

1993/04



**MATRIMONIAL PROPERTY RULES 1993**

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A. P. Short

Queen's Representative

**ORDER IN EXECUTIVE COUNCIL**

At Avarua, Rarotonga, this 8th day of June 1993

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE  
IN EXECUTIVE COUNCIL**

**PURSUANT** to section 53 of the Matrimonial Property Act 1976 of the General Assembly of New Zealand, as applied in the Cook Islands by the Matrimonial Property Act 1991-92, His Excellency the Queen's Representative acting by and with the advice and consent of the Executive Council hereby makes the following Rules:

**ANALYSIS**

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. Title</li> <li>2. Interpretation<br/><u>Disclosure</u></li> <li>3. Application of Rules</li> <li>4. Affidavit disclosing property</li> <li>5. Insufficient affidavit</li> <li>6. Failure to file affidavit or sufficient affidavit</li> <li>7. Failure to attend for examination or to comply with directions in relation to examination</li> <li>8. Power to summon witnesses</li> </ol> | <ol style="list-style-type: none"> <li>9. Execution of warrants</li> <li>10. Conduct of examination<br/><u>Conference</u></li> <li>11. Power of Judge to call conference</li> <li>12. Orders and directions</li> <li>13. Non-compliance with order<br/><u>Service Outside Cook Islands</u></li> <li>14. Service and execution of process outside Cook Islands</li> <li>15. Schedule</li> </ol> |
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**REGULATIONS**

1. **Title** - These rules may be cited as the Matrimonial Property Rules 1993.
2. **Interpretation** - (1) In these rules, unless the context otherwise requires, -  
 "The Act" means Matrimonial Property Act 1976 of the General Assembly of New Zealand, as applied in the Cook Islands by the Matrimonial Property Act 1991-92.  
 "Registrar" means the Registrar of the High Court; and includes any Deputy Registrar.

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"Working day" means any day for the week other than -

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Gospel Day, The Sovereign's birthday, and Constitution Day; and
- (b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year.

(2) In these rules a reference to a numbered form is a reference to the form so numbered in the Schedule to these rules.

### DISCLOSURE

3. **Application of Rules** - (1) These rules shall apply to -

- (a) Every application made to the High Court pursuant to section 25(1)(a) of the Act;
- (b) Any other application for an order under the Act (other than one under section 25(1)(a) to which the High Court either on application or on its own motion may, by order, apply these rules.

whether or not such application was made before or after the coming into force of these rules.

(2) These rules shall apply in addition to any relevant rules in the Code of Civil Procedure of the High Court 1981, and if in any proceedings any question arises as to the application of these rules or if a situation arises for which no provision is made either under these rules or those rules, the High Court shall dispose of the case in such manner as the High Court thinks best calculated to promote the ends of justice.

4. **Affidavit disclosing property** - (1) Where this rule applies in respect of any application, the applicant shall, within 30 working days of filing the application or within such longer time as the High Court or a High Court Judge on application may allow -

- (a) File an affidavit in form MP1 in the office of the High Court in which the application was filed; and
- (b) Effect personal service of a copy of the affidavit on the respondent to the application.

(2) The respondent to an application to which this rule applies shall, within 20 working days of service on the respondent of the copy of the affidavit referred to in subclause (1)(b) of this rule or within such shorter or longer time as the High Court or a High Court Judge on application may specify -

- (a) File an affidavit in form MP1 in the office of the High Court in which the applicant's affidavit was filed under subclause (1)(a) of this rule; and
- (b) Serve a copy of the affidavit on the applicant.

(3) If the respondent to an application to which this rule applies has not, at the time of the filing by the respondent of an affidavit in form MP1, already filed an address for service, that affidavit shall state an address for service in accordance with the Code of Civil Procedure of the High Court 1981.

5. **Insufficient affidavit** - If either party to an application to which this rule applies files an affidavit in form MP1 which purports to set out the property of that party that is or may be in issue in the proceedings, and the other party believes on reasonable grounds that the affidavit does not accurately set out the nature and value of the property of the first-mentioned party that is or may be in issue in the proceedings, the other party may apply to the High Court, either ex parte or on notice, for -

- (a) An order requiring the party in default to file a sufficient affidavit; or
- (b) An order, under section 38(1) of the Act, for an inquiry into the nature and value of the property of the party in default which is or may be in issue in the proceedings.

6. **Failure to file affidavit or sufficient affidavit** - (1) If a respondent who is required under these rules to file an affidavit in form MP1 -

- (a) Fails to file an affidavit in form MP1; or
- (b) Fails to file a sufficient affidavit in form MP1.

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the applicant may apply, either ex parte or on notice, to the High Court or a High Court Judge for an order -

- (a) Requiring the respondent to attend at a time and place stated in the order for examination by the High Court as to any or all of the matters required to be disclosed in an affidavit in form MP1; or
  - (b) Under section 38(1) of the Act for an inquiry into the nature and value of the property of the party in default which is or may be in issue in the proceedings.
- (2) On an application under subclause (1)(a) of this rule, the High Court or a High Court Judge may make an order for the attendance and examination of the respondent and for the production of any books or documents relating to the respondent's property.
- (3) An order made under subclause (2) of this rule shall be in form MP2 and shall be served personally upon the respondent.
- (4) On the failure of the respondent to attend for examination at the time and place appointed, a High Court Judge may issue a warrant in form MP3 to arrest the respondent and bring the respondent before the High Court as soon as possible.
- (5) If the applicant fails to file an affidavit in form MP1, or a sufficient affidavit in form MP1, as the case may be, the Court may order the application to be -
- (a) Dismissed; or
  - (b) Stayed until the order is complied with.
- (6) The failure by the applicant or the respondent to file an affidavit in form MP1, or a sufficient affidavit in form MP1, as the case may be, may be taken into account by the High Court in exercising its power under section 40 of the Act to make an order as to costs.

**7. Failure to attend for examination or to comply with directions in relation to examination - (1) If the respondent -**

- (a) Fails to comply with an order made under rule 6(2) of these rules; or
  - (b) On attending or being brought before the High Court for examination under rule 6 of these rules, wilfully and without lawful excuse disobeys any direction given to the respondent by the High Court in relation to that examination (including a direction to answer questions) -
- the High Court may order that the respondent be allowed to defend the application only on such terms as the High Court thinks fit.

**8. Power to summon witness - (1) Where the High Court believes in relation to any examination to be held under rule 6 of these rules that any person (other than the respondent)-**

- (a) Has possession of any book, paper, or document relating to the affairs or property of the respondent; or
  - (b) Is capable of giving information concerning the respondent's property or concerning the respondent's liabilities;
- the High Court may issue a summons in form MP4 requiring that person to appear before the High Court as a witness at the time and place appointed in the summons.

(2) Any person so summoned may be required to produce any book, paper, document, computer disc, tape or other record relating to the affairs or property of the respondent.

(3) On the failure of any person to appear before the High Court in answer to a summons under subclause (1) of this rule, a High Court Judge may issue a warrant in form MP5 to arrest that person and bring that person before the High Court as soon as possible.

**9. Execution of warrants - (1) A person to whom a warrant under rule 6(4) or rule 8(3) of these rules is issued may execute it forthwith but shall not be obliged to do so if that person believes that the person to be arrested could not, within 72 hours after the arrest, be brought before the High Court.**

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(2) A warrant under rule 6(4) or rule 8(3) of these rules shall cease to have effect if a sufficient affidavit is filed.

(3) Every respondent or other person apprehended under a warrant under rule 6(4) or rule 8(3) of these rules shall be bailable as of right.

10. **Conduct of examination** - (1) An examination under rule 6 of these rules shall be made orally on oath before the High Court.

(2) Every respondent who is brought before a High Court under rule 6 of these rules shall appear personally, and may be represented by a barrister or solicitor who may examine the respondent and be heard on the matter of the respondent's property.

(3) Any witness may be cross-examined by the respondent or the respondent's barrister or solicitor.

(4) Any examination under rule 6 of these rules may from time to time be adjourned by the High Court to a time and place to be appointed.

### CONFERENCE

11. **Power of Judge to call conference** - (1) For the purpose of ensuring that any application or intended application under the Act may be determined in a just, expeditious and economical manner, a High Court Judge may at any time, either on the application of either party or intended party or their counsel, or without such application, on such terms as the High Court Judge thinks fit, direct the holding of a conference of -

(a) Parties or intended parties; or

(b) The counsel representing the parties or intended parties.

(2) A High Court Judge shall preside over the conference and may adjourn the conference from time to time and from place to place.

(3) Where the conference is held pursuant to subclause (1)(a) of this rule, the counsel representing any party or intended party may attend either in the place of the party or intended party or with the party or intended party.

(4) Where the conference is held pursuant to subclause (1)(b) of this rule, any party or intended party who is not represented by counsel may attend the conference of counsel.

12. **Orders and directions** - (1) At any conference held pursuant to rule 11 of these rules the High Court Judge presiding may make such orders and give such directions as appear best adapted to secure the just, expeditious, and economical disposal of the application under the Act.

(2) Without limiting the generality of subclause (1) of this rule, the High Court Judge may -

(a) Settle the issues to be determined;

(b) Direct what persons shall be joined as parties to the application or direct that the name of any party be joined or struck out;

(c) Direct which parties shall be served;

(d) Direct by whom and within what time any affidavit or other document shall be filed;

(e) Require any party to make admissions in respect of questions of fact, and, if that party refuses or fails to make an admission in respect of any such question, require that party (subject to the direction of the High Court Judge hearing the application) to bear the costs of proving that question at the hearing;

(f) Make any order or issue any warrant or summons authorised by rules 3 to 10 of these rules;

(g) Abridge, extend, or fix a time for the filing of any document or the doing of any other thing;

(h) Require further or better particulars of any facts or other circumstances connected with the application;

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- (i) Require any party to make discovery or to produce documents or permit any party to administer interrogatories;
- (j) Appoint any person pursuant to section 38(1) of the Act to make any inquiry into the matters of fact in the issue between the parties;
- (k) Fix a time and place for the hearing of the proceedings;
- (l) Give such consequential directions as may be necessary.

13. **Non-compliance with order** - If any party fails to comply with any order made under rule 12 of these rules, the following provisions shall apply:

- (a) If the party failing to comply with the order is the applicant in the proceedings, the High Court Judge may order the proceedings to be -
  - (i) Dismissed, or
  - (ii) Stayed until the order is complied with.
- (b) If the party failing to comply with the order is the respondent, the High Court Judge may order that the respondent be allowed to defend the application only on such terms as the High Court Judge thinks fit.
- (c) The failure may be taken into account by the High Court in exercising its power under section 40 of the Act to make an order as to costs.

### **SERVICE OUTSIDE COOK ISLANDS**

14. **Service and execution of process outside Cook Islands** - (1) Any person who makes an application to the High Court under the Matrimonial Property Act 1991-92 and who wishes to have that application served outside the Cook Islands shall apply to the High Court for directions.

- (2) On any such application for directions the Court -
  - (a) Shall give directions relating to -
    - (i) The time within which the respondent may file a notice of defence; and
    - (ii) The method of service of the application to the High Court under the Matrimonial Property Act 1991-92; and
  - (b) May give directions relating to any other matter relevant to the service outside the Cook Islands of the application to the High Court under the Matrimonial Property Act 1991-92.
- (3) The Registrar shall issue, for service on the respondent, -
  - (a) A copy of the application; and
  - (b) A notice in form MP6

M. Taruia  
**Clerk of the Executive Council**

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**SCHEDULE**

**FORMS**

**Form MP1**

**Rule 4**

**AFFIDAVIT OF ASSETS AND LIABILITIES**

**Matrimonial Property Act 1991-92**

In the High Court  
Civil Division  
Held at.....

In the matter of the Matrimonial  
Property Act 1991-92

And In the matter of an application for an order  
(here describe the order applied for)

Between (Full names) of (Address),  
(Occupation), Applicant,

And (Full name), of (Address),  
(Occupation)

I, (Full name) of (Address), (Occupation), make oath and say:

1. My assets and liabilities are described in paragraphs 3 to 6 of this affidavit.
2. The assets described in paragraph 3 of this affidavit include -
  - (a) All property owned by me either in my sole name or jointly or in common with any other person or persons;
  - (b) Any interest to which I am beneficially entitled in any property;
  - (c) All property owned by me whether it is in the Cook Islands or elsewhere;
  - (d) All property owned by me whether I consider it to be matrimonial property or separate property;
  - (e) All property owned by me irrespective of the time at which or the manner in which it was acquired.

**Assets**

3. My assets are as follows:
  - (a) Matrimonial home or homestead:
    - Location
    - Share owned
    - Value at separation
    - Value at date of affidavit
  - (b) Land and buildings:
    - Location
    - Share owned
    - Claimed as matrimonial property or separate property
    - Value at separation
    - Value at date of affidavit

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- (c) Household chattels:  
 Location  
 Share owned  
 Identify those claimed as matrimonial property and those claimed as separate property  
 Value at separation  
 Value at date of affidavit
- (d) Superannuation:  
 Name of scheme or schemes  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (e) Money in any bank:  
 Bank  
 Account No  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (f) Money not in bank or invested:  
 Location  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (g) Money lent or in hands of any person:  
 Name and address  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (h) Government stock, debentures, or bonds:  
 Details  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (i) Public company shares, debentures, or bonds:  
 Details  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (j) Private company shares, debentures, or bonds:  
 Details  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (k) Plant and machinery  
 Description  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit

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- (l) Livestock:  
 Description  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (m) Interest in business, partnership, stock-in-trade, or venture of any kind:  
 Description  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (n) Motor vehicles:  
 Description  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (o) Life assurance:  
 Life assured  
 Name and number  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (p) Property insurance:  
 Name and number  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (q) Compensation or damages:  
 Description  
 Share owned  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (r) Debt or mortgage owed to me:  
 Description  
 Share owed to me  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (s) Interest in trust or estate:  
 Description  
 Share  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit
- (t) Any other property or asset not specified above that is, or could be, the subject of an order in the proceedings:  
 Share  
 Claimed as matrimonial property or separate property  
 Value at separation  
 Value at date of affidavit



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4. Valuation of items described in paragraphs (a), (b), (c) and (d) of paragraph 3 of this affidavit are attached marked "A", "B", "C", and "D" respectively.

### Liabilities

5. My liabilities as follows:

- (a) Mortgages or charges secured over matrimonial home:  
 Mortgagee or charge-holder  
 Nature of mortgage/charge  
 Amount owing
- (b) Mortgages secured over any other land or buildings  
 Property  
 Mortgagee or charge-holder  
 Nature of mortgage/charge  
 Amount owing
- (c) Bank overdrafts or term loans  
 Bank  
 Amount owing
- (d) Borrowing against life assurance policy  
 Name and number  
 Amount owing
- (e) Borrowing against superannuation contributions:  
 Name of scheme  
 Amount owing
- (f) Loans secured over chattels, plant, machinery, or livestock:  
 Property  
 Lender  
 Amount owing
- (g) Hire purchase loans:  
 Goods  
 Lender  
 Amount owing
- (h) Other loans  
 Lender  
 Amount owing
- (i) Unsecured debts  
 Lender  
 Amount owing
- (j) Any other liabilities not falling within any of the preceding paragraphs:  
 Nature of liability  
 Amount owing  
 To whom owing

### Income

6. Since the separation I have earned or received, from an asset described in paragraph 3 of this affidavit or from other sources, the following income:
- |        |  |
|--------|--|
| Source |  |
| Amount |  |

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**Capital payments**

7. Since the separation I have made to an asset described in paragraph 3 of this affidavit the following capital payments:  
Asset  
Amount paid

**Assets disposed of**

8. The assets that, since the separation, I have sold or otherwise disposed of, or have agreed to sell or otherwise dispose of, are as follows:  
Asset  
Date  
Amount received or to be received  
Disposition of amount

**Assets acquired**

9. The assets that, since the separation, I have acquired or agreed to acquire are as follows:  
Asset  
Mode of acquisition  
Amount paid or to be paid  
Value at date of affidavit

**SWORN AT**.....this .....of .....19...  
before me

**A Solicitor of the High Court of New Zealand; (or)  
A Barrister or Solicitor of the High Court of the Cook Islands**

\_\_\_\_\_

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**Form MP2**

**Rule 6(3)**

**ORDER TO ATTEND FOR EXAMINATION**  
**Matrimonial Property Act 1991-92**  
**(Heading - As for form MP1)**

To: the Respondent

- \* You have failed to file an affidavit as required by rule 4 of the Matrimonial property Rules 1993.
- \* You have failed to file a sufficient affidavit as required by rule 5 of the Matrimonial Property Rules 1993.

You are ordered to attend the High Court for examination as to any or all of the matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1993.

You are ordered to appear at..... a.m.(p.m.) on (Date) at the High Court at .....

If you file a sufficient affidavit before the above date, you need not appear for examination.

- \* You are ordered to bring to the examination any books or documents relating to your property.

.....  
**Registrar**

.....  
**Date**

The office of the High Court is open from ..... to ..... on Mondays to Fridays inclusive.

\* Delete if not applicable.

**NOTES**

**Representation by a lawyer**

You may be represented at the examination by a lawyer if you wish.

**Failure to appear**

If you fail to appear in answer to this order, a warrant may be issued for your arrest.

**Advice**

If you need help, consult a lawyer or contact a High Court office immediately.

\_\_\_\_\_

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**Form MP3**

**Rule 6(4)**

**WARRANT TO ARREST RESPONDENT FOR EXAMINATION**  
**Matrimonial Property Act 1991-92**  
**(Heading - As for form MP1)**

To: Every Constable

An order was made on ..... requiring the respondent to appear on  
(Date) at the High Court at ..... (Date)  
to be examined as to any or all of the matters  
required to be disclosed in an affidavit under the Matrimonial Property Rules 1993.

\* The examination was adjourned to .....  
The order could not be served (or The respondent did not appear).

I direct you to arrest the respondent and bring the respondent before a High Court as soon  
as possible.

If you believe the respondent cannot be brought before a High Court within 72 hours after  
the arrest of the respondent, you need not execute the warrant immediately.

.....  
**Judge**

.....  
**Date**

\_\_\_\_\_

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Form MP4

Rule 8(1)

**SUMMONS TO WITNESS TO ATTEND EXAMINATION**  
**Matrimonial Property Act 1991-92**  
**(Heading - As for form MP1)**

To: .....  
.....  
.....

(Full name) has been ordered to attend for examination as to any or all of the matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1993.

I believe -

- That you have possession of books, papers, or documents relating to the affairs or property of the respondent; or
- That you are capable of giving information concerning the respondent's property or the respondent's liabilities.

**YOU ARE SUMMONED** to appear as a witness at the examination at .....a.m.  
(p.m.) on ..... at the High Court at .....  
(Date)

- You are required to bring with you and produce (Set out details of the book, paper, document or computer record, etc.).

.....  
**Registrar**

.....  
**Date**

• Delete if not applicable

**NOTES**

**Failure to appear**

If you fail to appear in answer to this summons, a warrant may be issued for your arrest.

**Advice**

If you need help, consult a lawyer or contact a High Court office immediately.

\_\_\_\_\_

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**Form MP5**

**Rule 8(4)**

**WARRANT TO ARREST WITNESS FOR ATTENDANCE AT EXAMINATION**  
**Matrimonial Property Act 1991-92**  
**(Heading - As for form MP1)**

To: Every Constable

(Full name), of (Address), (Occupation), was summoned to appear on ..... at  
(Date)  
..... as a witness at an examination of the respondent as to any or all of the  
matters required to be disclosed in an affidavit under the Matrimonial Property Rules 1993.

The witness failed to appear.

I am satisfied that -

- (a) summons was duly served on the witness; and
- (b) witness expenses at the prescribed scale were tendered to the witness.

I direct you to arrest the witness (Full name), and bring him (or her) before a High Court as soon as possible.

If you believe that the witness cannot be brought before the High Court within 72 hours after the arrest of the witness, you need not execute the warrant immediately.

.....  
**Judge**

.....  
**Date**

\_\_\_\_\_

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**Form MP8**

**Rule 14(4)**

**NOTICE TO RESPONDENT RESIDING OUTSIDE COOK ISLANDS OF APPLICATION UNDER MATRIMONIAL PROPERTY ACT 1991-92**

In the High Court

At .....

To: .....

.....

.....

An application (see the attached copy) has been filed in this Court by (Full name). The order or orders sought by the applicant are specified in the application.

**Jurisdiction of Court**

The Court may make an order for ..... where (Set out bases for jurisdiction in respect of each order sought following closely the relevant provisions of the Matrimonial Property Act 1991-92).

**Notice of defence**

If you wish to defend the application or be heard on it, you would, either directly or through a lawyer in the place where you are, send authority to a lawyer in the Cook Islands by air mail, instructing that lawyer to act for you. If you wish to defend the application, you must, within ..... days of receiving this notice, -

- (a) File a notice of defence in this office of the Court; and
- (b) Serve a copy of the notice or defence on the other party to the proceedings. That copy may be delivered to the address for service given by the applicant.

If your notice of defence is not filed within that time, the case may proceed without further notice to you.

**Address for service**

If you do not wish to defend the application but you do wish to know what is happening, you should -

- (a) File in this office of the Court a notice giving the address of a place in the Cook Islands at which documents can be left for you; and
- (b) Serve a copy the notice on the other party to the proceedings. That copy may be delivered to the address for service given by the applicant.

**Advice**

If you need help, consult a lawyer in the place where you are immediately.

.....  
**Registrar**

.....