

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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