

CAYMAN ISLANDS



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PRACTICE DIRECTION No 4 OF 2015

(GCR O. 1, r. 12)

**WITNESS STATEMENTS AND AFFIDAVITS (GCR O. 38 AND O. 41)
TAKING EVIDENCE FROM WITNESSES, AFFIANTS AND DEPONENTS WHO DO
NOT SPEAK ENGLISH**



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WITNESS STATEMENTS AND AFFIDAVITS (GCR O. 38 AND O. 41)

TAKING EVIDENCE FROM WITNESSES, AFFIANTS AND DEPONENTS WHO DO NOT SPEAK ENGLISH

1. If a witness or affiant or deponent (a "**Witness**") is not capable of reading or speaking English then a witness statement or affidavit or deposition (a "**Statement**") from him must be prepared in his native language before being translated into English. Where the Statement is in a foreign language –
 - (1) the party wishing to rely on it must –
 - (a) have it translated into English; and
 - (b) file the foreign language Statement at the Court and serve it on the other parties; and
 - (2) the translator must swear an affidavit certifying that the exhibited translation is a faithful and accurate translation into English.
2. There must be clarity about the process by which a Statement in a foreign language has been created. In all cases, the Statement should contain an explanation of the process by which it has been taken: for example, face-to-face, over the telephone, by Skype/video-link, or based on a document written in the Witness' native language.

If an attorney has been instructed by the party, he should be fully involved in the process described above and should not defer or delegate it to his client.
3. If an attorney is presented with a Statement in English from a witness whom the attorney is not reasonably satisfied is able to read, speak and testify in English, the attorney should question its provenance and not simply seek to adduce the document as a proof of evidence.
4. The Witness should be spoken to wherever possible, using an interpreter, and a draft Statement should be prepared in the native language for the Witness to read and sign and for the interpreter to read. If the attorney is fluent in the foreign language then it is permissible for him to act in the role of the interpreter. However, this must be made clear either within the body of the Statement or in a separate affidavit from the attorney (in his role as interpreter).



5. A litigant in person should where possible use an interpreter when preparing a Statement.
6. If the Witness is not able to read or write in their own native language, the interpreter must carefully read the Statement to the Witness in his own native language and set out the fact that he has done so in the translator's jurat or affidavit, using the words provided in Annex 1 or 2.
7. Once the witness has completed his Statement in his native language and signed it, the Statement should be translated by a translator who must then either: sign a jurat confirming that the translation is a faithful and accurate translation of the Statement; or provide a short affidavit to the same effect.
8. If a Witness is to testify either in person or by video-link, a copy of the original Statement in his native language and the English translation thereof must be provided to him well in advance of the hearing.
9. If a deposition or other Statement has been obtained and prepared abroad in compliance with the relevant country's laws, a translation of that deposition or other Statement must be filed at Court and served on the other parties together with the original document.
10. If a party files and serves a Statement in English (not being a translation into English) then the Court will be entitled to presume that this is a representation from that party and his attorney to the Court and to the other parties that the Witness is fluent in English and that he is willing and able to testify in English. In the event that the Court is subsequently satisfied that the Witness is not willing or able to testify in English, the Court will make such case-management orders as it sees fit, including, without limitation:
 - (1) Whether or not the party is to be permitted to rely on the Statement;
 - (2) Whether or not the party is to be permitted to adduce a new Statement from the Witness in a foreign language in compliance with the terms of this Practice Direction;
 - (3) Whether or not to adjourn any hearing and, if so, whether a court translator will be required to attend the adjourned hearing;
 - (4) Whether or not the party should bear the costs thrown away and, if so, whether those costs should be on the standard basis or indemnity basis; and



(5) Whether or not a wasted costs order should be made against the party's attorney.

11. This Practice Direction applies to all Divisions of the Grand Court except the Criminal Division. Practice Direction No 8 of 2014 (Taking evidence from non-English speakers in the Family Division of the Grand Court) is hereby revoked.

Dated this 9th day of July 2015

The Hon. Anthony Smellie, Q.C.
Chief Justice



Annex 1

Certificate to be used where an affiant is unable to read or sign an affidavit written in his native language.

Sworn at ... [*place*]
this ... day of ... 20..

Before me,

[*and either*]

I having first read over the contents of this affidavit to the affiant [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it], who appeared to understand it and approved its content as true and accurate, and signed/made* his/her* mark on the affidavit in my presence.

[*Name and signature of notary or other person authorised to administer oath where affidavit sworn*]

[*or*]

the witness to the mark of the affiant having been first sworn that the witness had read over the contents of this affidavit to the affiant [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it], who appeared to understand it and approved its content as true and accurate, and that the witness saw the affiant sign/make* his/her* mark on the affidavit.

[*Name and signature of witness.*]

[*Name and signature of notary or other person authorised to administer oath where affidavit sworn*]

* delete as appropriate



Annex 2

Certificate to be used where a witness is unable to read or sign a witness statement written in his native language.

I certify that I [*name and address of authorised person*] have read over the contents of this witness statement and the statement of truth to the witness [*if there are exhibits, add the words* and explained the nature and effect of the exhibits referred to in it] who (a) appeared to understand the witness statement and approved its content as true and accurate and (b) appeared to understand the statement of truth and the consequences of making a false witness statement, and signed/made* his/her mark* in my presence.

[*Signature of witness.*]