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L.N. 335 of 2014

CRIMINAL CODE
(CAP. 9)

Method of Service of Judicial Acts Regulations, 2014

IN EXERCISE of the powers conferred by article 699 of the Criminal Code, the Minister responsible for Justice has made the following regulations:-

Citation.

1. The title of these regulations is the Method of Service of Judicial Acts Regulations, 2014.

Interpretation.

2. In these regulations, unless the context otherwise requires:-

"Court of Magistrates" means the Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, as a court of criminal judicature under article 370(1) of the Criminal Code;

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"household" includes any premises wherein any person, at the time of delivery of the summons, lives, even though temporarily, or the particular last registered address or postal address of such person;

"judicial act" means any act or order made in writing by the Court of Magistrates, the Executive Police or other competent authority in proceedings under the provisions of these regulations and includes the summons of the person charged, subpoena and affidavits as well as any document to be produced in evidence in the same proceedings;

"last registered address" means:

(a) in relation to a person appearing on the last issued Electoral Register, the address shown for such person, and in relation to persons not appearing on the last issued Electoral Register, the address shown for such persons on the last Electoral Register where his name is shown;

(b) in relation to a body corporate having distinct legal personality:

(i) the address of the registered office shown on the registration of that body corporate with any state body or authority in Malta with which it is obliged, under any law, to be registered in order to function; or

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(ii) if there is no obligation to register, the address of the main office given on the voluntary registration by such body corporate with any state body or authority;

"local warden" means any person duly licensed in accordance with article 14 of the Private Guards and Local Wardens Act; Cap. 389.

"officer" means Police officers, officers of the Post Office, local wardens, and any other body or persons entrusted with the service of judicial acts by virtue of these regulations or any other regulations made under the provisions of the Criminal Code, or any other law; Cap. 9.

"officers of the Post Office" means post-officers duly employed in the business of the Post Office;

"place of work" means any place where the person works, whether as employer, employee or service provider, whether full-time or part-time, whether for any remunerative consideration or otherwise on a voluntary basis;

"place of business" means the business address from where a main business is conducted, and this includes but is not limited to, the address or addresses from where the administration and, or the management and, or the main dealings of the business are conducted;

"postal address" means:

(i) in relation to a natural person, the address where the person usually receives his mail, or to such other place that may have been indicated by the person to the officers of the Post Office; and

(ii) in relation to a body corporate having distinct legal personality, the last registered address;

"service" means any service whether such service is given on a permanent basis or whether it is given on a temporary basis;

"statement" means the declaration made by the officer charged with the notification of judicial acts, which declaration must be drawn up on the certificate of notification by the officer charged with the notification, which certificate must be completed in the form prescribed in Schedule 2;

"subpoena" means a witness summons whereby a person is called upon to give evidence before a Court of Magistrates, and such subpoena shall contain an order to appear at a stated place and time

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for the purpose of giving evidence before the Court of Magistrates.

Applicability.

3. These regulations shall apply to proceedings before the Court of Magistrates as designated in Schedule 1.

Mode of effecting service.

4. (1) Notification of a summons shall be effected by the delivery of the summons:

(a) at any place in Malta or Gozo personally to the person on whom the summons is to be served; or

(b) by leaving such summons at the postal address or last registered address of such person; or

(c) by leaving such summons at the place of business or place of work of such person:

Provided that notification in terms of paragraph (b) shall only be valid if the summons is left with some member of his family or household, or with a person giving him a service in that household:

Provided also that notification in terms of paragraph (c) shall only be valid if the summons is left with some person in his service or employment, or his attorney, or person authorised to receive his mail:

Provided further that it shall not be lawful to leave such summons with any person under the age of fourteen years, or with any person who, on account of infirmity of mind, is unable to give evidence of such service, and that a person shall be presumed to be able to give evidence unless the contrary is proven.

(2) No objection may be raised on the grounds of irregularity of the notification for any of the reasons stated in the above provisos if it results that the summons has actually reached the person to be served therewith or if the person appears before the Court.

Notification to legal person.

5. In the case of a body having a distinct legal personality, notification on such body shall be effected by leaving the summons:

(a) at its place of business, or postal address or last registered address with any of the persons vested with the legal or judicial representation thereof, or with any company secretary, or with any other person authorised in writing by such body to receive such summons, or with any person in its service or employment; or

(b) with any of the persons vested with the legal or

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judicial representation thereof, with any company secretary or with any other person authorised in writing by such body to receive such summons in the manner provided for in regulation 4.

Persons on board vessels, etc.

6. In the case of persons on board ships, other vessels or aircrafts, or members of the crew having no place of residence in Malta, notification may be effected by delivering such summons to the master of the ship, vessel or aircraft or to any other person acting in their behalf or, in the absence of such persons, on the agent of the ship or other vessel, as the case may be, or in the absence of such persons and agent, on curators appointed by the court in terms of article 929 of the Code of Organization and Civil Procedure. Cap. 12.

Refusal to accept notification.

7. Where a person to whom a judicial act is addressed, or a person who is obliged to accept notification on behalf of the person to whom the judicial act is addressed, refuses to receive it personally from an officer charged with the notification of the judicial act, such officer shall leave the judicial act as near as reasonably possible to the person who refuses to accept the judicial act and the person to whom the judicial act is addressed shall be deemed regularly notified on the day and time of the refusal of notification.

When notification cannot be accepted.

8. (1)(a) In the event that with the second attempt to notify the person, notification of the judicial act cannot be effected in terms of regulations 4 and 5, the officer charged with the notification shall leave the summons at the last registered address or affix it to the door of that last registered address:

Provided that the officer may not leave the summons at the last registered address or affix it to the door of that last registered address unless the second attempt has been carried out the next following day or after the lapse of any longer period.

(b) Moreover abstracts of the judicial acts shall be published once in the Gazette or one daily newspaper, which abstracts shall contain the name and surname of the offender, a legally valid identification document number of the offender, the respective Court where the sitting is going to be held, the sitting date and time, and the charges:

Provided that if the last registered address is not known, it shall suffice and a person shall be deemed to be notified, if abstracts of the judicial act are published in accordance with paragraph (b).

(2) The officer who effects notification in terms of subregulation (1)(a) and (b) shall draw up a certificate of service in

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terms of regulation 14.

(3) Copies of the abstracts published as required by the proviso to subregulation (1)(b) shall be exhibited before the Court by the Prosecuting Officer and such fact shall be noted down in the Court proceedings.

(4) Notification effected in terms of subregulation (1) shall, in all cases, be deemed to have been made three days following the publication.

Persons present in Malta.

9. Regulation 8 shall also apply when notification has not been effected and it appears to the officer charged with the notification that one of the persons mentioned in regulation 5 is present in Malta.

Notification of subpoenas.

10. (1) Notification of subpoenas shall be carried out in accordance with regulations 4 to 6 and regulation 11:

Provided that if a person to whom a subpoena is addressed, or a person who is obliged to accept notification on behalf of the person to whom the subpoena is addressed, refuses to receive it personally from an officer charged with the notification of the summons, such officer shall leave the subpoena as near as reasonably possible to the person who refuses to accept the subpoena and such person may be found guilty of contempt.

(2) The officer charged with the notification shall fill in the certificate of notification in accordance with regulation 14.

Designated persons to effect service.

11. For the purpose of these regulations, service of all the judicial acts filed or issued by the Court of Magistrates or the Executive Police shall be carried out by Police officers, and, or by officers of the Post Office, and, or by Local Wardens, and, or any other body or persons entrusted with such service by virtue of these regulations or any other regulations made under the provisions of the Criminal Code or any other law in accordance with the provisions of regulations 4 to 6.

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Times of notification.

12. Notification of judicial acts shall be executed between seven o'clock in the morning and seven o'clock in the evening, between Monday and Saturday, both days inclusive, excluding public holidays:

Provided that where the urgency of the case does not admit of any delay the persons entrusted with such service may effect the notification at any other time or day.

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Authorised server.

13. (1) The Minister may appoint an authorised server for the purpose of carrying out duties in or connected with the delivery of summons and, or other judicial acts, which duties shall be carried out in accordance with the conditions listed in the authorisation appointing the authorised server therewith.

(2) The Minister shall verify that the person who is to be appointed as an authorised server and any person who is employed with the authorised server and who has the effective control of the services to be provided by the person who is to be appointed as the authorised server:

(a) has not been convicted in Malta or elsewhere of any crime of wilful homicide or of grievous bodily harm or any crime against property aggravated by an amount exceeding two thousand and four hundred (€2,400) or by violence or any crime against public trust or any other serious crime; or

(b) has not been declared bankrupt or his financial position is precarious or otherwise renders the applicant unsuitable; or

(c) has not been discharged from the Police or armed forces or the prison services because of any offence or other misbehaviour; or

(d) is not a public officer other than one who belongs to a grade or category as may be prescribed by the Minister, or a member of the Police, or armed forces, or the prison services; or

(e) has been convicted in Malta or elsewhere of a crime against the person or against property and the application is made within five years from the commission of the crime.

(3) No person shall operate, act or offer his services as an authorised server, unless such person is authorised in accordance with the provisions of these regulations. Nor may such person employ, engage or permit the use of the service of a server unless such service is provided by a qualified server. For the purpose of these regulations, "server" shall mean an individual whose services are rendered in the provision of authorised server services.

(4) It shall not be lawful to employ, engage or permit the use of the service of a server unless the server is operating through the authorised server duly authorised in accordance with these regulations.

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Certificate of service.

14. (1) The officer charged with the notification of the summons shall, draw up a certificate of notification stating the name and surname of the person on whom service was effected and, if the summons was not served directly on the person on whom service was to be effected, the name and the surname of the person to whom the summons was delivered. The officer shall also note down the place where the summons was served, and the date and time when the summons was served:

Provided that if the person refuses to accept the summons in terms of regulation 5 the officer shall also note down the fact together with the circumstances of such refusal, on the certificate of notification:

Provided also if notification is effected in terms of regulation 8(1)(b) it shall be sufficient if the officer, on the certificate of notification, states and confirms the place, day and time he attempted notification:

Provided further that if the judicial act is delivered, in respect of a person at one of the places referred to in regulation 4(1)(b) and, in respect of a body corporate or incorporate at one of the places referred to in regulation 5(a) or (b), the person to whom the summons was delivered refuses to identify himself, and the officer charged with the service is satisfied that the person who refuses to receive and, or identify himself is of age and of sound mind, it shall be sufficient if, on the certificate of notification, the officer notes down the facts of the case, the date and time when notification was effected and the place where notification was effected:

Provided finally, for the purpose of this provision, delivery in terms of regulation 5(b) shall be limited to the procedure stipulated in regulation 4(1)(b).

(2) The officer charged with the notification of the summons may also, on the certificate of notification, note down any other relevant remarks.

Certificate of notification.

15. The officer charged with the service shall draw up the certificate of notification using the form prescribed in the Schedule 2.

Certificate proof of own contents.

16. The certificate of notification shall be deemed to be proof of its own contents unless otherwise proven by any party in the proceedings and such proof provided by the contending party appears justified *prima facie* to the Court.

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17. Nothing contained in these regulations shall be construed to be inconsistent with the provisions of the Criminal Code.

Regulations not inconsistent with Criminal Code. Cap.9

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Schedule 1
(Regulation 3)

Court of Magistrates (Malta) as presided by
Magistrate Dr. Francesco Depasquale

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Schedule 2

(Regulation 15)

FRONT

Date: .....

Hearing : .....

Contravention No: .....

Summons No: .....

Served to: (*name*) .....

Address: .....

.....

DELIVERED

Name and surname of the receiver: .....

Date and time: .....

Place delivered (*if different from the above*):

.....

.....

I, ...

the undersigned, hereby confirm that all the above is correct.

Signature of Official: .....

Date: .....

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BACK

NO ANSWER

1. Date and time: .....

1. Place: .....

.....

2. Date and time: .....

2. Place: .....

.....

Because of the fact that nobody replied

I left the summons:

I affixed the summons to the door:

at the last registered address, which is: .....

.....

Date and time: .....

REFUSED

Date and time: .....

Place: .....

.....

Although the summons was refused, I have left it at the address mentioned in the summons which is: .....

.....

Date and time: .....

Other remarks: .....

.....

I, ...

the undersigned, hereby confirm that all the above is correct.

Signature of Official: .....

Date and time: .....

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