

Practice Direction

Default judgment

No 10 of 2023

1. Introduction

- 1.1 This practice direction is made pursuant to Rule 4.2 of the Supreme Court Civil Procedure Rules, 2022 (as amended) (the Rules).
- 1.2 The purpose of this practice direction is to supplement Part 12 of the Rules.
- 1.3 This practice direction has no application to default judgments already entered in civil proceedings subject to the Rules.
- 1.4 This practice direction comes into effect immediately.

2. General

- 2.1 A default judgment is a judgment without trial where a defendant has failed to file either –
 - (i) an acknowledgment of service containing a notice of intention to defend; or
 - (ii) a defence.

(See Part 9 for information about the acknowledgment of service and Part 10 for information about the defence and what it should contain.)
- 2.2 For the purpose of whether a default judgment may be obtained, a defence includes any document purporting to be a defence.
- 2.3 A claimant may not obtain default judgment if the claim is –
 - (i) a claim in probate proceedings;
 - (ii) a fixed date claim;

- (iii) a claim commenced under Section II of Part 8 (i.e. by originating application); or
- (iv) an admiralty claim in rem.

(See Rule 12.2.)

2.4 A claimant may not obtain default judgment without the permission of the Court if –

- (i) the claim is against a minor or patient as defined in Rule 2.3 (see Rule 12.3(1)(a));
- (ii) the claim is against a State as defined in any relevant enactment relating to state immunity (see Rule 12.3(1)(b));
- (iii) the claimant wishes to obtain judgment in default of service against a diplomatic agent who enjoys immunity from civil jurisdiction by virtue of any relevant enactment relating to diplomatic privileges (see Rule 12.3(2));
- (iv) the claimant makes a claim for goods and the claimant seeks a judgment requiring the defendant to deliver the goods without giving the defendant the alternative of paying their assessed value (see Rule 12.9(1)(c)(iii)); or
- (v) default judgment is sought against the Crown (see Rule 65.6).

2.5 Where there is uncertainty as to the application of any of the Rules relating to the grant of default judgments, the matter should be referred to a Registrar or a Judge.

3. Obtaining default judgment

3.1 Default judgment may be obtained by one of two methods, depending upon the nature of the claim and the judgment sought:

- (i) by filing a request for default judgment in the relevant practice form, which is dealt with by the Court administratively; or
- (ii) by application made by notice of application.

3.2 Subject to paragraph 3.3 below, a claimant may obtain default judgment by filing a request in the form of **Annex A** where the claim is for:

- (i) a specified sum of money;
- (ii) an amount of money to be decided by the Court;
- (iii) delivery of goods where the claim form gives the defendant the option of paying the value of the goods; or
- (iv) any combination of such remedies.

If a claimant claims any other remedies, a default judgment cannot be obtained by request unless the claim to those other remedies is abandoned.

3.3 In addition to those enumerated in paragraph 2.4, the following are some of the types of claims which require an application for default judgment –

- (i) the claim is for a specified sum of money together with interest at an unspecified rate (see Rule 12.7(2));
- (ii) the defendant is an individual who has admitted liability to pay either a specified sum towards a claim for an unspecified sum of money or part only of a claim for a specified sum, the defendant has not filed a defence and the claimant does not accept the sum admitted (see Rule 12.6);
- (iii) the claim is for money or delivery of goods against two or more defendants and the claimant wishes to enter default judgment against one defendant and proceed with the claim against the other defendants (see Rule 12.8); and

- (iv) the claim seeks a remedy not listed in paragraph 3.2 and the claimant has not abandoned the claim to that remedy (see Rule 12.9(4) and 12.9(5)).

4. Evidence

4.1 Whether the claimant seeks default judgment by request or by application, the Court must be satisfied that –

- (i) the statement of claim has been served on the defendant (an affidavit of service will be sufficient evidence for this purpose);
- (ii) either the defendant has not filed an acknowledgment of service or has not filed a defence and that, in either case, the relevant period for doing so has expired;
- (iii) the defendant has not satisfied the claim; and
- (iv) the defendant has not filed an admission in respect of the whole claim.

4.2 Where default judgment is sought against a minor or a patient, the Court must be satisfied that –

- (i) a litigation guardian to act on behalf of the minor or patient has been appointed by the Court (see Rule 23.3(2)); and
- (ii) the claimant is entitled to the judgment claimed.

4.3 Where default judgment is sought against a defendant who was served outside of The Bahamas, the Court must be satisfied that –

- (i) the claim is one that the Court has power to hear and decide; and
- (ii) the claim was properly served in accordance with Part 7.

4.4 Any evidence relied on by a claimant in support of an application for default judgment need not be served on a party who has failed to file an acknowledgment of service.

5. Form of default judgment

- 5.1 A default judgment sought by request should be in the form of **Annex B** with such modifications as the circumstances of the case may require.
- 5.2 Where the claimant makes an application for default judgment, the Court shall give such judgment as the claimant is entitled to on their statement of case in such form as the Court may think fit.
- 5.3 Where default judgment is given on a claim for a sum of money expressed in a foreign currency, the judgment should be for the amount of the foreign currency with the addition of “or the Bahamian dollar equivalent at the time of payment”.

6. Further allocation to Registrars in relation to default judgments

- 6.1 In addition to the matters allocated to Registrars in Direction 2.3 of Practice Direction No. 8 of 2023, a Registrar may also hear applications arising under Part 13 of the Rules and under Rule 62.7 of the Rules.

7. Costs

- 7.1 A default judgment must include fixed costs unless the Court assesses the costs. An application to assess costs must be on notice to the defendant.



Sir Ian R. Winder
Chief Justice
19 December 2023

ANNEX A - REQUEST FOR THE ENTRY OF JUDGMENT IN DEFAULT

(Attach General Heading – G1)

REQUEST FOR THE ENTRY OF JUDGMENT IN DEFAULT

I/we the claimant/claimant’s attorneys-at-law request entry of judgment against the defendant in default of –

Acknowledge of Service	YES/NO
Defence	YES/NO

(in case of failure to file an acknowledgement of service) Evidence of service of the claim form and statement of claim is filed with this form and I/we certify that–

- (a) the period for *filing an acknowledgement of service* has expired; and
- (b) the defendant has not *file an acknowledgement of service*; or
- (c) the defendant has not filed a defence to the claim or any part of it; or
- (d) (where appropriate) the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it; or
- (e) the defendant has not satisfied the claim; and
- (f) (where appropriate) permission to enter judgment was given by the Court on
(date)

(in case of failure to serve a defence only) I/we certify that –

- (a) the time for the defendant to file and serve a defence has expired (including any extension of time agreed between the parties or granted by the Court); and
- (b) that no defence or counterclaim has been served on me/us; and
- (c) (where appropriate) the defendant has not filed and served an admission of liability to pay all of the money claimed together with a request for time to pay it; and
- (d) that the defendant has not paid any money in settlement of the claim except such sum (if any) as is stated below; and
- (e) (where appropriate) permission to enter judgment was given by the Court on
(date).

Judgment should be entered for –

Amount claimed	\$
Interest from issue to today	\$
Court fees	\$
Fixed costs	\$
Total	\$
Less amount paid by defendant since issue of claim	\$
Amount for which judgment is to be entered	\$

to be paid [forthwith] [on (state date)] [or by weekly/monthly instalments of \$..... (state amount)]

Dated the day of 20....

Signature of claimant/claimant's attorneys-at-law

Address of Court Office:

Tel. No.:

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. and 4:30 p.m. except on public holidays.

Claimant's Address for Service:

(Attach Last Page – G2)

ANNEX B – FORM OF JUDGMENT IN DEFAULT (BY REQUEST)

(Attach General Heading – G1)

JUDGMENT IN DEFAULT

To the Defendant:

Because [you have not filed [an acknowledgment of service containing a notice of intention to defend within the time limit under rule 9.3 in accordance with Part 9 of the CPR]/[a defence within the time limit under rule 10.3 in accordance with Part 10 of the CPR]]/[*the circumstances as the case may be giving rise to the right to enter default judgment*]*, judgment is hereby given that:

[You must pay to the Claimant [the sum of \$[amount] for debt and interest to the date of judgment.]*/[the sum of \$[amount] for debt and an amount of interest to be decided by the Court.]*/[the sum of \$[amount] for debt and interest at the statutory rate from the date of the claim to the date of entering judgment.]*

[You must pay to the Claimant such sum as may be assessed by a Registrar and an amount of interest to be decided by the Court.]*

[You must deliver the goods claimed by the Claimant or pay their value as assessed by the Court.]*

[You must pay to the Claimant [\$[amount] for costs]/[the costs of the claim, which are to be subject to detailed assessment.].]*

Date:

Signature:

(Registrar/Deputy Registrar/Assistant Registrar)

(Seal)

*** Modify or Delete as necessary**

NOTES FOR THE DEFENDANT:

IF YOU IGNORE THIS JUDGMENT, YOUR GOODS MAY BE REMOVED AND SOLD, OR OTHER ENFORCEMENT PROCEEDINGS MAY BE TAKEN AGAINST YOU BY THE CLAIMANT.

If you did reply to the claim form and believe judgment has been entered wrongly in default, you may apply to the Court to set aside this judgment under Part 13 of the CPR.

Unless the Chief Justice otherwise directs, the court office is open weekdays between 9:30 a.m. to 4:30 p.m. except on public holidays.