup> for service <sup>(b)</sup> at or elsewhere in <sup>(c)</sup>

(a) Name of country.

(b) Or substituted service.

(c) If under Rule 1 add "Directly through the British Consul" or "by the Foreign judicial authority."

And I [or we] hereby personally undertake to be responsible for all expenses incurred by His Majesty's Principal Secretary of State for Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I [or we] undertake to pay the same to the Registrar of the Central Court, and to produce the receipt for such payment to the proper officer of the Central Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
Signature of Solicitor.

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### No. 2.

(Title, etc.)

Upon hearing the solicitors on both sides, and upon reading the Affidavit of

It is ordered that the British Consul or his Deputy at \_\_\_\_\_ be appointed as Special Examiner for the purpose of taking the examination,

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

(4) See the *Rules of the Central Court, gazetted on 1.9.1915, printed on p. 843.*

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cross-examination and re-examination viva voce on oath or affirmation, of witnesses on the part of the  
 at aforesaid. The Examiner shall be at liberty to invite the attendance of the said witnesses and the production of documents, but shall not exercise any compulsory powers. Otherwise such examination shall be taken in accordance with the English procedure. The solicitors to give to the solicitors  
 days' notice in writing of the date on which they propose to send out this order to for execution, and that days  
 after the service of such notice the solicitors for the plaintiffs and defendants, respectively, do exchange the names of their agent at  
 to whom notice relating to the examination of the said witnesses may be sent. And that days (exclusive of Sundays) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with). And that the depositions when so taken, together with any documents referred to therein, or certified copies of such documents, or of extract therefrom, be transmitted by the Examiner, under seal, to the Registrar of the Central Court of the Territory of Papua, Port Moresby, Papua, on or before the day of  
 next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

(NOTE.—If the Convention requires that the invitation or notice to the witnesses must expressly state that no compulsory powers may be used, this requirement must be complied with.)

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No. 3.

(Heading.)

I [or we] hereby undertake to be responsible for all expenses incurred by his Majesty's Secretary of State for Foreign Affairs in respect of the letter of request issued herein on the \_\_\_\_\_ day of \_\_\_\_\_, 19 , and on receiving due notification of the amount of such expenses undertake to pay the same as directed by the Registrar of the Central Court.

The following have been appointed as agents for the parties in connection with the execution of the above letter of request:—

Plaintiff's Agent,  
 of  
 Defendant's Agent,  
 of

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19 .

Solicitor for

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No. 4.

To the Competent Judicial Authority of \_\_\_\_\_ in the  
 of \_\_\_\_\_

WHEREAS a civil [commercial] action is now pending in the Central Court of the Territory of Papua in which \_\_\_\_\_ is plaintiff and \_\_\_\_\_ is defendant. And in the said action the plaintiff claims \_\_\_\_\_



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and do there submit to be examined upon oath, or affirmation, touching the testimony so required as aforesaid, and do then and there produce [*description of documents, if any, required to be produced*].

And it is further ordered that the said examiner do take down in writing the evidence of the said witness (or witnesses) according to the Rules and Practice of the Central Court pertaining to the examination and cross-examination of witnesses [*or as may be otherwise directed*] and do cause each and every such witness to sign his or her depositions in his, the said examiner's presence; and do sign the depositions taken in pursuance of this order, and when so completed, do transmit the same, together with this order, to the Registrar of the Central Court for transmission as provided.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
Judge of the Central Court.

No. 6.

I, \_\_\_\_\_, the Registrar of the Central Court of the Territory of Papua, hereby certify that the documents annexed hereto are (1) the original order of the Central Court dated the \_\_\_\_\_, 19 \_\_\_\_, made in the matter of \_\_\_\_\_ pending in the \_\_\_\_\_ at \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_ directing the examination of certain witnesses to be taken before \_\_\_\_\_; and (2) the examination and depositions taken by the said \_\_\_\_\_ pursuant to the said order, and duly signed and completed by him on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_  
Registrar of the Central Court.

# TABLE OF LEGAL PROCEEDINGS IN CIVIL AND CRIMINAL MATTERS CONVENTIONS WHICH EXTEND TO THE TERRITORY OF PAPUA.

Particulars of these Conventions are set out in the Table below:—

## TABLE.

Date on which Convention between United Kingdom and Foreign State made.	Date on which came into force in Territory of Papua.	Date on which extension to Territory of Papua notified in <i>Cwlth. Gaz.</i>	Foreign State.
31.3.1931	10.11.1933	23.11.1933	Austria
21.6.1922	10.10.1928	(a)	Belgium
4.11.1932	6.7.1935	4.7.1935	Belgium
11.11.1924	9.11.1933	23.11.1933	Czechoslovakia
15.2.1935	7.5.1936	23.4.1936	Czechoslovakia
29.11.1932	“one month after 8.1.1935”	28.2.1935	Denmark
22.12.1931	26.11.1933	30.11.1933	Estonia
11.8.1933	1.3.1935	21.3.1935	Finland
2.2.1922	10.10.1928	(a)	France
20.3.1928	3.1.1933	15.12.1932	Germany
27.2.1936	14.12.1938	8.12.1938	Greece
25.9.1935	20.8.1937	5.8.1937	Hungary
25.7.1935	7.10.1937	18.11.1937	Iraq
17.12.1930	9.11.1933	23.11.1933	Italy
24.4.1934	31.8.1937	19.8.1937	Lithuania
31.5.1932	8.4.1935	24.1.1935	Netherlands
30.1.1931	3.11.1933	23.11.1933	Norway
26.8.1931	8.12.1933	30.11.1933	Poland
9.7.1931	11.11.1933	23.11.1933	Portugal
27.6.1929	10.11.1933	23.11.1933	Spain
28.8.1930	2.11.1933	23.11.1933	Sweden
3.12.1937	11.2.1940	24.4.1940	Switzerland
28.11.1931	“one month after 3.2.1935”	28.2.1935	Turkey
27.2.1936	23.6.1938	12.5.1938	Yugoslavia

(a) Date on which Convention extended to the Territory not notified in *Cwlth. Gaz.*

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