



Warwick Legal Network

**HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A
LIMITED LIABILITY COMPANY**

A PRACTICAL HANDBOOK

This practical guide provides a general overlook into the main legal and administrative aspects regarding summons in different countries worldwide.

Warwick Legal Network is an international association of independent law firms with offices in over 30 jurisdictions

WITH THE PARTICIPATION OF...

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“HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY”

INDEX

- 1) Belgium
- 2) Bulgaria
- 3) Hungary
- 4) India
- 5) Italy
- 6) Spain
- 7) UAE
- 8) USA

CHAPTER 2
HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY
IN BELGIUM

(A) What is the applicable law in domestic claims?

The Belgian Judicial Code.

(B) What is the applicable law in international claims?

1. From the EU.

Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) is applicable when summoning a defendant from Belgium before a court in another EU member state.

In principal, Belgian law will apply to the service of the writ of summons (article 7 of the aforementioned Regulation). Belgian law does not have any special requirements apart from the ones mentioned in this Regulation (model forms etc.).

Language is one of the most important things when summoning in Belgium in my opinion, as we have some difficult language rules (especially around Brussels). When the writ of summons has not been drafted in a language the defendant understands, or in the official language of his place of residence, he can decline to receive the writ of summons and the service will be deemed not to have happened (article 8).

2. From a third country.

The same principles apply for a writ of summons from a third country, the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters will be applicable.

When the writ of summons originates from a country which is not a party to the Convention, legalisation of the writ will be required. The legalisation will be carried out by the National Chamber of Bailiffs (instead of by the Federal Government Services).

(C) How can the defendant be summoned?

1. Writ of summons.

This is the most common way to bring a case to court. For this, the plaintiff calls upon a bailiff who hands the writ of summons to the other party (the defendant). The writ of summons is an official summons to appear in court that is handed to the summoned person by the bailiff.

The writ of summons must contain some mandatory information.

2. Voluntary appearance.

A voluntary appearance of the parties before the court is also possible and saves the parties the cost of a writ of summons, which the losing party has to pay in principle. It is filed by a joint petition of all parties. The original thereof must be signed and dated by all parties. The petition may be filed at the registry or sent to the registry by registered mail.

3. *Inter partes* application.

In cases determined by law (for example, disputes between spouses and rent disputes), a case can be initiated by an *inter partes* application. This must be sent by the plaintiff to the registry or filed at the registry.

The application must be filed in as many copies as there are parties involved (and sometimes even more).

(D) Regarding individuals

Documents are preferred to be served to individuals in the following order:

To the person directly; to his place of residence; by abandonment to the domicile; to the prosecutor's office (if unknown); abroad.

As far as possible, the bailiff takes the above-mentioned order into account and tries first to summon the defendant personally.

(E) Regarding a company

Documents are served to a company at its registered seat in principle. If not reachable there (and also if explicitly requested by the court) the writ of summons has to be served to the director(s) at his/her/their own residence (and then the same order mentioned above applies: personally, at their residence...).

In exceptional cases, a writ of summons can also be served to the shareholders.

(F) What happens if the defendant is not found?

1. The writ of summons.

If the defendant himself, or a legal representative in case of a company, is not present at his place of residence, the bailiff can give a copy of the writ of summons to a relative if he or she is present at that time, or to an employee for example in case of a company (article 35 Judicial Code). However, the writ of summons cannot be handed to a child that is not older than 16 years old.

When the bailiff cannot serve the writ of summons in the aforementioned way and he cannot serve it to the defendant himself, the bailiff will leave a copy under closed envelope at the place of residence of the defendant. The bailiff will mention this on the original writ and on the copy which he will leave and has to mention the date, time and place where he left the copy (article 38, §1 Judicial Code).

Subsequently, the bailiff has to address a registered letter at the place of residence of the defendant stating the fact that he left a copy of a writ of summons for him, as well as the date and hour when the bailiff offered the writ at his place of residence, and that he can obtain a copy at the offices of the bailiff during a period of 3 months starting from the date of serving. This registered letter can only be sent onwards from the first working day after the serving (article 38, §1 Judicial Code).

Should a defendant not have legal place of residence, but a known place of stay, the bailiff can point all his actions at this address.

When it is materially impossible to leave a copy of the writ of summons at the looking upon the factual circumstances (e.g. when the property is clearly vacant), the bailiff can leave a copy of the writ of summons at the prosecutor's office of the district where the impossibility occurred, which counts as service. The factual circumstances which justify this method of serving have to be mentioned on the original and the copy of the writ. The prosecutor subsequently has to try to find the defendant as soon as possible, but most of the time these efforts will not amount to much (article 38, §2 Judicial Code).

When the defendant does not have a known place of residence, place of stay or chosen place of residence in Belgium, the bailiff will send a copy of the writ to their place of residence abroad by registered letter, notwithstanding any other means of serving which has been agreed upon between Belgium and the country where the defendant has his place of residence (see below). Delivering the copy of the writ to the postal services counts as the serving to the defendant (article 40 Judicial Code).

When the defendant does not have a known place of residence or place of stay in Belgium or abroad, the service of the writ will be done by handing a copy of the writ to the prosecutor's office of the district in which the court where the claim is brought for lies (article 40 Judicial Code).

2. Unilateral application.

In exceptional cases determined by law, a case may be brought before the court by means of a unilateral application filed at the registry.

The opposing party is not notified of the case. That happens only after the judge makes a decision.

That way to initiate a case is used, for example, when the opposing party is not known.

(G) Is it possible to notify by edicts?

No. The 'last resort' is to serve a document to the public prosecutor's office, which has the obligation to search the defendant and when the defendant gets a new address during the procedure, notify him or her of the documents that were served.

Practical issues:

(H) Should the claim be translated or not?

No. It will be either in Dutch, French or German depending on the area/competent court. Any claim/writ of summons shall be in one language only, that of the competent court.

If they want it to be translated, the defendant must translate it themselves.

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CHAPTER 3
HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY
IN BULGARIA

(A) What is the applicable law in domestic claims?

Code Of Civil Procedure

(B) What is the applicable law in international claims?

(a) Regulation (Ec) No. 1393/2007 Of The European Parliament And Of The Council (of 13.11.2007) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).

(b) The Hague Convention (of 15.11.1965) on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

(c) Code Of Private International Law.

(d) Code Of Civil Procedure.

(e) Bilateral treaties.

(C) How can the defendant be summoned?

1. The general method is to serve a summons on the defendant through the summons officer of the court before which the claim is pending. If he fails to serve the summon in person, a notice shall be stamped and a period shall be allowed for the defendant to receive his papers from the court. If the defendant does not come to receive them, the court is obliged to appoint a special representative for the defendant in order to protect his rights.
2. The summons can be served through defendant's employer, when the court cannot find him on his permanent and current address.
3. The court can also summon the defendant by phone, after making an official check of his phone number and only if some of the above ways of summon didn't succeed. The court employee which make the phone call to summon the defendant prepare a protocol/ record of the date and time of the summons and the name of the person with whom he spoke to prove the fact of the summons.

(D) Regarding individuals

Directly to the person on his permanent/current address.

(E) Regarding a company

At the registered office of the company. If not reachable there, a notice shall be put to the address and the summons shall be deemed to have been served. This is because companies in Bulgaria are required to be on their registered address, which is listed in the Commercial Register.

(F) What happens if the defendant is not found?

If all known legal ways to summon the defendant are unsuccessful, then the court is obliged to appoint a special representative for the defendant in order to protect his rights on claimant expense. If the judgment is in favor of the claimant, the costs shall be borne by the defendant.

(G) Is it possible to notify by edicts?

If the defendant does not have a registered permanent or current address when the case is brought, at the request of the plaintiff, notice of the case brought against him shall be given by publication in the unofficial section of the

Official Gazette. If, despite the publication, the defendant fails to appear in court to obtain copies of the application and annexes, the court shall appoint a special representative at the plaintiff's expense.

(H) Is it always valid?

Yes, if the specific procedural rules are kept.

Practical issues:

(I) Should the claim be translated or not?

Yes.

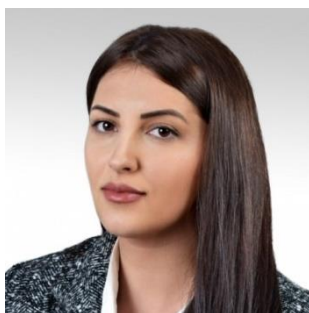
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CHAPTER 5
HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY
IN HUNGARY

(A) What is the applicable law in domestic claims?

Civil Procedure Act (Act CXXX of 2016).

(B) What is the applicable law in international claims?

- (a) REGULATION (EC) No. 1393/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (of 13.11.2007) on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents).
- (b) The Hague Convention (of 15.11.1965) on the service abroad of judicial and extrajudicial documents in civil or commercial matters.
- (c) Act XXVIII of 2017 on International Private Law.
- (d) Bilateral treaties.

(C) How can the defendant be summoned?

1. The general method of summons is to deliver the summoning order in writing in accordance with the official postal delivery rules (or regarding companies, to the electronic "Company Gate" service).

2. However, it is also possible, as the judicial case-law applies, for the court to summon the party present at the hearing orally to the next hearing, to set a new date for the hearing immediately and for the judge to record this form in the minutes.

3. The Civil Procedure Act also allows the short-term summons, but only in cases of "urgency" and subject to other conditions, in which case (by courier, telephone, fax, e-mail) the addressee will be invited to appear.

(D) Regarding individuals

- 1. Post to the domicile address
- 2. Personal electronic service ("Personal Gate")
- 3. Personally
- 4. Through delivery Agent if the person has no domicile address in Hungary
- 5. By Bailiff or Notary Public in different procedures

(E) Regarding a company

- 1. Post to the seat
- 2. Electronic Service ("Company Gate")
- 3. Through Delivery Agent if the person has no seat in Hungary
- 4. By Bailiff or Notary Public in different procedures

(F) What happens if the defendant is not found?

Judicial documents shall be considered served on the day of attempted delivery if the addressee refused to accept it. If service failed because the addressee did not accept the document – it was returned to the court marked "nem kereste" (*unclaimed*) if delivered by the postal service provider –, the document shall be considered served on the 5th working day following the day of the second attempted delivery.

(G) Is it possible to notify by edicts?

Yes. The decision of the summons is attached to the bulletin board at the Court Office and the Mayor's Office where the party had his last known domicile address and on the website of the Court for 15 days, and if known it must be sent to the email address of the party.

(H) Is it always valid?

Yes, if the specific procedural rules are kept.

Practical issues:

(I) Should the claim be translated or not?

Yes.

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CHAPTER 6
HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY IN INDIA

(A) What is the applicable law in domestic claims?

For domestic claims in India, a Civil Suit has to be filed in the court having jurisdiction in the matter. Every such Suit is instituted by the presentation of a Plaint. Once the suit is duly instituted, then the Court issues summons to the Defendant calling upon it to appear and answer the claim. A copy of the plaint shall be accompanied with the summons. The relevant statute is the Code of Civil Procedure, 1908 (“**CPC**”). The provisions related to summons are incorporated in Sections 27 to 32 of the CPC and Order V of the CPC.

Jurisdiction of the Court is of 2 types. Pecuniary and Territorial.

Pecuniary jurisdiction confers upon the Court, the jurisdiction to try matters of a specific value (i.e. on the claim amount). The threshold value is different in different States within India.

Territorial jurisdiction refers to the jurisdiction of the Court to try a case, the subject matter whereof falls under the local limits of that Court. Every suit is to be instituted in a Court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides or carries on business or works for gain or where the cause of action wholly or in part arises.

(B) What is the applicable law in international claims?

Same as above.

(C) How can the defendant be summoned?

While presenting the Plaint, the Plaintiff provides to the Court, the address of the Defendant on which the summons may be served. Such summons are then sent via Registered Post Acknowledgement Due (“**RPAD**”), Speed Post, approved Courier services to the Defendant’s address or via Email. In case the summons cannot be successfully delivered to the Defendant or the Defendant attempts to evade the service of the summons, then the summons may be affixed on the outer door or some other conspicuous part of the house where the Defendant ordinarily resides.

The Court may if it is of the opinion that the Defendant is keeping out of the way for the purpose of avoiding service or that for some other reason the summons cannot be served by ordinary way, the Court may permit the summons to be published in a newspaper in wide circulation at the Defendant’s last known address.

(D) Regarding individuals

Same as above.

(E) Regarding a company

When the Defendant is a company, the summons are sent to the registered office of the Company and its directors. The service on the registered office is considered to be the completion of service even if the directors are not served due to change of address / incorrect or incomplete address.

(F) What happens if the defendant is not found?

If the Defendant is not found at the address he normally resides at and is last known address to the plaintiff / claimant, then summons are served through affixation and newspaper publication as mentioned above. If the Court is satisfied that despite due service, the Defendant has failed to appear, the Court proceeds to hear the matter ex-parte.

(G) Is it possible to notify by edicts?

As mentioned above, service of summons through affixation and newspaper publication is permissible in India.

(H) Is it always valid?

The Courts permit service to be effectuated through substituted service i.e. affixation and newspaper publication only when the Court is completely satisfied that service through ordinary means (i.e. through RPAD, Speed Post, Courier, etc.) is not possible or is not producing the desired result.

Practical issues:

(I) Should the claim be translated or not?

Yes, the medium is generally English except few cities where the claim is filed in Hindi or local language, therefore, the petition needs to be in English and all the documents need translation by a certified translator which need to be annexed with such petition.

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CHAPTER 7 HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY IN ITALY

(A) What are the proceedings?

Most likely a claim of liability of the director of a LLC in Italy will follow the rules of the standard procedure of the Italian code of civil procedure.

In the writ of summons, the claimant sets out the factual and legal grounds and fixes the day of the first hearing.

If the defendant is resident in Italy, at least 120 days must pass between the notification and the first hearing; if the defendant is resident abroad, this term is increased to 150 days.

The defendant is due to file a statement of defence at least 70 days before the first hearing.

Before the first hearing the parties have also the possibility to file further 3 statements in order to contradict the opposing defence arguments and to request the admission of measures of evidence.

After the first hearing the Court will assume the admitted evidence and finally issue its judgment.

(B) Procedural requirements majority

Internal director's liability

Every quota holder can file a claim against a director; no minimum value of the participation in the LLC is required in order to file the claim.

External director's liability

Third parties may also take action against directors in order to obtain compensation for damages that were directly caused by their willful misconduct or negligence.

Creditors of the company may also file a claim against directors in case of failure to fulfil their obligations to preserve the integrity of the company's assets

(C) Competent Court & territorial jurisdiction

Regardless of a few exceptions, the competent court is that of the registered office of the company. The case will be examined by a section of the court specialized in commercial law .

Arbitration is also possible.

(D) Who is legitimized to be the claimant?

Concerning internal director's liability: Every quotaholder independently from the value of his participation is legitimated to be a claimant. Even if it is not expressly provided by law for an LLC, some case law precedents admit a direct claim from the company itself against the directors.

Concerning external director's liability: Any third party is legitimated to act in order to obtain compensation for damages that were caused to him directly by willful misconduct or negligence of the directors. Creditors of the company are legitimated in case of failure to fulfil the obligations to preserve the integrity of the company's assets by the directors.

(E) Can the judgment be challenged?

Yes, the judgement can be challenged before the Court of Appeal.

The judgement of the Court of Appeal can be challenged in Cassation, but only on legal grounds.

PART II: LIQUIDATION

The Italian civil code expressly provides that the liability of liquidators is governed by the same rules that regulate the liability of directors.

PART III: BANKRUPTCY CASES

In case of bankruptcy of the company, the bankruptcy administrator may file a claim of liability against the directors. The bankruptcy administrator may act on his own initiative and does not need any resolution of the quota holders. However, in order to file a claim, an explicit authorization of the judge of the bankruptcy procedure is required.

Claims filed by the bankruptcy administrator could also be based on the failure of the directors to signal duly a financial crisis of the company and to undertake appropriate measures.

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CHAPTER 8
HOW TO FILE A CLAIM OF LIABILITY OF A DIRECTOR IN A LIMITED LIABILITY COMPANY
IN SPAIN

(J) What is the applicable law in domestic claims?

Civil Procedure Act 7th January 2000.

(K) What is the applicable law in international claims?

- (a) - Regulation (EC) 1393/2007 of 13.11.2007 Member States in civil or commercial matters.
- (b) The Hague Convention 15.11.65 (Argentina, US, Switzerland, Turkey...).
- (c) Act 29/2015 30.07 (rest of the world).
- (d) Bilateral Conventions (Brazil or China).

(L) How can the defendant be summoned?

- (a) Personally, by a civil servant or a procurator.
- (b) By a letter in the mail.

(M) Regarding individuals

It may be served on any employee, family member older than 14, to the building's concierge...

(N) Regarding a company

It can be done at the address of the sole administrator or at a member of the Board appearing at the Commercial Register.

(O) What happens if the defendant is not found?

The Court clerk will use any suitable means to find them.

(P) Is it possible to notify by edicts?

Yes. The decision of the summons is attached to the bulletin board at the Court Office.

(Q) Is it always valid?

The Constitutional Court has established a very precise case law in order to avoid judgments given by default that could be declared invalid due to a fraud.

Practical issues:

(R) Should the claim be translated or not?

Yes.

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