

Authorised Version No. 001
Courts (Case Transfer) Rules 2011

S.R. No. 101/2011

Authorised Version as at
18 September 2011

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The Chief Justice of the Supreme Court (with the approval of the Council of Judges of the Supreme Court), the Chief Judge of the County Court (with the approval of the Council of Judges of the County Court) and the Chief Magistrate (with the approval of the Council of Magistrates) make the following Rules:

PART 1—PRELIMINARY

1 Object

The object of these Rules is to make provision for the transfer of civil proceedings between courts under the **Courts (Case Transfer) Act 1991**.

2 Authorising provisions

These Rules are made under section 34 of the **Courts (Case Transfer) Act 1991** and all other enabling powers.

3 Commencement

These Rules come into operation on 18 September 2011.

4 Revocation

The Courts (Case Transfer) Rules 2001¹ are **revoked**.

5 Definition

In these Rules, *the Act* means the **Courts (Case Transfer) Act 1991**.

PART 2—GENERAL TRANSFERS

6 Notice of selection to transfer

- (1) Notice under section 9 of the Act to the parties to a proceeding selected for transfer shall be in Form 1.
- (2) The transferor court shall cause a copy of the notice to be filed in the proceeding.

7 Objection

- (1) A notice of objection under section 10 of the Act shall be filed within—
 - (a) 14 days after notice to the party under section 9 of the Act; or
 - (b) such further time as the senior judicial officer of the higher court may allow.
- (2) The notice shall—
 - (a) include a statement of the grounds of the objection and any submissions in support; and
 - (b) be in Form 2.

8 Determination

If a determination is made under section 11 of the Act that a proceeding is not to be transferred, the court in which the proceeding is pending shall cause—

- (a) notice of the determination to be given to the parties to the proceeding; and
- (b) a copy of the notice to be filed in the proceeding.

9 Transfer order

- (1) If an order is made under section 12 of the Act, the order shall be drawn up by the transferor court.

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- (2) In respect of each proceeding to which the order relates the transferor court shall cause a copy of the order—
- (a) to be filed in the proceeding; and
 - (b) to be given to the parties to the proceeding within 14 days after the making of an order.
- (3) The transferor court shall cause the record and all documents relating to the proceedings to which the order applies to be sent to the transferee court within 14 days after the making of an order.

10 Election as to costs

A party to a proceeding which is transferred to a lower court under Part 2 of the Act may make an election having effect under section 13(1)(g) of the Act by filing in the proceeding a notice in Form 3 within 28 days after the making of the transfer order.

PART 3—INDIVIDUAL TRANSFERS

11 Reference by a party

A party to a proceeding in a court may refer the proceeding to the designated judicial officer of that court by filing a notice in Form 4.

12 Notice of reference

- (1) If a matter is referred under section 17(1) of the Act, the designated judicial officer shall cause notice of the reference to be given to the parties to the proceeding.
- (2) The notice shall—
 - (a) be in Form 5; and
 - (b) specify a date by which the parties to the proceeding may make written submissions.
- (3) The date specified in the notice shall be not less than 21 days after the date of the notice.
- (4) The time specified in the notice may be extended by the designated judicial officer who caused the notice to be given.

13 Determination after objection

Upon a determination being made under section 17(3) of the Act, the designated judicial officer of the court in which the proceeding is pending shall cause—

- (a) notice of the determination to be given to the parties to the proceeding; and
- (b) a copy of the notice to be filed in the proceeding.

14 Undertaking under Part 3

An undertaking required of a party under section 17(6) or section 20(4) of the Act may be given by the party filing the undertaking in the proceeding.

15 Order under section 17(8)

A party to a proceeding may apply to a court for an order under section 17(8) of the Act in the manner prescribed by, and subject to the rules of, that court for the making of an interlocutory application in the proceeding notice of which is not required to be served personally.

16 Objection

- (1) A notice of objection under section 19 of the Act by a party to a proceeding shall be filed within—
 - (a) 14 days after notice to the party of the determination under section 17 of the Act; or
 - (b) such further time as the senior judicial officer of the higher court may allow.
- (2) Rule 7(2) applies to the notice.

17 Determination after objection

If a determination is made under section 20 of the Act that a proceeding is not to be transferred, the court in which the proceeding is pending shall cause—

- (a) notice of the determination to be given to the parties to the proceeding; and
- (b) a copy of the notice to be filed in the proceeding.

18 Transfer order

- (1) If an order is made under section 21 of the Act, the order shall be drawn up by the transferor court.
- (2) The transferor court shall cause a copy of the order—
 - (a) to be filed in the proceeding; and
 - (b) to be given to the parties to the proceeding within 7 days after the making of the order.
- (3) The transferor court shall cause the record and all documents relating to the proceeding to be sent to the transferee court within 7 days after the making of the order.

PART 4—CIRCUIT TRANSFERS

19 Transfer order

If an order is made under section 24 of the Act, Rule 9 applies in the same manner as it applies when an order is made under section 12 of the Act.

PART 5—ADMINISTRATIVE TRANSFERS

20 Application under section 26—transfer to lower court

- (1) An application under section 26 of the Act shall be in Form 6.
- (2) If the written consent of the parties to the proceeding is required under section 26 of the Act, the application shall not be made unless that consent is filed before or at the time when the application is filed.

21 Application under section 27—transfer to higher court

- (1) An application under section 27 of the Act shall be in Form 7.
- (2) The application shall not be made before the defendant's counterclaim has been filed and served in the proceeding.

22 Transfer order

If an order is made under section 26 or section 27 of the Act, Rule 18 applies in the same manner as it applies when an order is made under section 21 of the Act.

PART 6—OTHER TRANSFERS

23 Application by party

An application for an order under section 30 of the Act in relation to a proceeding pending in the Supreme Court or the County Court shall be made in the manner prescribed by, and subject to, the rules of that court for the making of an interlocutory application in the proceeding notice of which is not required to be served personally.

24 Order not on application of party

- (1) The Supreme Court or the County Court may make an order under section 30 of the Act of its own motion only upon notice to the parties.
 - (2) If the Supreme Court or the County Court makes an order under section 30 of the Act of its own motion, Rule 18 applies in the same manner as it applies when an order is made under section 21 of the Act.
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PART 7—GENERAL

25 Delegation of powers or duties

The senior judicial officer of a court may delegate to another judicial officer of that court any of his or her powers or duties under these Rules other than this power of delegation.

26 Extension of time

Any time that may be extended under these Rules may be extended—

- (a) before or after the time expires; and
- (b) whether or not any application for the extension is made.

27 Copy document to be served

A party to a proceeding who files a document under the Act or these Rules shall serve a copy of the document on the other parties to the proceedings as soon as practicable thereafter.

28 Manner of giving notice or serving

If by or under the Act or these Rules any notice is to be given or any document is to be served upon a party to a proceeding in a court, the notice may be given or the document served (as the case may be) in any manner allowed by the rules of that court for service of an interlocutory application in the proceeding where personal service is not required.

29 Non-compliance with Rules

Subject to the Act, a failure to comply with these Rules is an irregularity and does not render any step taken or any document or order a nullity.

30 Dispensing with compliance

Subject to the Act, the court in which a proceeding is pending may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

FORMS

RULE 6(1)

FORM 1

In the [*transferor court*]

In the matter of the **Courts (Case Transfer) Act 1991**.

NOTICE OF SELECTION UNDER SECTION 9

TAKE NOTICE that the proceedings identified in the Schedule have been selected under section 8 of the **Courts (Case Transfer) Act 1991** for transfer to the [*transferee court*] under Part 2 of the Act.

AND TAKE NOTICE that as a party to one of the proceedings identified in the Schedule you may object to the transfer of that proceeding by filing a Notice of Objection in accordance with the Courts (Case Transfer) Rules 2011.

Dated:

This Notice is given at the
direction of the [*transferor
court*]

Note

Any Notice of Objection should be filed within 14 days and be in Form 2 of the Rules. It should contain a statement of the grounds of the objection and any submissions in support.

Form 2

RULES 7(2), 16(2)

FORM 2

[Heading as in originating process]

NOTICE OF OBJECTION
under the **Courts (Case Transfer) Act 1991**

TAKE NOTICE that the *[title of party]* in this proceeding objects to the transfer of this proceeding to the *[transferee court]* under the **Courts (Case Transfer) Act 1991**.

THE GROUNDS of the objection are as follows: *[set out the grounds concisely in separate, numbered paragraphs]*.

THE FOLLOWING SUBMISSIONS are made in support of the objection: *[set out the submissions, if any, that the party objecting wishes to have considered in support of the objection. Submissions should be set out concisely, in separate numbered paragraphs]*.

Dated:

*[Signature of party objecting or
legal practitioner]*

RULE 10

FORM 3

[Heading as in originating process]

NOTICE OF ELECTION

TAKE NOTICE that the *[title of party]* in this proceeding elects under section 13(1)(g) of the **Courts (Case Transfer) Act 1991** to take costs (if ordered in favour of the said party) on the court scale of the *[transferee court]*.

Dated:

*[Signature of party electing or
legal practitioner]*

Note

This Notice of Election must be filed in the proceeding and served on all other parties to the proceeding.

Form 4

RULE 11

FORM 4

[Heading as in originating process]

**REFERRAL UNDER PART 3
of the Courts (Case Transfer) Act 1991**

TAKE NOTICE that the *[title of party]* refers this proceeding to the *[designated judicial officer]* of this Court under section 17(1) of the **Courts (Case Transfer) Act 1991** as a proceeding which is or may be suitable for transfer to the *[suggested transferee court]* under Part 3 of that Act.

Dated:

*[Signature of party referring or
legal practitioner]*

Note

This Referral must be filed in the proceeding and a copy served on all other parties to the proceeding.

RULE 12(2)

FORM 5

[*Heading as in originating process*]

**NOTICE OF REFERRAL UNDER PART 3
of the Courts (Case Transfer) Act 1991**

TAKE NOTICE that this proceeding has been referred to the [*title of the designated judicial officer*] of this Court for consideration for transfer to [*suggested transferee court*] under Part 3 of the **Courts (Case Transfer) Act 1991**.

AND TAKE NOTICE that as a party to this proceeding you may make written submissions on the matter on or before [*specify date not less than 21 days after the date of this notice*].

Any submissions should be—

1. entitled in this proceeding;
2. set out concisely in separate, numbered paragraphs; and
3. filed in the Court as a document in this proceeding.

Dated:

This Notice is given at the direction
of the [*designated judicial officer*]

RULE 20(1)

FORM 6

[Heading as in originating process]

**PLAINTIFF'S APPLICATION UNDER PART 5
of the Courts (Case Transfer) Act 1991**

TAKE NOTICE that the Plaintiff in this proceeding applies for an order under Part 5 of the **Courts (Case Transfer) Act 1991** that this proceeding be transferred to *[proposed transferee court]*.

*THE PLAINTIFF certifies that the *[proposed transferee court]* has jurisdiction to hear and determine this proceeding *[including the counterclaim]*

OR

*THE PLAINTIFF certifies that with the written consent of the parties to this proceeding the *[proposed transferee court]* will have jurisdiction to hear and determine this proceeding *[including the counterclaim]*.

Dated:

*[Signature of Plaintiff or
legal practitioner]*

Notes

1. If the jurisdiction of the proposed transferee court depends upon the written consent of the parties, that consent must be filed with this application, if not previously filed.
2. This application must be filed in the proceeding and a copy served on all other parties to the proceeding.

*Delete whichever is not applicable.

RULE 21(1)

FORM 7

[Heading as in originating process]

**DEFENDANT'S APPLICATION UNDER PART 5
of the Courts (Case Transfer) Act 1991**

TAKE NOTICE that the Defendant in this proceeding applies for an order under Part 5 of the **Courts (Case Transfer) Act 1991** that these proceedings be transferred to *[suggested transferee court]* at *[location of transferee court]*.

THE DEFENDANT certifies that the Defendant's counterclaim in this proceeding involves a matter exceeding the jurisdiction of the *[transferor court]* and that the Plaintiff does not consent to the *[transferor court]* having jurisdiction.

Dated:

*[Signature of Defendant or
legal practitioner]*

Note

This Application must be filed in the proceeding and a copy served on all other parties to the proceeding.

Courts (Case Transfer) Rules 2011
S.R. No. 101/2011

Dated: 15 September 2011

MARILYN WARREN,
Chief Justice

MICHAEL ROZENES,
Chief Judge

IAN L. GRAY,
Chief Magistrate

ENDNOTES

1. General Information

The Courts (Case Transfer) Rules 2011, S.R. No. 101/2011 were made on 15 September 2011 by the Chief Justice of the Supreme Court (with the approval of the Council of Judges of the Supreme Court), the Chief Judge of the County Court (with the approval of the Council of Judges of the County Court) and the Chief Magistrate (with the approval of the Council of Magistrates) under section 34 of the **Courts (Case Transfer) Act 1991**, No. 43/1991 and came into operation on 18 September 2011: Rule 3.

The Courts (Case Transfer) Rules 2011 will sunset 10 years after the day of making on 15 September 2021 (see section 5 of the **Subordinate Legislation Act 1994**).

Endnotes

2. Table of Amendments

There are no amendments made to the Courts (Case Transfer) Rules 2011 by statutory rules, subordinate instruments and Acts.

3. Explanatory Details

¹ Rule 4: S.R. No. 92/2001.