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RULES OF THE HIGH COURT (AMENDMENT) RULES 2007

CONSULTATION DRAFT

(Made by the Rules Committee of the High Court
under section 54 of the High Court
Ordinance (Cap. 4))

**PART 1
OBJECTIVES AND CASE MANAGEMENT POWERS**

Recommendations 2, 3, 4, 81 and 82

1. Orders added

The Rules of the High Court (Cap. 4 sub. leg. A) are amended by adding after Order 1 -

**"ORDER 1A
OBJECTIVES**

1. Underlying objectives (O. 1A, r. 1)

The underlying objectives of these rules are –

- (a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Court;
- (b) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) to promote greater equality between the parties;
- (e) to facilitate settlement of disputes; and
- (f) to ensure that the resources of the Court are distributed fairly.

2. Application by the Court of underlying objectives (O. 1A, r. 2)

- (1) The Court shall seek to give effect to the underlying objectives when it –
 - (a) exercises any of its powers (whether under its inherent jurisdiction or given to it by these rules or otherwise); or
 - (b) interprets any of these rules or a practice direction.

(2) In giving effect to the underlying objectives, the Court shall always recognize that the primary aim in exercising the powers of the Court is to secure the just resolution of disputes in accordance with the substantive rights of the parties.

3. Duty of the parties and their legal representatives (O. 1A, r. 3)

The parties to any proceedings and their legal representatives shall assist the Court to further the underlying objectives.

4. Court's duty to manage cases

(O. 1A, r. 4)

(1) The Court shall further the underlying objectives by actively managing cases.

(2) Active case management includes –

- (a) encouraging the parties to co-operate with each other in the conduct of the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to use an alternative dispute resolution procedure if the Court considers that appropriate, and facilitating the use of such procedure;
- (f) helping the parties to settle the whole or part of the case;
- (g) fixing timetables or otherwise controlling the progress of the case;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the case as it can on the same occasion;
- (j) dealing with the case without the parties needing to attend at court;
- (k) making use of technology; and
- (l) giving directions to ensure that the trial of a case proceeds quickly and efficiently.

ORDER 1B
CASE MANAGEMENT POWERS

1. Court's general powers of management (O. 1B, r. 1)

(1) The list of powers in this rule is in addition to and not in substitution for any powers given to the Court by any other rule or practice direction or by any other enactment or any powers it may otherwise have.

(2) Except where these rules provide otherwise, the Court may by order –

- (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired);
- (b) adjourn or bring forward a hearing;
- (c) require a party or a party's legal representative to attend the Court;
- (d) direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings;
- (e) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (f) consolidate proceedings;
- (g) try two or more claims on the same occasion;
- (h) direct a separate trial of any issue;
- (i) decide the order in which issues are to be tried;
- (j) exclude an issue from consideration;
- (k) dismiss or give judgment on a claim after a decision on a preliminary issue;
- (l) take any other step or make any other order for the purpose of managing the case and furthering the underlying objectives set out in Order 1A.

(3) When the Court makes an order, it may –

- (a) make it subject to conditions, including a condition to pay a sum of money into court; and
- (b) specify the consequences of failure to comply with the order or a condition.

(4) Where a party pays money into court following an order under paragraph (3), the money is security for any sum payable by that party to any other party in the proceedings.

2. Court's power to make order of its own motion (O. 1B, r. 2)

(1) Except where a rule or some other enactment provides otherwise, the Court may exercise its powers on an application or of its own motion.

- (2) Where the Court proposes to make an order of its own motion –
 - (a) it may give any person likely to be affected by the order an opportunity to make representations; and
 - (b) where it does so, it shall specify the time by and the manner in which the representations must be made.
- (3) Where the Court proposes –
 - (a) to make an order of its own motion; and
 - (b) to hold a hearing to decide whether to make the order,it shall give each party likely to be affected by the order at least 3 days' notice of the hearing.
- (4) The Court may make an order of its own motion, without hearing the parties or giving them an opportunity to make representations.
- (5) Where the Court has made an order under paragraph (4) –
 - (a) a party affected by the order may apply to have it set aside, varied or stayed; and
 - (b) the order must contain a statement of the right to make such an application.
- (6) An application under paragraph (5)(a) must be made –
 - (a) within such period as may be specified by the Court; or
 - (b) if the Court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

3. Court's power to give procedural directions by way of order nisi

(O. 1B, r. 3)

- (1) Where the Court considers that it is necessary or desirable to give a direction on the procedure of the Court and that the direction is unlikely to be objected to by the parties, it may of its own motion and without hearing the parties, give the direction by way of an order nisi.
- (2) The order nisi becomes absolute 14 days after the order is made unless a party has applied to the Court for not making the order absolute."

**PART 2
PRE-ACTION PROTOCOLS**

Recommendations 7, 8, 9 and 84

2. Definitions

Order 1, rule 4(1) is amended by adding –
"practice direction" () means –

- (a) a direction issued by the Chief Justice as to the practice and procedure of the Court; or
 - (b) a direction issued by a specialist judge for his specialist list;
- "pre-action protocol" () means any code of practice designated as such and approved by a practice direction;"

3. Rules added

Order 2 is amended by adding –

"3. Non-compliance with pre-action protocol, practice direction, etc. (O. 2, r. 3)

(1) Where the Court exercises any of its powers under these rules or gives any direction, it may take into account whether or not a party has complied with any relevant pre-action protocol.

(2) The Court may order a party to pay a sum of money into court if that party has, without good reason, failed to comply with a rule, practice direction or relevant pre-action protocol.

(3) When exercising its power under paragraph (2), the Court shall have regard to –

- (a) the amount in dispute; and
- (b) the costs which the parties have incurred or which they may incur.

(4) Where a party pays money into court following an order under paragraph (2), the money is security for any sum payable by that party to any other party in the proceedings.

4. Sanctions have effect unless defaulting party obtains relief (O. 2, r. 4)

Where a party has failed to comply with a rule, practice direction, court order or pre-action protocol, any sanction for failure to comply imposed by the rule, practice direction, court order or pre-action protocol has effect unless the party in default applies for and obtains relief from the sanction.

5. Relief from sanctions (O. 2, r. 5)

(1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction, court order or pre-action protocol, the Court shall consider all the circumstances including –

- (a) the interests of the administration of justice;
- (b) whether the application for relief has been made promptly;
- (c) whether the failure to comply was intentional;
- (d) whether there is a good explanation for the failure;

- (e) the extent to which the party in default has complied with other rules, practice directions, court orders and pre-action protocols;
 - (f) whether the failure to comply was caused by the party or his legal representative;
 - (g) in the case where the party in default is not legally represented, whether he was unaware of the rule, practice direction, court order or pre-action protocol, or if he was aware of it, whether he was able to comply with it without legal assistance;
 - (h) whether the trial date or the likely trial date can still be met if relief is granted;
 - (i) the effect which the failure to comply had on each party; and
 - (j) the effect which the granting of relief would have on each party.
- (2) An application for relief must be supported by evidence."

4. Principal cases in which service of writ out of jurisdiction is permissible

Order 11, rule 1(1) is amended by adding –

- "(ob) the claim is for an order that the Court exercises its power under section 52B of the Ordinance to make a costs order against another person;"

5. Rule added

Order 15 is amended by adding –

"5A. Costs orders in favour of or against non-parties

(O. 15, r. 5A)

(1) Where the Court is considering whether to exercise its power under section 52A of the Ordinance to make a costs order in favour of or against a person who is not a party to proceedings –

- (a) that person must be joined as a party to the proceedings for the purposes of costs only; and
- (b) that person must be given a reasonable opportunity to attend a hearing at which the Court shall consider the matter further.

(2) This rule does not apply in proceedings to which section 41, 41A or 42 of the Ordinance applies."

6. Special matters to be taken into account in exercising discretion

Order 62, rule 5 is amended –

- (a) by renumbering it as Order 62, rule 5(1);

- (b) in paragraph (1) –
- (i) in sub-paragraph (c), by repealing "and" at the end;
 - (ii) by adding –
 - (e) the conduct of all the parties;
 - (f) whether a party has succeeded on part of his case, even if he has not been wholly successful; and
 - (g) any admissible offer to settle made by a party which is drawn to the Court's attention.";
- (c) by adding –
- "(2) For the purpose of paragraph (1)(e), the conduct of the parties includes –
- (a) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
 - (b) the manner in which a party has pursued or defended his case or a particular allegation or issue; and
 - (c) whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim,
- but does not include any conduct before the commencement of the action unless the conduct is regulated by a pre-action protocol.
- (3) In considering whether a party has complied with any relevant pre-action protocol, the Court shall, in the case where the party is not legally represented, take into account whether he was unaware of the relevant pre-action protocol, or if he was aware of it, whether he was able to comply with it without legal assistance."

7. Rule added

Order 62 is amended by adding immediately after rule 11 –

"11A. Commencement of costs-only proceedings (O. 62, r. 11A)

- (1) Proceedings under section 52B(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.
- (2) The originating summons must contain or be accompanied by the agreement referred to in section 52B(1) of the Ordinance.
- (3) A master may make an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1)."

8. Powers of taxing masters to tax costs

Order 62, rule 12(1) is amended by adding –

- "(ab) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1);".

**PART 3
COMMENCEMENT OF PROCEEDINGS**

Recommendations 10 to 16

9. Application

Order 1, rule 2 is amended by adding –

- "(5) These rules do not have effect in relation to an election petition lodged under an enactment specified in the first column of the following Table, except to the extent that the practice and procedure of the High Court are applied to that election petition by virtue of an enactment specified in the second column of the Table –

TABLE

1. Legislative Council Ordinance (Cap. 542), Part VII.	Legislative Council (Election Petition) Rules (Cap. 542 sub. leg. F), rule 2.
2. District Councils Ordinance (Cap. 547), Part V.	District Councils (Election Petition) Rules (Cap. 547 sub. leg. C), rule 2.
3. Chief Executive Election Ordinance (Cap. 569), Part 6.	Chief Executive Election (Election Petition) Rules (Cap. 569 sub. leg. E), section 3.
4. Village Representative Election Ordinance (Cap. 576), Part 5.	Village Representative (Election Petition) Rules (Cap. 576 sub. leg. B), section 2."

10. Definitions

Order 1, rule 4(1) is amended by adding –

- ""Amendment Rules 2007" () means the Rules of the High Court (Amendment) Rules 2007 (L.N. of 2007);".

11. Non-compliance with Rules

Order 2, rule 1(3) is repealed and the following substituted –

"(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings ought to have begun by an originating process other than the one employed, but shall instead give directions for the continuation of the proceedings in an appropriate manner."

12. Application to set aside for irregularity

Order 2, rule 2(2) is amended by repealing "or motion" and "or notice of motion".

13. Rule added

Order 2 is amended by adding –

"6. Transitional provision relating to rule 12 of Amendment Rules 2007 (O. 2, r. 6)

Where, immediately before the commencement of rule 12 ("the amending rule") of the Amendment Rules 2007, an application by motion made under rule 2(2) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

14. Mode of beginning civil proceedings

Order 5, rule 1 is amended by repealing ", originating summons, originating motion or petition" and substituting "or originating summons".

15. Rules repealed

Order 5, rules 2 and 3 are repealed.

16. Proceedings which may be begun by writ or originating summons

Order 5, rule 4(1) is repealed and the following substituted –

"(1) Except in the case of proceedings which under any written law are required to be begun by a specific form of originating process, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate."

17. Proceedings to be begun by motion or petition

Order 5, rule 5 is amended by repealing "by these rules or by or".

18. Rule added

Order 5 is amended by adding -

"7. Transitional provision relating to rule 14 of Amendment Rules 2007 (O. 5, r. 7)

Where, immediately before the commencement of rule 14 ("the amending rule") of the Amendment Rules 2007, any civil proceedings begun by originating motion or petition in accordance with rule 1 as in force immediately before the commencement is pending, then the civil proceedings may be continued and disposed of as if the amending rule had not been made."

19. Form of summons, etc.

Order 7, rule 2 is amended by adding –

"(1A) Form No. 8 in Appendix A is appropriate to be used in all cases except where another form is prescribed under a written law or there is no party on whom the summons is to be served.

(1B) Form No. 10 in Appendix A is appropriate to be used if it is prescribed under a written law.

(1C) Form No. 11 in Appendix A is appropriate to be used if there is no party on whom the summons is to be served."

20. Rule substituted

Order 8, rule 1 is repealed and the following substituted –

"1. Application (O. 8, r. 1)

The provisions of this Order apply to all motions required under a written law, subject to any provisions relating to any class of motions made by that written law or any other written law."

21. Rule substituted

Order 9, rule 1 is repealed and the following substituted –

"1. Application (O. 9, r. 1)

The provisions of this Order apply to all petitions required under a written law, subject to any provisions relating to any class of petitions made by that written law or any other written law."

22. Mode of application

Order 17, rule 3(1) is amended by repealing "must be made" where it twice appears and substituting "may be made".

23. Rule added

Order 28 is amended by adding –

"3A. Originating summonses to be heard in open court (O. 28, r. 3A)

An originating summons must be heard in open court unless the Court otherwise directs in accordance with a written law."

24. Application for receiver and injunction

Order 30, rule 1(1) is amended by repealing "or motion".

25. Rule added

Order 30 is amended by adding –

"10. Transitional provision relating to rule 24 of Amendment Rules 2007

(O. 30, r. 10)

Where, immediately before the commencement of rule 24 ("the amending rule") of the Amendment Rules 2007, an application by motion made under rule 1(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

26. Mode of applying for judicial review

Order 53, rule 5 is amended –

(a) by repealing paragraph (1) and substituting –

"(1) When leave has been granted to make an application for judicial review, the application must be made by originating summons to a judge sitting in open court or, if the judge granting leave has so ordered, to a judge in chambers.";

(b) in paragraph (3) –

(i) by repealing "notice of motion or summons" and substituting "originating summons";

(ii) by repealing "notice or summons" and substituting "summons";

(c) in paragraph (4), by repealing "notice of motion or summons" and substituting "summons";

(d) in paragraph (5), by repealing "A motion" and substituting "An originating summons";

(e) in paragraph (6) –

(i) by repealing "notice of motion" and substituting "originating summons";

- (ii) by repealing "the motion" where it twice appears and substituting "the summons";
- (f) in paragraph (7) –
 - (i) by repealing "motion" and substituting "originating summons";
 - (ii) by repealing "notice" and substituting "summons".

27. **Hearing of application for judicial review**

Order 53, rule 9 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "motion or" where it twice appears";
 - (ii) by repealing "notice of the motion";
- (b) in paragraph (2), by repealing "motion or" where it twice appears.

28. **Rule added**

Order 53 is amended by adding –

"15. **Transitional provision relating to rule 26 of Amendment Rules 2007**

(O. 53, r. 15)

Where, immediately before the commencement of rule 26 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 5(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

29. **Matters for a judge in court**

Order 73, rule 2 is amended –

- (a) in paragraph (1) –
 - (i) by repealing sub-paragraph (f);
 - (ii) by repealing "must be made by originating motion" and substituting "may be made by originating summons in Form No. 10 in Appendix A";
- (b) in paragraph (2), by repealing "shall be made by originating motion" and substituting "may be made by originating summons in Form No. 10 in Appendix A";
- (c) in paragraph (3) –
 - (i) by repealing "originating motion" and substituting "originating summons in Form No. 10 in Appendix A";
 - (ii) by repealing everything after "single judge in court" and substituting a full stop.

30. Matters for judge in chambers or master

Order 73, rule 3(2) and (3) is repealed and the following substituted –

"(2) Any application under section 23(5) or (7) of the Arbitration Ordinance (Cap. 341) (including any application for leave) must be made to a judge in chambers.

(3) Any application to which this rule applies may, where an action is pending, be made by summons in the action, and in any other case may be made by an originating summons in Form No. 10 in Appendix A."

31. Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance

Order 73, rule 5 is amended –

(a) in paragraph (1) –

(i) by repealing "or notice";

(ii) by repealing "21 days" and substituting "30 days";

(b) in paragraph (2) –

(i) by repealing "the notice" and substituting "the summons";

(ii) by repealing "21 days" where it twice appears and substituting "30 days";

(c) in paragraph (3), by repealing "14 days" and substituting "30 days";

(d) in paragraph (5), by repealing "the notice of originating motion, or as the case may be, the originating summons," and substituting "the summons".

32. Rule added

Order 73 is amended by adding –

"6A. Originating summons to be heard in chambers (O. 73, r. 6A)

An originating summons referred to in rules 2, 3 and 5 may be heard in chambers if the judge, whether of his own motion or at the request of one or more of the parties, so decides."

33. Service out of the jurisdiction of summons, notice, etc.

Order 73, rule 7 is amended –

(a) in the heading, by repealing ", notice, etc." and substituting "**and order**";

(b) in paragraph (1) –

(i) in sub-paragraph (a), by repealing "or notice of originating motion";

(ii) in sub-paragraph (b), by repealing "or motion as aforesaid";

- (iii) by repealing "summons, motion or order" and substituting "summons or order";
- (c) in paragraph (3), by repealing "summons, notice or order" and substituting "summons or order".

**34. Registration of awards under Arbitration
(International Investment Disputes)
Act 1966**

Order 73, rule 9(3) is amended by repealing "shall be made" and substituting "may be made".

**35. Enforcement of settlement agreement
under section 2C of the Arbitration
Ordinance or of award under section
2GG of that Ordinance**

Order 73, rule 10(2) is amended by repealing "shall be an originating summons" and substituting "may be an originating summons".

36. Rule added

Order 73 is amended by adding –

**"19. Transitional provision relating to
rule 29 of Amendment Rules 2007
(O. 73, r. 19)**

Where, immediately before the commencement of rule 29 ("the amending rule") of the Amendment Rules 2007, an application, request or appeal by originating motion made under rule 2 as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

**37. Issue of writ and acknowledgment
of service**

Order 75, rule 3(1) is amended by repealing "must be begun by writ" and substituting "may be begun by writ".

**38. Requirements in connection with
issue of writ**

Order 76, rule 2(1) is amended by repealing "must be" and substituting "may be".

39. Approval of settlement

Order 80, rule 11(1) is amended by repealing ", notwithstanding anything in Order 5, rule 2,".

40. Commencement of money lender's action

Order 83A, rule 2(1) is amended by repealing "shall be" and substituting "may be".

41. Determination of questions as to property

Order 89, rule 1 is amended by repealing "must be" and substituting "may be".

42. Provisions as to actions in tort

Order 89, rule 2(2) is amended by repealing "or motion".

43. Rule added

Order 89 is amended by adding –

"3. Transitional provision relating to rule 42 of Amendment Rules 2007

(O. 89, r. 3)

Where, immediately before the commencement of rule 42 ("the amending rule") of the Amendment Rules 2007, an application by motion made under rule 2(2) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

44. Application to make a minor a ward of court

Order 90, rule 3(1) is amended by repealing "but except in that case an application to make a minor a ward of court must be made by originating summons" and substituting "in any other case an application to make a minor a ward of court may be made by originating summons".

45. Appeals and applications under the Trade Marks Ordinance

Order 100, rule 2 is amended –

(a) in paragraph (2), by repealing "must be begun by originating motion" and substituting "may be begun by originating summons in Form No. 10 in Appendix A";

(b) in paragraph (3), by repealing "Notice of the motion" and substituting "The summons".

46. Rule added

Order 100 is amended by adding –

"4. Transitional provision relating to rule 45 of Amendment Rules 2007

(O. 100, r. 4)

Where, immediately before the commencement of rule 45 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 2(2) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

47. Applications to be made by originating summons

Order 102, rule 2(1) is repealed and the following substituting –

"(1) Except in the case of applications made in proceedings relating to the winding up of companies, applications made pursuant to section 168A of the Ordinance and the applications mentioned in rule 5, every application under the Ordinance may be made by originating summons."

48. Rules repealed

Order 102, rules 3 and 4 are repealed.

49. Entitlement of proceedings

Order 102, rule 6(2) is amended by repealing ", notice of originating motion".

50. Rule added

Order 102 is amended by adding –

"18. Transitional provision relating to rule 48 of Amendment Rules 2007

(O. 102, r. 18)

Where, immediately before the commencement of rule 48 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 3(1) or 4(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

51. Assignment of proceedings

Order 115, rule 2 is amended by repealing "a motion" and substituting "an originating summons".

**52. Application for confiscation order
where person has died or absconded**

Order 115, rule 2A is amended –

- (a) by renumbering it as Order 115, rule 2A(1);
- (b) in paragraph (1), by repealing "by originating summons";
- (c) by adding –

"(2) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A."

**53. Application for restraint order or
charging order**

Order 115, rule 3 is amended –

- (a) in paragraph (1), by repealing "by originating motion";
- (b) by adding –

"(1A) An application under paragraph (1) may be made by originating summons in Form No. 10 in Appendix A.";

- (c) in paragraph (3), by repealing "originating motion" and substituting "originating summons".

54. Realisation of property

Order 115, rule 7 is amended –

- (a) by repealing paragraph (1) and substituting –

"(1) An application under section 12 must be made by the Secretary for Justice.

(1A) The application may, where there have been proceedings against the defendant in the Court of First Instance, be made by summons and may otherwise be made by originating summons in Form No. 10 in Appendix A.";

- (b) in paragraph (2), by repealing "originating motion" and substituting "originating summons".

**55. Application for continued detention
of seized property**

Order 115, rule 24(1) is amended by repealing "shall be made by ex parte originating motion in Form No. 107 in Appendix A" and substituting "may be made by originating summons in Form No. 10 in Appendix A".

56. Rule added

Order 115 is amended by adding –

"34. Transitional provision relating to rules 53 and 54 of Amendment Rules 2007 (O. 115, r. 34)

Where, immediately before the commencement of rules 53 and 54 ("the amending rules") of the Amendment Rules 2007, an application by originating motion made under rule 3(1) or 7(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rules had not been made."

57. Proceedings under section 84

Order 118, rule 3(1) is amended by repealing "shall be" and substituting "may be".

58. Proceedings under section 85

Order 118, rule 4(1) is amended by repealing "shall be" and substituting "may be".

59. Form of application

Order 119, rule 4 is amended by repealing "shall be made by ex parte notice of motion in Form 109" and substituting "may be made ex parte by originating summons in Form No. 11 in Appendix A".

60. Rule added

Order 119 is amended by adding –

"7. Transitional provision relating to rule 59 of Amendment Rules 2007 (O. 119, r. 7)

Where, immediately before the commencement of rule 59 ("the amending rule") of the Amendment Rules 2007, an application by ex parte notice of motion in Form 109 made under rule 4 as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

61. Mode of application

Order 121, rule 2(1) is amended by repealing "shall be" and substituting "may be".

62. Forms

Appendix A is amended by repealing Forms No. 107 and 109.

**PART 4
DISPUTING JURISDICTION**

Recommendation 17

63. Dispute as to jurisdiction

Order 12, rule 8 is amended -

- (a) in paragraph (1), by adding –
 - "(ga) an order staying the proceedings, or";
- (b) by adding –
 - "(2) A defendant who wishes to argue that the Court should not exercise its jurisdiction in the proceedings on one or more of the grounds specified in paragraph (2A) or on any other ground shall also give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for –
 - (a) a declaration that in the circumstances of the case the Court should not exercise any jurisdiction it may have, or
 - (b) an order staying the proceedings, or
 - (c) such other relief as may be appropriate, including the relief specified in paragraph (1)(e) or (f).
 - (2A) The grounds specified for the purposes of paragraph (2) are that –
 - (a) considering the best interests and convenience of the parties to the proceedings and the witnesses of such proceedings, the proceedings should be conducted in another court,
 - (b) the defendant is entitled to rely on an agreement to which the plaintiff is a party excluding the jurisdiction of the Court, and
 - (c) in respect of the same cause of action to which the proceedings relate, there are other proceedings pending between the defendant and the plaintiff in another court.";
- (c) by repealing paragraph (3) and substituting –
 - "(3) An application under paragraph (1) or (2) must be made by summons and the summons must state the grounds of the application.";
- (d) in paragraph (4) –
 - (i) by adding "or (2)" after "paragraph (1)";
 - (ii) by repealing "notice of motion or";
- (e) in paragraphs (5), (6) and (7), by adding "or (2)" after "paragraph (1)".

64. Rule added

Order 12 is amended by adding -

"11. Transitional provision relating to rule 63 of Amendment Rules 2007 (O. 12, r. 11)

Where, immediately before the commencement of rule 63 ("the amending rule") of the Amendment Rules 2007, an application by summons or motion made under rule 8(3) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made."

**PART 5
DEFAULT JUDGMENTS AND ADMISSIONS**

Recommendation 18

65. Order added

The following is added –

"ORDER 13A
ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

1. Making an admission (O. 13A, r. 1)

- (1) A party may admit the truth of the whole or any part of another party's case.
- (2) The party may do this by giving notice in writing (such as in a pleading or by letter).
- (3) Where the only remedy which a plaintiff is seeking is the payment of money, the defendant may make an admission in accordance with –
 - (a) rule 4 (admission of whole of claim for liquidated amount of money);
 - (b) rule 5 (admission of part of claim for liquidated amount of money);
 - (c) rule 6 (admission of liability to pay whole of claim for unliquidated amount of money); or
 - (d) rule 7 (admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim).
- (4) Where the defendant makes an admission as mentioned in paragraph (3), the plaintiff has a right to enter judgment except where –
 - (a) the defendant is a person under disability; or
 - (b) the plaintiff is a person under disability and the admission is made under rule 5 or 7.
- (5) The Court may allow a party to amend or withdraw an admission.

(6) In this rule, "person under disability" () has the meaning assigned to it in Order 80, rule 1.

2. Admission by notice in writing – application for judgment

(O. 13A, r. 2)

(1) Where a party makes an admission by notice in writing under rule 1(2), any other party may apply for judgment on the admission.

(2) Judgment shall be such judgment as it appears to the Court that the applicant is entitled to on the admission.

3. Period for making admission

(O. 13A, r. 3)

(1) The period for filing and serving an admission under rule 4, 5, 6 or 7 is –

(a) where the defendant is served with a writ, the period fixed by or under these rules for service of his defence;

(b) where the defendant is served with an originating summons, the period fixed by or under these rules for filing of his affidavit evidence; and

(c) in any other case, 14 days after service of the originating process.

(2) A defendant may file an admission under rule 4, 5, 6 or 7 after the end of the period for filing it specified in paragraph (1) if the plaintiff has not obtained default judgment under Order 13 or 19.

(3) If the defendant does so, this Order applies as if he had made the admission within that period.

4. Admission of whole of claim for liquidated amount of money

(O. 13A, r. 4)

(1) This rule applies where –

(a) the only remedy which the plaintiff is seeking is the payment of a liquidated amount of money; and

(b) the defendant admits the whole of the claim.

(2) The defendant may admit the claim by –

(a) filing in the Registry an admission in Form No. 16 in Appendix A; and

(b) serving a copy of the admission on the plaintiff.

(3) The plaintiff may obtain judgment by filing in the Registry a request in Form No. 16A in Appendix A and, if he does so –

- (a) where the defendant has not requested time to pay, paragraphs (4) to (6) apply;
- (b) where the defendant has requested time to pay, rule 9 applies.
- (4) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (5) On receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be for the amount of the claim (less any payments made) and costs to be paid –
 - (a) by the date or at the times and rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

5. Admission of part of claim for liquidated amount of money

(O. 13A, r. 5)

- (1) This rule applies where –
 - (a) the only remedy which the plaintiff is seeking is the payment of a liquidated amount of money; and
 - (b) the defendant admits part of the claim.
- (2) The defendant may admit part of the claim by –
 - (a) filing in the Registry an admission in Form No. 16 in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –
 - (a) file in the Registry a notice in Form No. 16B in Appendix A, stating that –
 - (i) he accepts the amount admitted in satisfaction of the claim;
 - (ii) he does not accept the amount admitted by the defendant and wishes the proceedings to continue; or
 - (iii) if the defendant has requested time to pay, he accepts the amount admitted in satisfaction of the claim, but not the defendant’s proposals as to payment; and
 - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.
- (5) If the plaintiff accepts the amount admitted in satisfaction of the claim, he may obtain judgment by filing in the Registry a request in Form No. 16B in Appendix A and, if he does so –

- (a) where the defendant has not requested time to pay, paragraphs (6) to (8) apply;
- (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (7) On receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount admitted (less any payments made) and costs to be paid –
 - (a) by the date or at the rate specified in the request for judgment; or
 - (b) if none is specified, immediately.

6. Admission of liability to pay whole of claim for unliquidated amount of money (O. 13A, r. 6)

- (1) This rule applies where –
 - (a) the only remedy which the plaintiff is seeking is the payment of money;
 - (b) the amount of the claim is unliquidated; and
 - (c) the defendant admits liability but does not offer to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) The plaintiff may obtain judgment by filing a request in Form No. 16D in Appendix A.
- (4) If the plaintiff does not file a request for judgment within 14 days after the copy of the admission is served on him, the claim is stayed until he files the request.
- (5) On receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be for an amount to be decided by the Court and costs.

7. Admission of liability to pay claim for unliquidated amount of money where defendant offers a sum in satisfaction of the claim

(O. 13A, r. 7)

- (1) This rule applies where –
 - (a) the only remedy which the plaintiff is seeking is the payment of money;
 - (b) the amount of the claim is unliquidated; and

- (c) the defendant –
 - (i) admits liability; and
 - (ii) offers to pay a liquidated amount of money in satisfaction of the claim.
- (2) The defendant may admit the claim by –
 - (a) filing in the Registry an admission in Form No. 16C in Appendix A; and
 - (b) serving a copy of the admission on the plaintiff.
- (3) Within 14 days after the copy of the admission is served on him, the plaintiff shall –
 - (a) file in the Registry a notice in Form No. 16E in Appendix A, stating whether or not he accepts the amount in satisfaction of the claim; and
 - (b) serve a copy of the notice on the defendant.
- (4) If the plaintiff does not file the notice in accordance with paragraph (3), the claim is stayed until he files the notice.
- (5) If the plaintiff accepts the offer he may obtain judgment by filing a request in Form No. 16E in Appendix A and if he does so –
 - (a) where the defendant has not requested time to pay, paragraphs (6) to (8) apply;
 - (b) where the defendant has requested time to pay, rule 9 applies.
- (6) The plaintiff may specify in his request for judgment –
 - (a) the date by which the whole of the judgment debt is to be paid; or
 - (b) the times and rate at which it is to be paid by instalments.
- (7) On receipt of the request for judgment, the Court shall enter judgment.
- (8) Judgment shall be for the amount offered by the defendant (less any payments made) and costs to be paid –
 - (a) on the date or at the rate specified in the request for judgment; or
 - (b) if none is specified, immediately.
- (9) If the plaintiff does not accept the amount offered by the defendant, he may obtain judgment by filing a request in Form No. 16E in Appendix A.
- (10) Judgment under paragraph (9) shall be for an amount to be decided by the Court and costs.

8. Duty of Court to give directions

(O. 13A, r. 8)

Where the Court enters judgment under rule 6 or 7 for an amount to be decided by the Court, it shall give any directions it considers appropriate.

9. Request for time to pay (O. 13A, r. 9)

(1) A defendant who makes an admission under rule 4, 5 or 7 may make a request for time to pay.

- (2) A request for time to pay is a proposal about the date of payment or a proposal to pay by instalments at the times and rate specified in the request.
- (3) The defendant's request for time to pay must be filed with his admission.
- (4) If the plaintiff accepts the defendant's request, he may obtain judgment by filing a request in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.
- (5) On receipt of the request for judgment, the Court shall enter judgment.
- (6) Judgment shall be –
 - (a) where rule 4 applies, for the amount of the claim (less any payments made) and costs;
 - (b) where rule 5 applies, for the amount admitted (less any payments made) and costs; or
 - (c) where rule 7 applies, for the amount offered by the defendant (less any payments made) and costs,and (in all cases) shall be for payment at the time and rate specified in the defendant's request for time to pay.

**10. Determination of rate of payment
by Court (O. 13A, r. 10)**

- (1) This rule applies where the defendant makes a request for time to pay under rule 9.
- (2) If the plaintiff does not accept the defendant's proposals for payment, he shall file a notice in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.
- (3) When the Court receives the plaintiff's notice, it shall enter judgment for the amount admitted (less any payments made) to be paid at the time and rate of payment determined by the Court.
- (4) Where the Court is to determine the time and rate of payment, it may do so without a hearing.
- (5) If there is to be a hearing to determine the time and rate of payment, the Court shall give each party at least 7 days' notice of the hearing.

11. Right of re-determination (O. 13A, r. 11)

- (1) Where the Court has determined the time and rate of payment under rule 10(4) without a hearing, either party may apply for the decision to be re-determined by the Court.
- (2) An application for re-determination must be made within 14 days after service of the determination on the applicant.

12. Interest (O. 13A, r. 12)

- (1) Judgment under rule 4, 5 or 7 shall include the amount of interest claimed to the date of judgment if –

- (a) the plaintiff is seeking interest and he has stated in the endorsement of the writ or the statement of claim or the originating summons whether he is doing so –
 - (i) under the terms of a contract;
 - (ii) under an enactment and, if so, which enactment; or
 - (iii) on some other basis and, if so, what that basis is;
- (b) where interest is claimed under section 48 of the Ordinance, the rate is no higher than the rate of interest payable on judgment debts at the date when the writ or the originating summons was issued; and
- (c) the plaintiff's request for judgment includes a calculation of the interest claimed for the period from the date up to which interest was stated to be calculated in the statement of claim or the originating summons to the date of the request for judgment.

(2) In any case where judgment is entered under rule 4, 5 or 7 and the conditions specified in paragraph (1) are not satisfied, judgment shall be for an amount of interest to be decided by the Court.

13. Form for admission to be served with statement of claim or originating summons (O. 13A, r. 13)

(1) This rule applies where the only remedy which the plaintiff is seeking is the payment of money, whether or not the amount is liquidated.

(2) Where a statement of claim or an originating summons is served on a defendant, it must be accompanied by –

- (a) if the amount of money which the plaintiff is seeking is liquidated, a copy of Form No. 16A in Appendix A for admitting the claim; and
- (b) if the amount of money which the plaintiff is seeking is unliquidated, a copy of Form No. 16C in Appendix A for admitting the claim.

14. Application to counterclaim (O. 13A, r. 14)

Where a defendant has made a counterclaim against a plaintiff, this Order applies in relation to the counterclaim with the necessary modifications as if –

- (a) a reference to a claim or statement of claim were a reference to a counterclaim;
- (b) a reference to a plaintiff were a reference to the party making the counterclaim; and
- (c) a reference to a defendant were a reference to the defendant to the counterclaim."

66. Forms

(1) Appendix A is amended in Form No. 1 by repealing "without further notice." and substituting –

"without further notice.

If you intend to make an admission, you may complete an appropriate form in accordance with the accompanying Directions for Acknowledgment of Service. *[Insert this paragraph if the only remedy which the plaintiff is seeking is the payment of a liquidated amount of money or an unliquidated amount of money and the statement of claim is served with this writ].*".

(2) Appendix A is amended in Form No. 14, under the sub-heading "*Directions for Acknowledgment of Service*" –

(a) in paragraph 2, by repealing "14 days" where it twice appears and substituting "28 days";

(b) by repealing paragraph 3 and substituting –

"3. If the only remedy which the Plaintiff is seeking is the payment of a liquidated or unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form 16 or 16C as attached to the statement of claim.

4. A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the Plaintiff [or the Plaintiff's solicitors] within the period for service of the Defence."

(3) Appendix A is amended in Form No. 14, under the sub-heading "ACKNOWLEDGMENT OF SERVICE OF WRIT OF SUMMONS", by repealing -

"see Direction 3.

3. If the claim against the Defendant is for a debt or liquidated demand, AND he does not intend to contest the proceedings, state if the Defendant intends to apply for a stay of execution against any judgment entered by the Plaintiff (tick box)

"

and substituting –

"see Directions 3 and 4.

3. If the only remedy which the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state if the Defendant intends to make an admission (tick appropriate box). If yes, the Defendant may make the admission by completing Form No. 16 or 16C

(as the case may be) accompanying the statement of claim.

Yes No

(4) Appendix A is amended in Form No. 15, under the sub-heading "*Directions for Acknowledgment of Service*" –

(a) by repealing "The accompanying form" and substituting "1. The accompanying form";

(b) by adding –

"2. If the only remedy which the Plaintiff is seeking is the payment of a liquidated or unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form No. 16 or 16C as attached to the originating summons.

3. A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the Plaintiff [or the Plaintiff's solicitors] within the period for filing of the Defendant's affidavit evidence."

(5) Appendix A is amended in Form No. 15, under the sub-heading "ACKNOWLEDGMENT OF SERVICE OF ORIGINATING SUMMONS", by repealing "Service of the Originating Summons is acknowledged accordingly." and substituting –

"see Directions 2 and 3.

3. If the only remedy which the Plaintiff is seeking is the payment of a liquidated amount of money or the payment of an unliquidated amount of money, state if the Defendant intends to make an admission (tick appropriate box). If yes, the Defendant may make the admission by completing Form No. 16 or 16C (as the case may be) accompanying the originating summons.

Yes No

Service of the Originating Summons is acknowledged accordingly."

(6) Appendix A is amended by adding –

"No. 16

Admission (liquidated amount)

(O. 13A, rr. 4(2), 5(2) & 13(2))

(Heading as in action)

Explanatory Note

1. The only claim the Plaintiff has made against you is for a liquidated amount of money. You may admit the Plaintiff's claim in whole or in part by completing this form **within 28 days** of the service of this statement of claim on you.
2. If you do not ask for time to pay, the Plaintiff will decide how much and when you should pay.
3. If you ask for time to pay, the Plaintiff will decide whether or not to accept the proposal for payment.
4. If the Plaintiff accepts your proposal for payment, the Plaintiff may request the Court to enter judgment against you.
5. If the Plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.

How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete sections 2 to 11.**
- If you ask for time to pay, make your offer of payment in box 11 on the back of this form.
- If you are not an individual, you should ensure that you provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made in box 11.
- You can get help to complete this form at the Registry of the High Court.

How much of the claim do you admit?

- I admit the full amount claimed as shown on the statement of claim **or**
- I admit the amount of \$

1 Personal details

Surname

Forename

Mr Mrs Miss Ms

Married Single Other (*specify*)

Age

Address

Tel. no.

2 Dependants (*people you look after financially*)

Number of children in each age group

under 11 11-15 16-17 18 & over

Other dependants (*give details*)

3 Employment

I am employed as a
 My employer is
 Jobs other than main job (*give details*)

I am self employed as a
 Annual turnover is \$

I am not in arrears with my mandatory provident fund contributions and income tax

I am in arrears and I owe..... \$

Give details of:

(a) contracts and other work in hand

(b) any sums due for work done

I have been unemployed for years months

I am pensioner

4 Bank account and savings

I have a bank account

The account is in credit by \$

The account is overdrawn by \$

5 Residence

I live in my own flat

my jointly owned flat

public housing estate

others (please specify)

6 Income

My usual take home pay (including overtime, commission, bonuses etc)	\$	per
My pension(s)	\$	per
Others living in my home give me	\$	per
Other income (give details below)		
	\$	per
	\$	per
	\$	per
Total income	\$	per

7 Expenses

(Do not include any payments made by other members of the household out of their own income)

I have regular expenses as follows:		
Mortgage (including second mortgage)	\$	per
Rent	\$	per
Rates	\$	per
Gas	\$	per
Electricity	\$	per
Water charges	\$	per
Housekeeping, food, school meals	\$	per
Travelling expenses	\$	per
Children's clothing	\$	per
Maintenance payments	\$	per
Others (not court orders or credit debts listed in boxes 9 and 10)		
	\$	per
	\$	per
	\$	per
Total expenses	\$	per

8 Priority debts (This section is for arrears only. Do not include regular expenses listed in box 7.)

Rent arrears	\$	per
Mortgage arrears	\$	per
Rates arrears	\$	per
Water charges arrears	\$	per
Fuel debts : Gas	\$	per
Electricity	\$	per
Other	\$	per
Maintenance arrears	\$	per
Others (give details below)		
	\$	per
	\$	per
Total priority debts	\$	per

9 Court orders

Court	Action No.	\$	per
Total court order instalments		\$	per

Of the payments above, I am behind with payments to (please list)

10 Credit debts

Loans and credit card debts (please list)

	\$	per
	\$	per
	\$	per

Of the payments above, I am behind with payments to (please list)

11 Offer of payment

- I can pay the amount admitted on
- or
- I can pay by monthly instalments of \$

If you cannot pay immediately, please give brief reasons below

12 Declaration I declare that the details I have given above are true to the best of my knowledge

Signed

Date

Position or office held
(if signing on behalf of firm or company)

No. 16A

Request for judgment (admission of liquidated amount)

(O. 13A, rr. 4(3), 9(4) & 10(2))

(Heading as in action)

- Remember to sign and date the form. Your signature certifies that the information you have given is correct.
- Return the completed form to the court.

<p>A The defendant has admitted the whole of my claim</p> <p>Tick only one box below and complete all the judgment details at B.</p> <p><input type="checkbox"/> I accept the defendant's proposal for payment</p> <p>Say how the defendant intends to pay. The court will send the defendant an order to pay. You will also be sent a copy.</p> <p><input type="checkbox"/> The defendant has not made any proposal for payment</p> <p>Say how you want the defendant to pay. You can ask for the judgment to be paid by instalments or in one payment. The court will send the defendant an order to pay. You will also be sent a copy.</p> <p><input type="checkbox"/> I do NOT accept the defendant's proposal for payment</p> <p>Say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.) The court will fix a rate of payment and send the defendant an order to pay. You will also be sent a copy.</p>	<p>B Judgment details</p> <p>I would like the judgment sum to be paid</p> <p><input type="checkbox"/> (immediately)</p> <p><input type="checkbox"/> (by instalments of \$ <input style="width: 50px;" type="text"/> per month)</p> <p><input type="checkbox"/> (in full by <input style="width: 150px;" type="text"/>)</p> <hr style="border-top: 1px dotted black;"/> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Amount of claim as admitted</td> <td style="width: 10%;"></td> <td style="width: 20%;"></td> </tr> <tr> <td>Interest (if any)</td> <td></td> <td></td> </tr> <tr> <td>Period from to</td> <td></td> <td></td> </tr> <tr> <td>Rate%</td> <td></td> <td></td> </tr> <tr> <td>Court fees</td> <td></td> <td></td> </tr> <tr> <td>Solicitor's costs (if any) on issuing claim</td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">Sub Total</td> <td></td> <td></td> </tr> <tr> <td>Solicitor's costs (if any) on entering judgment</td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">Sub Total</td> <td></td> <td></td> </tr> <tr> <td>Deduct amount (if any) paid since issue</td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;">Amount payable by defendant</td> <td></td> <td></td> </tr> </table>	Amount of claim as admitted			Interest (if any)			Period from to			Rate%			Court fees			Solicitor's costs (if any) on issuing claim			Sub Total			Solicitor's costs (if any) on entering judgment			Sub Total			Deduct amount (if any) paid since issue			Amount payable by defendant		
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Amount payable by defendant																																		

I certify that the information given is correct

Signed
 (Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held
 (If signing on behalf of firm or company)

Date

Reply to part admission of liquidated amount and Request for judgment

(O. 13A, rr. 5(3) & (5), 9(4) & 10(2))

(Heading as in action)

- **Please tell the court what you wish to do by completing the lower half of this form and filing it in the Registry of the High Court within 14 days after the copy of the defendant's admission is served on you.**
At the same time you must serve a copy on the defendant. If you do not file this form in the Registry of the High Court within the prescribed period, your claim will be stayed. No further action will be taken by the court until the form is received.
- You must tick box A or B. If you tick box B you must also complete the details in that part and part C.
- Remember to sign and date the notice.

<p>A <input type="checkbox"/> I DO NOT accept the defendant's part admission</p> <p>If you tick this box the claim will proceed as a defended claim.</p> <p>B <input type="checkbox"/> I ACCEPT the amount admitted by the defendant in satisfaction of my claim</p> <p>Tick only one box and follow the instructions given.</p> <p><input type="checkbox"/> I accept the defendant's proposal for payment</p> <p>Complete all the judgment details at C. The court will enter judgment in accordance with the offer and will send the defendant an order to pay. You will also be sent a copy.</p> <p><input type="checkbox"/> The defendant has not made any proposal for payment</p> <p>Complete all the judgment details at C. Say how you want the defendant to pay. You can ask for the judgment to be paid by instalments or in one payment. The court will send the defendant an order to pay. You will also be sent a copy.</p> <p><input type="checkbox"/> I do NOT accept the defendant's proposal for payment</p> <p>Complete all the judgment details at C and say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.) The court will fix a rate of payment and send the defendant an order to pay. You will also be sent a copy.</p>	<p>C Judgment details</p> <p>I would like the judgment sum to be paid</p> <p><input type="checkbox"/> (immediately)</p> <p><input type="checkbox"/> (by instalments of \$ <input style="width: 50px;" type="text"/> per month)</p> <p><input type="checkbox"/> (in full by <input style="width: 150px;" type="text"/>)</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%; border-right: 1px solid black; padding: 2px;">Amount of claim as admitted</td> <td style="width: 5%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Interest (if any)</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Period from</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">to</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Rate</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Court fees</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Solicitor's costs (if any) on issuing claim</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px; text-align: right;">Sub Total</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Solicitor's costs (if any) on entering judgment</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px; text-align: right;">Sub Total</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px;">Deduct amount (if any) paid since issue</td> <td></td> <td></td> </tr> <tr> <td style="border-right: 1px solid black; padding: 2px; text-align: right;">Amount payable by defendant</td> <td></td> <td></td> </tr> </table>	Amount of claim as admitted			Interest (if any)			Period from			to			Rate			Court fees			Solicitor's costs (if any) on issuing claim			Sub Total			Solicitor's costs (if any) on entering judgment			Sub Total			Deduct amount (if any) paid since issue			Amount payable by defendant		
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Deduct amount (if any) paid since issue																																					
Amount payable by defendant																																					

I certify that the information given is correct

Signed
(Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held
(If signing on behalf of firm or company)

Date

Admission (unliquidated amount)

(O. 13A, rr. 6(2), 7(2) & 13(2))

(Heading as in action)

Explanatory Note

1. The only claim the Plaintiff has made against you is for a unliquidated amount of money. You may admit the Plaintiff's claim in whole or in part by completing this form **within 28 days** of the service of this statement of claim on you.
2. You may offer a specified amount to satisfy the claim. If the amount you offer is accepted by the Plaintiff, the Plaintiff may request the court to enter judgment against you for that amount. Alternatively, the Plaintiff may request the court to enter judgment against you for an amount to be decided by the court and costs.
3. You may also ask for time to pay. If the Plaintiff does not accept your proposal for payment, the Court will decide how the payment should be made.

How to fill in this form

- Tick the correct boxes and give as much information as you can. **Then sign and date the form.** If necessary provide details on a separate sheet, add the action number and attach it to this form.
- **If you do not ask for time to pay, you need not complete sections 2 to 11.**
- If you ask for time to pay, make your offer of payment in box 11 on the back of this form.
- If you are not an individual, you should ensure that you provide sufficient details about the assets and liabilities of your firm, company or corporation to support any offer of payment made in box 11.
- You can get help to complete this form at the Registry of the High Court.

Part A Response to claim (tick one box only)

I admit liability for the whole claim but want the court to decide the amount I should pay (if you tick this box, you need not complete Part B and sections 2 to 10)

OR

I admit liability for the claim and offer to pay in satisfaction of the claim

Part B How are you going to pay the amount you have admitted? (tick one box only)

I offer to pay on (date)

OR

I cannot pay the amount immediately because (state reason)

AND

I offer to pay by instalments of \$ per (week)(month) starting (date)

1 Personal details

Surname

Forename

Mr Mrs Miss Ms

Married Single Other (specify)

Age

Address

Tel. no.

2 Dependants (people you look after financially)

Number of children in each age group

under 11 11-15 16-17 18 & over

Other dependants

(give details)

3 Employment

I am employed as a

My employer is
Jobs other than
main job (give details)

I am self employed as a

Annual turnover is

\$

I am not in arrears with my mandatory provident fund contributions and income tax

I am in arrears and I owe.....

\$

Give details of :

(a) contracts and other work in hand

(b) any sums due for work done

I have been unemployed for

years months

I am pensioner

4 Bank account and savings

I have a bank account

The account is in credit by

\$

The account is overdrawn by

\$

5 Residence

I live in my own flat

my jointly owned flat

public housing estate

others (please specify)

6 Income

My usual take home pay (including overtime, commission, bonuses etc)	\$	per
My pension(s)	\$	per
Others living in my home give me	\$	per
Other income (give details below)		
	\$	per
	\$	per
	\$	per
Total income	\$	per

7 Expenses

(Do not include any payments made by other members of the household out of their own income)

I have regular expenses as follows:		
Mortgage (including second mortgage)	\$	per
Rent	\$	per
Rates	\$	per
Gas	\$	per
Electricity	\$	per
Water charges	\$	per
Housekeeping, food, school meals	\$	per
Travelling expenses	\$	per
Children's clothing	\$	per
Maintenance payments	\$	per
Others (not court orders or credit debts listed in boxes 9 and 10)		
	\$	per
	\$	per
	\$	per
Total expenses	\$	per

8 Priority debts (This section is for arrears only. Do not include regular expenses listed in box 7.)

Rent arrears	\$	per
Mortgage arrears	\$	per
Rates arrears	\$	per
Water charges arrears	\$	per
Fuel debts : Gas	\$	per
Electricity	\$	per
Other	\$	per
Maintenance arrears	\$	per
Others (give details below)		
	\$	per
	\$	per
Total priority debts	\$	per

9 Court orders

Court	Action No.	\$	per
Total court order instalments		\$	per

Of the payments above, I am behind with payments to (please list)

10 Credit debts

Loans and credit card debts (please list)			
		\$	per
		\$	per
		\$	per

Of the payments above, I am behind with payments to (please list)

11 Declaration I declare that the details I have given above are true to the best of my knowledge

Signed

Date

Position or office held
(if signing on behalf of firm or company)

No. 16D

Request for judgment (admission of unliquidated amount)

(O. 13A, r. 6(3))

(Heading as in action)

The defendant has admitted liability to pay the whole of my claim but has not made any proposal for payment.

I request judgment to be entered against the defendant for an amount to be decided by the court and costs.

Signed

(Plaintiff)(Plaintiff's solicitor)(next friend)

**Position or
office held**
(if signing on
behalf of firm
or company)

Date

Reply to admission of unliquidated amount and Request for judgment

(O. 13A, r. 7(3), (5) & (9), 9(4) & 10(2))

(Heading as in action)

Important notes for plaintiff

- You must tick either A **or** complete B and C and return the form to the Registry of the High Court within 14 days after the copy of the defendant’s admission is sent to you.
At the same time you must send a copy to the defendant. If you do not return the form within the prescribed period, your claim will be stayed. No further action will be taken by the court until the form is received.
- Remember to sign and date the notice.

A **I DO NOT accept the amount offered by the defendant in satisfaction of my claim. I wish judgment to be entered for an amount to be decided by the court.**

The court will refer the court file to a judge for directions for management of the case. You and the defendant will be sent a copy of the court’s order.

B **I ACCEPT the amount admitted by the defendant in satisfaction of my claim**

Tick only **one** box and follow the instructions given.

I accept the defendant's proposal for payment

Complete all the judgment details at C. The court will enter judgment in accordance with the offer and will send the defendant an order to pay. You will also be sent a copy.

I do NOT accept the defendant's proposal for payment

Complete all the judgment details at C and say how you want the defendant to pay. Give your reasons for objecting to the defendant's offer of payment. (Continue on the back of this form if necessary.) The court will fix a rate of payment and send the defendant an order to pay. You will also be sent a copy.

C Judgment details

I would like the judgment sum to be paid

- (immediately)
- (by instalments of \$ per month)
- (in full by)

Enter amounts as shown

Amount of offer
 Court fees entered on claim
 Solicitor’ costs (if any) on issuing claim
 Solicitor's costs (if any) on entering judgment

\$	
Sub Total	
Deduct amount (if any) paid since issue	
Amount payable by defendant	

I certify that the information given is correct

Signed
 (Plaintiff)(Plaintiff's solicitor)(next friend)

Position or office held
 (If signing on behalf of firm or company)

Date

"

"

- (7) Appendix A is amended in Form No. 17 –
- (a) by repealing "Take notice that, within [14 days]" and substituting "1. Take notice that, within [28 days]";
 - (b) by adding –
 - "2. If the only remedy which the Plaintiff is seeking is the payment of a liquidated or unliquidated amount of money, you may admit the Plaintiff's claim in whole or in part by completing Form 16 or 16C as attached to the statement of claim.
 - 3. A completed Form No. 16 or 16C must be filed with the Registry of the High Court and served on the Plaintiff [or the Plaintiff's solicitors] within the period for service of the Defence."

PART 6 PLEADINGS

Division 1 – Recommendations 22 to 24

67. Admissions and denials

Order 18, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Any allegation" and substituting "Subject to paragraph (6), an allegation";
 - (ii) by repealing "denial" and substituting "non-admission";
- (b) in paragraph (2), by repealing "A traverse" and substituting "Subject to paragraph (5), a traverse";
- (c) by adding –
 - "(5) Where an allegation made in a statement of claim or counterclaim is traversed by a denial, the party who denies the allegation shall in his defence or defence to counterclaim –
 - (a) state his reasons for doing so; and
 - (b) if he intends to put forward a different version of events from that given by the claimant, state his own version.
 - (6) A party who –
 - (a) fails to deal with an allegation; but
 - (b) has set out in his defence or defence to counterclaim the nature of his case in relation to the issue to which that allegation is relevant,shall be taken to require that allegation to be proved."

68. Denial by joinder of issue

Order 18, rule 14(4) is amended by repealing "denial" where it twice appears and substituting "non-admission".

69. Rule added

Order 18 is amended by adding –

"23. Transitional provision relating to rule 67 of Amendment Rules 2007

(O. 18, r. 23)

Where –

- (a) a statement of claim has been served on a defendant before the commencement of rule 67 ("the amending rule") of the Amendment Rules 2007; or
- (b) a counterclaim has been served on a plaintiff before that commencement,

nothing in the amending rule is to apply in relation to that statement of claim or counterclaim (as the case may be), and rule 13 as in force immediately before the commencement is to continue to apply in relation to the statement of claim or counterclaim as if the amending rule had not been made."

Division 2 – Recommendations 26 to 32 and 35

70. Service of defence

Order 18, rule 2(1), (2) and (3) is amended by repealing "14 days" and substituting "28 days".

71. Rule added

Order 18 is amended by adding –

"12A. Pleading with inconsistent alternatives (O. 18, r. 12A)

A party may in any pleading make an allegation of fact which is inconsistent with another allegation of fact in the same pleading if –

- (a) the party has reasonable grounds for so doing; and
- (b) the allegations are made in the alternative."

72. Striking out pleadings and indorsements

Order 18, rule 19(1) is amended by adding ", either of its own motion or on application," after "The Court may".

73. Rule added

Order 18 is amended by adding –

"20A. Pleading, etc. to be verified by statement of truth (O. 18, r. 20A)

(1) A pleading and the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

- (a) a request made by that other party; or
- (b) an order of the Court made under rule 12(3) or (4)."

74. Rule added

Order 18 is amended by adding –

"24. Transitional provision relating to rule 70 of Amendment Rules 2007 (O. 18, r. 24)

Where an action has commenced before the commencement of rule 70 ("the amending rule") of the Amendment Rules 2007, then the amending rule does not apply in relation to a defence in that action and rule 2 as in force immediately before the commencement of the amending rule is to apply as if the amending rule had not been made."

75. Rule added

Order 20 is amended by adding –

"13. Amendment of pleadings or particulars of pleadings to be verified by statement of truth (O. 20, r. 13)

(1) An amendment to a pleading or to the particulars of a pleading specified in paragraph (2) must be verified by a statement of truth in accordance with Order 41A.

(2) The particulars of a pleading referred to in paragraph (1) are particulars given by a party to any other party, whether voluntarily or pursuant to –

- (a) a request made by that other party; or
- (b) an order of the Court made under Order 18, rule 12(3) or (4)."

76. Rules added

Order 38 is amended –

- (a) in Part I, in rule 2A(4)(a), by repealing "shall include a statement by him that the contents are true to the best of his knowledge and belief" and substituting "must be verified by a statement of truth in accordance with Order 41A";

(b) in Part IV, by adding –

**"37A. Expert report to be verified
by statement of truth**

(O. 38, r. 37A)

A report disclosed under rule 37 must be verified by a statement of truth in accordance with Order 41A."

77. Order added

The following is added immediately after Order 41 –

**"ORDER 41A
STATEMENTS OF TRUTH**

1. Interpretation (O. 41A, r. 1)

In this Order, unless the context otherwise requires –

"expert report" () means a report disclosed under Order 38, rule 37;

"pleading" () includes –

- (a) particulars of a pleading given by a party to another party, whether voluntarily or pursuant to –
 - (i) a request of that other party; or
 - (ii) an order of the Court made under Order 18, rule 12(3) or (4); and
- (b) an amendment to a pleading or any of the particulars referred to in paragraph (a);

"witness statement" () means a statement served under Order 38, rule 2A.

**2. Documents to be verified by
statement of truth (O. 41A, r. 2)**

(1) The following documents shall be verified by a statement of truth in accordance with this Order –

- (a) a pleading;
- (b) a witness statement;
- (c) an expert report; and
- (d) any other document verification of which in accordance with this Order is required by any other provision of these rules or by a practice direction.

(2) A pleading must be verified by a statement of truth in accordance with this Order notwithstanding that the party has in the pleading made an allegation of fact in accordance with Order 18, rule 12A, which is inconsistent with another allegation of fact in the same pleading.

(3) If the Court considers that it is expedient to do so in a particular case, it may direct that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth.

(4) All or any of the documents specified in paragraph (1) need not be verified by a statement of truth if it is so provided by a practice direction.

(5) A practice direction may only provide that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth if the documents or document relate to a matter that is to be heard in a specialist list.

3. Signing of statement of truth

(O. 41A, r. 3)

(1) Subject to paragraphs (4), (5), (6) and (7), a statement of truth shall be signed by –

- (a) in the case of a witness statement or expert report, the maker of the statement or report;
- (b) in any other case –
 - (i) the party or where appropriate, his next friend or guardian ad litem; or
 - (ii) the legal representative of the party or next friend or guardian ad litem.

(2) Subject to paragraphs (5), (6) and (7), where a party is a body of persons, corporate or unincorporate, the statement of truth shall be signed by a person holding a senior position in the body. That person shall state the office or position he holds.

(3) Each of the following persons is a person holding a senior position –

- (a) in respect of a corporation, any director, manager, secretary or other similar officer of the corporation; and
- (b) in respect of an unincorporated association, any corresponding person appropriate to that unincorporated association.

(4) Subject to paragraphs (5), (6) and (7), where the party is a partnership, the statement of truth shall be signed by –

- (a) any of the partners; or
- (b) a person having the control or management of the partnership business.

(5) A statement of truth in or in relation to a pleading may be made by –

- (a) a person who is not a party; or
- (b) two or more parties jointly,

if this is permitted by a practice direction.

(6) An insurer or the Motor Insurers' Bureau of Hong Kong may sign a statement of truth in or in relation to a pleading on behalf of a party where the insurer or the Motor Insurers' Bureau of Hong Kong has a financial interest in the result of proceedings brought wholly or partially by or against that party.

(7) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in a relation to a pleading may be signed by an officer responsible for the case as the lead insurer, but –

- (a) the person signing shall specify the capacity in which he signs;
- (b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
- (c) the Court may order that the statement of truth also be signed by one or more of the parties.

4. Effect of statement of truth

(O. 41A, r. 4)

(1) Subject to paragraph (2), a statement of truth is a statement that –

- (a) the party putting forward the document believes the facts stated in the document are true; or
- (b) in the case of a witness statement or expert report, the maker of the witness statement or expert report believes that the facts stated in the document are true.

(2) If a party is conducting proceedings with a next friend or guardian ad litem, the statement of truth in or in relation to a pleading is a statement that the next friend or guardian ad litem believes the facts stated in the document being verified are true.

(3) Where a legal representative or insurer has signed a statement of truth on behalf of a party, the Court shall treat his signature as his statement that –

- (a) the party on whose behalf he has signed had authorized him to do so;
- (b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and
- (c) before signing he had informed the party of the possible consequences to the party if it should subsequently appear that the party did not have an honest belief in the truth of those facts.

5. Form of statement of truth

(O. 41A, r. 5)

(1) The form of the statement of truth verifying a document other than a witness statement and expert report shall be as follows –

"[I believe][the (*plaintiff or as may be*) believes] that the facts stated in this [*name document being verified*] are true."

(2) The form of the statement of truth verifying a witness statement or expert report shall be as follows –

"I believe that the facts stated in this [*name document being verified*] are true."

(3) Where the statement of truth is not contained in the document which it verifies –

- (a) the document containing the statement of truth must be headed with the title of the proceedings and the action number; and
- (b) the document being verified must be identified in the statement of truth as follows –
 - (i) pleading: "the [*statement of claim or as may be*] served on the [*name of party*] on [*date*]";
 - (ii) particulars of pleading: "the particulars of pleading issued on [*date*]";
 - (iii) amendment to a pleading or particulars of pleading: "the amendment to [*name document being verified*], made on [*date*]";
 - (iv) witness statement: "the witness statement filed on [*date*] or served on [*party*] on [*date*]";
 - (v) expert report: "the expert report disclosed to [*party*] on [*date*]".

6. Failure to verify pleading

(O. 41A, r. 6)

- (1) If a party fails to verify his pleading by a statement of truth –
 - (a) the pleading remains effective unless struck out; but
 - (b) the party may not rely on the pleading as evidence of any of the matters set out in it.
- (2) The Court may order to be struck out a pleading which is not verified by a statement of truth.
- (3) Any party may apply for an order under paragraph (2).

7. Failure to verify witness statement or expert report

(O. 41A, r. 7)

If the maker of a witness statement or expert report fails to verify the witness statement or expert report by a statement of truth, the Court may direct that it shall not be admissible in evidence.

8. Power of Court to require document to be verified

(O. 41A, r. 8)

- (1) The Court may order a person who has failed to verify a document in accordance with this Order to verify the document.
- (2) Any party may apply for an order under paragraph (1).

9. Verified statement to be used as evidence in interlocutory proceedings (O. 41A, r. 9)

A document verified by a statement of truth may be used as evidence in any interlocutory proceedings.

10. False statements (O. 41A, r. 10)

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only –

(a) by the Secretary for Justice or a person aggrieved by the false statement; and

(b) with the leave of the Court.

(3) The Court shall not grant the permission under paragraph (2) unless it is satisfied that the punishment for contempt of court is proportionate and appropriate in relation to the false statement.

(4) Proceedings under this rule are subject to the law relating to contempt of court and this rule is without prejudice to such law.

11. Transitional (O. 41A, r. 11)

This Order does not apply in relation to a document in any action if that document was filed, served or exchanged before the commencement of this Order."

Division 3 – Recommendations 33 and 34

78. Particulars of pleading

Order 18, rule 12 is amended –

(a) by repealing paragraph (3) and substituting –

"(3) The Court may, on such terms as it thinks just –

(a) order a party to serve on any other party –

(i) particulars of any claim, defence or other matter stated in his pleading, or in any affidavit of his ordered to stand as a pleading; or

(ii) a statement of the nature of the case on which he relies; or

- (b) order a party to amend his pleading and serve the amended pleading on any other party.";
- (b) by adding –
- "(4A) The Court may make an order under paragraph (3) or (4) upon the application of a party or of its own motion.
- (4B) No order shall be made under paragraph (3) or (4) unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

PART 7
SANCTIONED OFFERS AND PAYMENTS

Recommendations 38 to 43 and Recommendation 132

79. Order substituted

Order 22 is repealed and the following substituted –

"ORDER 22
OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

1. Interpretation (O. 22, r. 1)

In this Order –

- "claim" () includes, where the context so permits or requires, a counterclaim;
- "counterclaim" () includes, where the context so permits or requires, a claim;
- "defendant" () includes, where the context so permits or requires, a defendant to a counterclaim;
- "offeree" () means the party to whom an offer is made;
- "offeror" () means the party who makes an offer;
- "plaintiff" () includes, where the context so permits or requires, a counterclaiming defendant;
- "sanctioned offer" () means an offer made (otherwise than by way of a payment into court) in accordance with this Order;
- "sanctioned payment" () means an offer made by way of a payment into court in accordance with this Order;
- "sanctioned payment notice" () means the notice referred to in rule 9(2).

2. Offer to settle with specified consequences (O. 22, r. 2)

(1) Any party to a claim (whether a money claim or a non-money claim) may make an offer to settle the claim in accordance with this Order.

(2) An offer made under paragraph (1) may take into account any counterclaim or set-off in the action.

(3) An offer made under paragraph (1) will have the consequences specified in rules 18, 19, 20, 21 and 22 (as may be applicable).

(4) Nothing in this Order prevents a party from making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with this Order, it will only have the consequences specified in this Order if the Court so orders.

**II. MANNER OF MAKING SANCTIONED OFFER
OR SANCTIONED PAYMENT**

3. Offer to settle money claim by sanctioned payment (O. 22, r. 3)

(1) Where an offer by a defendant to settle a plaintiff's money claim involves a payment of money by the defendant to the plaintiff, the offer will not have the consequences set out in this Order unless it is made by way of a sanctioned payment.

(2) A sanctioned payment may only be made after the proceedings have commenced.

4. Offer to settle money claim by sanctioned offer (O. 22, r. 4)

An offer by a plaintiff to settle his money claim will not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

5. Offer to settle non-money claim by sanctioned offer

(O. 22, r. 5)

An offer to settle a non-money claim will not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

6. Offer to settle the whole of a claim which includes both a money claim and a non-money claim (O. 22, r. 6)

(1) This rule applies where a party to a claim which includes both a money claim and a non-money claim wishes to make an offer to settle the whole claim which will have the consequences set out in this Order.

(2) The party shall –

- (a) where his offer involves a payment of money by him to the other party, make a sanctioned payment in relation to the payment; and
- (b) make a sanctioned offer in relation to the balance of the offer.

(3) The sanctioned payment notice must –

- (a) identify the document which sets out the terms of the sanctioned offer; and
- (b) state that if the other party gives notice of acceptance of the sanctioned payment he will be treated as also accepting the sanctioned offer.

(4) If the other party gives notice of acceptance of the sanctioned payment, he shall also be taken as giving notice of acceptance of the sanctioned offer in relation to the non-money claim.

7. Form and content of a sanctioned offer (O. 22, r. 7)

(1) A sanctioned offer must be in writing.

(2) A sanctioned offer may relate to the whole claim or to part of it or to any issue that arises in it.

(3) A sanctioned offer must –

- (a) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue;
- (b) state whether it takes into account any counterclaim or set-off; and
- (c) if it is expressed not to be inclusive of interest, give the details relating to interest set out in rule 24(2).

(4) A defendant may make a sanctioned offer limited to accepting liability up to a specified proportion.

(5) A sanctioned offer may be made by reference to an interim payment.

(6) A sanctioned offer made not less than 28 days before the commencement of the trial –

- (a) may not be withdrawn before the expiry of 28 days from the date the sanctioned offer is made unless the Court gives leave to withdraw it; and
- (b) must provide that after the expiry of the 28-day period, the offeree may only accept it if –
 - (i) the parties agree on the liability for costs; or

- (ii) the Court gives leave to accept it.
- (7) A sanctioned offer made less than 28 days before the commencement of the trial must provide that the offeree may only accept it if –
 - (a) the parties agree on the liability for costs; or
 - (b) the Court gives leave to accept it.
- (8) If a sanctioned offer is withdrawn it will not have the consequences set out in this Order.

8. Sanctioned offer to be made after commencement of proceedings

(O. 22, r. 8)

- (1) Subject to paragraph (2), a sanctioned offer may be made at any time after the commencement of the proceedings but may not be made before such commencement.
- (2) If a pre-action protocol in relation to a specialist list so provides, an offer to settle a claim may be made before the commencement of the relevant proceedings specified in the specialist list.
- (3) An offer to settle made before the commencement of proceedings in accordance with a pre-action protocol shall be treated as a sanctioned offer and the provisions of this Order apply accordingly.
- (4) Paragraph (3) takes effect subject to the provisions of the pre-action protocol.

9. Notice of a sanctioned payment

(O. 22, r. 9)

- (1) A sanctioned payment may relate to the whole claim or part of it or to an issue that arises in it.
- (2) A defendant who makes a sanctioned payment shall file with the Court a notice in Form No. _____ in Appendix A, that –
 - (a) states the amount of the payment;
 - (b) states whether the payment relates to the whole claim or to part of it or to any issue that arises in it and if so to which part or issue;
 - (c) states whether it takes into account any counterclaim or set-off;
 - (d) if an interim payment has been made, states that the interim payment has been taken into account;
 - (e) if it is expressed not to be inclusive of interest, gives the details relating to interest set out in rule 24(2); and
 - (f) if a sum of money has been paid into court as security for the action, cause or matter (other than security for costs), states whether the paying party has taken into account that sum of money.
- (3) The defendant shall –
 - (a) serve the sanctioned payment notice –
 - (i) on the plaintiff; and

- (ii) where the plaintiff is an aided person within the meaning of the Legal Aid Ordinance (Cap. 91), on the Director of Legal Aid; and
- (b) file a certificate of service of the notice.
- (4) A sanctioned payment may not be withdrawn before the expiry of 28 days from the date the sanctioned payment is made unless the Court gives leave to withdraw it.

10. Offer to settle a claim for provisional damages (O. 22, r. 10)

- (1) A defendant may make a sanctioned payment in respect of a claim that includes a claim for provisional damages.
- (2) Where he does so, the sanctioned payment notice must specify whether or not the defendant is offering to agree to the making of an award of provisional damages.
- (3) Where the defendant is offering to agree to the making of an award of provisional damages, the sanctioned payment notice must also state –
 - (a) that the sum paid into court is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the notice;
 - (b) that the offer is subject to the condition that the plaintiff shall make any claim for further damages within a limited period; and
 - (c) what that period is.
- (4) Where a sanctioned payment is –
 - (a) made in accordance with paragraph (3); and
 - (b) accepted within the relevant period specified in rule 13,the sanctioned payment will have the consequences set out in rule 18, unless the Court orders otherwise.
- (5) If the plaintiff accepts the sanctioned payment he must, within 7 days of doing so, apply to the Court for an order for an award of provisional damages under Order 37, rule 8.
- (6) The money in court may not be paid out until the Court has disposed of the application made in accordance with paragraph (5).

11. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 22, r. 11)

- (1) A sanctioned offer is made when received by the offeree.
- (2) A sanctioned payment is made when a sanctioned payment notice is served on the offeree.
- (3) An improvement to a sanctioned offer will be effective when its details are received by the offeree.

(4) An increase in a sanctioned payment will be effective when notice of the increase is served on the offeree.

(5) A sanctioned offer or sanctioned payment is accepted when notice of its acceptance is received by the offeror.

12. Clarification of a sanctioned offer or a sanctioned payment notice

(O. 22, r. 12)

(1) The offeree may, within 7 days of a sanctioned offer or payment being made, request the offeror to clarify the offer or payment notice.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the trial has commenced, apply for an order that he does so.

(3) If the Court makes an order under paragraph (2), it shall specify the date when the sanctioned offer or sanctioned payment is to be treated as having been made.

III. ACCEPTANCE OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

13. Time for acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 13)

(1) A plaintiff may accept a sanctioned offer or a sanctioned payment made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he gives the defendant written notice of acceptance not later than 28 days after the offer or payment was made.

(2) If –

(a) a defendant's sanctioned offer or sanctioned payment is made less than 28 days before the commencement of the trial; or

(b) the plaintiff does not accept it within the period specified in paragraph (1), then the plaintiff may –

(i) if the parties agree on the liability for costs, accept the offer or payment without leave of the Court; or

(ii) if the parties do not agree on the liability for costs, only accept the offer or payment with leave of the Court.

(3) Where the leave of the Court is required under paragraph (2), the Court shall, if it gives leave, make an order as to costs.

14. Time for acceptance of a plaintiff's sanctioned offer (O. 22, r. 14)

(1) A defendant may accept a sanctioned offer made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he gives the plaintiff written notice of acceptance not later than 28 days after the offer was made.

(2) If –

(a) a plaintiff's sanctioned offer is made less than 28 days before the commencement of the trial; or

(b) the defendant does not accept it within the period specified in paragraph (1), then the defendant may –

(i) if the parties agree on the liability for costs, accept the offer without leave of the Court; and

(ii) if the parties do not agree on the liability for costs, only accept the offer with leave of the Court.

(3) Where the leave of the Court is required under paragraph (2), the Court shall, if it gives leave, make an order as to costs.

15. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 22, r. 15)

Where a sanctioned payment is accepted, the plaintiff may obtain payment out of the sum in court by making a request for payment in Form No. _____ in Appendix A.

16. Acceptance of a sanctioned offer or a sanctioned payment made by one or more, but not all, defendants

(O. 22, r. 16)

(1) This rule applies where the plaintiff wishes to accept a sanctioned offer or a sanctioned payment made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the plaintiff may accept the offer or payment without requiring the leave of the Court in accordance with rule 13(1) if –

(a) he discontinues his claim against those defendants who have not made the offer or payment; and

(b) those defendants give written consent to the acceptance of the offer or payment.

(3) If the plaintiff alleges that the defendants have a several liability to him, the plaintiff may –

(a) accept the offer or payment in accordance with rule 13(1); and

(b) continue with his claims against the other defendants.

(4) In all other cases the plaintiff shall apply to the Court for –

- (a) an order permitting a payment out to him of any sum in court; and
- (b) such order as to costs as the Court considers appropriate.

17. Other cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 17)

- (1) Where a sanctioned offer or a sanctioned payment is made in proceedings to which Order 80, rule 10 (Compromise, etc., by person under disability) applies –
 - (a) the offer or payment may be accepted only with the leave of the Court; and
 - (b) no payment out of any sum in court shall be made without a court order.
- (2) Where the Court gives leave to a plaintiff to accept a sanctioned offer or payment after the trial has commenced –
 - (a) any money in court may be paid out only with a court order; and
 - (b) the Court shall, in the order, deal with the whole costs of the proceedings.
- (3) Where a plaintiff accepts a sanctioned payment after a defence of tender before action has been put forward by the defendant, the money in court may be paid out only after an order of the Court.

**IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT**

18. Costs consequences of acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 18)

- (1) Where a defendant's sanctioned offer or a sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff will be entitled to his costs of the proceedings up to the date of serving notice of acceptance.
- (2) Where –
 - (a) a sanctioned offer or a sanctioned payment relating to a part or issue of the claim is accepted; and
 - (b) at the time of serving notice of acceptance the plaintiff abandons the other parts or issues of the claim,
 the plaintiff will be entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court orders otherwise.
- (3) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer or the sanctioned payment notice states that it takes into account the counterclaim or set-off.

**19. Costs consequences of acceptance
of a plaintiff's sanctioned
offer** (O. 22, r. 19)

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff will be entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance.

(2) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer states that it takes into account the counterclaim or set-off.

**20. Other consequences of acceptance
of a sanctioned offer or a
sanctioned payment**

(O. 22, r. 20)

(1) If a sanctioned offer or sanctioned payment relates to the whole claim and is accepted, the claim will be stayed.

(2) In the case of acceptance of a sanctioned offer which relates to the whole claim –

- (a) the stay will be upon the terms of the offer; and
- (b) either party may apply to enforce those terms without the need for a new claim.

(3) If a sanctioned offer or a sanctioned payment which only relates to a part or issue of the claim is accepted –

- (a) the claim will be stayed as to that part or issue; and
- (b) unless the parties have agreed on costs, the liability for costs shall be decided by the Court.

(4) If the approval of the Court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment will take effect only when that approval has been given.

(5) Any stay arising under this rule does not affect the power of the Court –

- (a) to enforce the terms of a sanctioned offer;
- (b) to deal with any question of costs (including interest on costs) relating to the proceedings; or
- (c) to order payment out of court of any sum paid into court.

(6) Where –

- (a) a sanctioned offer has been accepted; and
- (b) a party alleges that –
 - (i) the other party has not honoured the terms of the offer; and
 - (ii) he is therefore entitled to a remedy for breach of contract,

the party may claim the remedy by applying to the Court without the need to start a new claim unless the Court orders otherwise.

21. Costs consequences where plaintiff fails to do better than a sanctioned offer or a sanctioned payment (O. 22, r. 21)

- (1) This rule applies where at trial a plaintiff –
 - (a) fails to better a sanctioned payment; or
 - (b) fails to obtain a judgment which is more advantageous than an offeror's sanctioned offer.
- (2) Unless it considers it unjust to do so, the Court shall order the plaintiff to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.

22. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 22)

- (1) This rule applies where at trial –
 - (a) a defendant is held liable for more than the proposals contained in a plaintiff's sanctioned offer; or
 - (b) the judgment against a defendant is more advantageous to the plaintiff than the proposals contained in a plaintiff's sanctioned offer.
- (2) The Court may order interest on the whole or part of any sum of money (excluding interest) awarded to the plaintiff at a rate not exceeding 10% above prime rate for some or all of the period starting with the latest date on which the defendant could have accepted the offer without requiring the leave of the Court.
- (3) The Court may also order that the plaintiff is entitled to –
 - (a) his costs on the indemnity basis from the latest date when the defendant could have accepted the offer without requiring the leave of the Court; and
 - (b) interest on those costs at a rate not exceeding 10% above prime rate.
- (4) Where this rule applies, the Court shall make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.
- (5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the Court shall take into account all the circumstances of the case including –
 - (a) the terms of any sanctioned offer;
 - (b) the stage in the proceedings when any sanctioned offer was made;

- (c) the information available to the parties at the time when the sanctioned offer was made; and
 - (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.
- (6) The power of the Court under this rule is in addition to any other power it may have to award interest.

V. MISCELLANEOUS

23. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 22, r. 23)

- (1) A sanctioned offer is treated as "without prejudice save as to costs".
- (2) The fact that a sanctioned payment has been made must not be communicated to the trial judge until all questions of liability and the amount of money to be awarded have been decided.
- (3) Paragraph (2) does not apply –
 - (a) where the defence of tender before action has been raised;
 - (b) where the proceedings have been stayed under rule 20 following acceptance of a sanctioned offer or a sanctioned payment; or
 - (c) where –
 - (i) the issue of liability has been determined before any assessment of the money claimed; and
 - (ii) the fact that there has or has not been a sanctioned payment may be relevant to the question of the costs of the issue of liability.

24. Interest (O. 22, r. 24)

- (1) Unless –
 - (a) a plaintiff's sanctioned offer which offers to accept a sum of money; or
 - (b) a sanctioned payment notice,
 indicates to the contrary, any such offer or payment will be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.
- (2) Where a plaintiff's sanctioned offer or a sanctioned payment notice is expressed not to be inclusive of interest, the offer or notice must state –
 - (a) whether interest is offered; and
 - (b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.

25. Transitional provision relating to rule 79 of the Rules of the High Court (Amendment) Rules 2007

(O. 22, r. 25)

Where –

- (a) a payment into court has been made in accordance with Order 22 ("the repealed Order") repealed by rule 79 ("the repealing rule") of the Amendment Rules 2007; and
- (b) the disposal of the payment is pending immediately before the commencement of the repealing rule,

then nothing in this Order is to apply in relation to that payment, and the repealed Order is to continue to apply in relation to that payment as if the repealing rule had not been made."

80. Payment into court in satisfaction

Order 29, rule 16 is amended by repealing "Order 22, rule 1" and substituting "Order 22".

81. Notification of setting down

Order 34, rule 8(3) is amended by repealing "Order 22, rule 3(1)" and substituting "Order 22, rule 13".

82. Non-disclosure of payment into court

Order 59, rule 12A(1)(b) is amended by repealing "Order 22, rule 1" and substituting "Order 22".

83. When a party may sign judgment for costs without an order

Order 62, rule 10 is amended –

- (a) by repealing paragraphs (2), (3) and (4);
- (b) in paragraph (5) –
 - (i) by repealing "each of";
 - (ii) by repealing "respectively".

84. Payment into and out of court

Order 75, rule 24(1) is amended by repealing "Order 22 (except rules 3, 4 and 12)" and substituting "Subject to this rule, Order 22".

**85. Proceedings under Fatal Accidents
Ordinance : apportionment by Court**

Order 80, rule 15 is amended in paragraphs (1) and (2) by repealing "Order 22, rule 1" and substituting "Order 22".

86. Provisions as to payment into court

Order 82, rule 4 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "Order 22, rule 3(1)" and substituting "Order 22";
 - (ii) by repealing "rule 3(4) of";
- (b) in paragraph (2), by repealing "Order 22, rule 7" and substituting "Order 22, rule 23".

**87. Applications with respect to funds
in court**

Order 92, rule 5(5) is amended by repealing "Order 22" and substituting "Order 22A".

88. Forms

Appendix A is amended by repealing Forms No. 23 and No. 24.

89. Order added

The following is added –

"ORDER 22A
MISCELLANEOUS PROVISIONS ABOUT
PAYMENTS INTO COURT

1. Money remaining in court

(O. 22A, r. 1)

(1) If any money paid into court in an action is not accepted (whether or not in accordance with Order 22), the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action.

(2) Where an order under paragraph (1) is made before the trial or hearing, the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

2. Person to whom payment to be made (O. 22A, r. 2)

(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under the Legal Aid Ordinance (Cap. 91), payment shall be made only to the Director of Legal Aid without the need for any authority from the party.

(2) Subject to paragraph (1), payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under Order 22 or under an order of the Court or a certificate of the Registrar.

3. Payment out: small intestate estates (O. 22A, r. 3)

Where –

- (a) a person entitled to a fund in court, or a share of such fund, dies intestate;
- (b) the Court is satisfied that no grant of administration of his estate has been made; and
- (c) the assets of his estate, including the fund or share, do not exceed \$20,000 in value,

it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

4. Investment of money in court
(O. 22A, r. 4)

Case under the control of or subject to the order of the Court may be invested in any manner specified in the High Court Suitors' Funds Rules (Cap. 4 sub. leg. B) and the Trustee Ordinance (Cap. 29)."

90. Order added

The following is added immediately after Order 62 –

"ORDER 62A
COSTS OFFER AND PAYMENTS INTO COURT

I. PRELIMINARY

1. Interpretation and application

(O. 62A, r. 1)

(1) In this Order –

"costs offer" () means an offer to settle a party's entitlement to costs that are the subject of a taxation;

"offeree" () means the party to whom a costs offer is made;

"offeror" () means the party who makes a costs offer;

"paying party" () means the party liable to pay costs;

"receiving party" (), in relation to a paying party, means the party who is entitled to payment of costs from that paying party;

"sanctioned offer" () means a costs offer made (otherwise than by way of a payment into court) in accordance with this Order;

"sanctioned payment" () means a costs offer made by way of a payment into court in accordance with this Order;

"sanctioned payment notice" () means the notice referred to in rule 5(2).

(2) This Order does not apply to or in relation to a party who is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91).

2. Offer to settle with specified consequences (O. 62A, r. 2)

(1) Any party to a taxation may make an offer to settle in accordance with this Order the entitlement to costs that are the subject of the taxation.

(2) An offer made under paragraph (1) will have the consequences specified in rules 13, 14 and 15 (as may be applicable).

(3) Nothing in this Order prevents a party from making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with this Order, it will only have the consequences specified in this Order if the Court so orders.

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. A paying party's costs offer requires a sanctioned payment

(O. 62A, r. 3)

(1) A costs offer by a paying party will not have the consequences set out in this Order unless it is made by way of a sanctioned payment.

(2) A sanctioned payment may be made at any time before the date appointed for taxation.

4. Form and content of a sanctioned offer

(O. 62A, r. 4)

(1) A sanctioned offer must be in writing.

(2) A sanctioned offer may relate to the whole or part of the costs.

(3) A sanctioned offer must state whether it relates to the whole or part of the costs, and if it relates to part of the costs, to which part does it relate.

(4) A sanctioned offer may be made or withdrawn at any time before the date appointed for taxation.

5. Notice of a sanctioned payment

(O. 62A, r. 5)

(1) A sanctioned payment may relate to the whole or part of the costs.

(2) A paying party who makes a sanctioned payment shall file with the Court a notice in Form No. _____ in Appendix A, that –

(a) states the amount of the payment;

(b) states whether the payment relates to the whole or part of the costs, and if it relates to part of the costs, to which part does it relate;

(c) if an interim payment of costs has been made, states that the paying party has taken into account the interim payment;

(d) if it is expressed not to be inclusive of interest, states –

(i) whether interest is offered; and

(ii) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered; and

(e) if a sum of money has been paid into court as security for the costs of the action, cause or matter, states whether the paying party has taken into account that sum of money.

(3) The paying party shall –

(a) serve the sanctioned payment notice on the receiving party; and

(b) file a certificate of service of the notice.

(4) A sanctioned payment may be withdrawn at any time before the date appointed for taxation.

6. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 62A, r. 6)

(1) A sanctioned offer is made when received by the offeree.

(2) A sanctioned payment is made when a sanctioned payment notice is served on the offeree.

(3) An improvement to a sanctioned offer will be effective when its details are received by the offeree.

(4) An increase in a sanctioned payment will be effective when notice of the increase is served on the offeree.

(5) A sanctioned offer or a sanctioned payment is accepted when notice of its acceptance is received by the offeror.

7. Clarification of a sanctioned offer or a sanctioned payment notice

(O. 62A, r. 7)

(1) The offeree may, within 7 days of a sanctioned offer or payment being made, request the offeror to clarify the offer or payment notice.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of receiving the request, the offeree may, unless the taxation has commenced, apply for an order that he does so.

(3) If the Court makes an order under paragraph (2), it shall specify the date when the sanctioned offer or sanctioned payment is to be treated as having been made.

III. ACCEPTANCE OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

8. Time for acceptance of a paying party's sanctioned payment

(O. 62A, r. 8)

A receiving party may accept a sanctioned payment at any time before the date appointed for taxation.

9. Time for acceptance of a receiving party's sanctioned offer (O. 62A, r. 9)

A paying party may accept a sanctioned offer at any time before the date appointed for taxation.

10. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 62A, r. 10)

Where a sanctioned payment is accepted the receiving party may obtain payment out of the sum in court by making a request for payment in Form No. _____ in Appendix A.

11. Acceptance of a sanctioned payment made by one or more, but not all, paying parties (O. 22, r. 11)

(1) This rule applies where the receiving party wishes to accept a sanctioned payment made by one or more, but not all, of a number of paying parties.

(2) If the paying parties are jointly and severally liable to pay costs, the receiving party may accept the payment in accordance with rule 8 if –

- (a) he discontinues the proceedings for taxation against those paying parties who have not made the payment; and
- (b) those paying parties give written consent to the acceptance of the payment or the Court is of the opinion that such consent is not necessary.

(3) If the paying parties are not jointly, but severally liable to pay costs, the receiving party may –

- (a) accept the payment in accordance with rule 8; and
- (b) continue with his proceedings for taxation against the other paying parties.

(4) In all other cases the receiving party shall apply to the Court for –

- (a) an order permitting a payment out to him of any sum in court; and
- (b) such order as to costs relating to the taxation as the Court considers appropriate.

12. Cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment

(O. 62A, r. 12)

Where a sanctioned offer or a sanctioned payment is made in proceedings to which Order 80, rule 10 (Compromise, etc., by person under disability) applies –

- (a) the offer or payment may be accepted only with the leave of the Court; and
- (b) no payment out of any sum in court shall be made without a court order.

IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

**13. Consequences of acceptance of
a sanctioned offer or a
sanctioned payment**

(O. 62A, r. 13)

(1) If a sanctioned offer or a sanctioned payment relates to the whole costs and is accepted, the taxation will be stayed.

(2) In the case of acceptance of a sanctioned offer which relates to the whole costs –

- (a) the stay will be upon the terms of the offer; and
- (b) either party may apply to enforce those terms without the need for a new taxation.

(3) If a sanctioned offer or a sanctioned payment which relates to part only of the costs is accepted the taxation will be stayed as to that part.

(4) If the approval of the Court is required before a settlement as to costs can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment will take effect only when that approval has been given.

(5) Any stay arising under this rule will not affect the power of the Court –

- (a) to enforce the terms of a sanctioned offer;
- (b) to deal with any question of costs (including interest on costs) relating to the taxation; or
- (c) to order payment out of court of any sum paid into court.

(6) Where –

- (a) a sanctioned offer has been accepted; or
- (b) a party alleges that –
 - (i) the other party has not honoured the terms of the offer; and
 - (ii) he is therefore entitled to a remedy for breach of contract,

the party may claim the remedy by applying to the Court without the need to start a new claim unless the Court orders otherwise.

14. Costs consequences where receiving party fails to do better than a sanctioned payment (O. 62A, r. 14)

(1) This rule applies where upon taxation a receiving party fails to do better than a sanctioned payment.

(2) Unless he considers it unjust to do so, the taxing master shall order the receiving party to pay the costs of the taxation on the indemnity basis starting with the date on which the payment was made.

15. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer (O. 62A, r. 15)

(O. 62A, r. 15)

(1) This rule applies where upon taxation a paying party is held liable for more than the proposals contained in a receiving party's sanctioned offer.

(2) The taxing master may order interest on the whole or part of the amount of the costs allowed to the receiving party at a rate not exceeding 10% above prime rate for some or all of the period starting with the date on which the sanctioned offer was received by the paying party.

(3) The taxing master may also order that the receiving party is entitled to –

- (a) his costs on the indemnity basis from the date on which the sanctioned offer was received by the paying party; and
- (b) interest on those costs at a rate not exceeding 10% above prime rate.

(4) Where this rule applies, the taxing master shall make the orders referred to in paragraphs (2) and (3) unless it considers it unjust to do so.

(5) In considering whether it would be unjust to make the orders referred to in paragraphs (2) and (3), the taxing master shall take into account all the circumstances of the case including –

- (a) the terms of any sanctioned offer;
- (b) the stage in the proceedings when any sanctioned offer was made;
- (c) the information available to the parties at the time when the sanctioned offer was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.

(6) The power of the taxing master under this rule is in addition to any other power he may have to award interest.

V. MISCELLANEOUS

16. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 62A, r. 16)

- (1) A sanctioned offer is treated as "without prejudice save as to costs".
- (2) The fact that a sanctioned payment has been made must not be communicated to the taxing master until the amount of the costs to be allowed have been decided.
- (3) Paragraph (2) does not apply –
 - (a) where the taxation has been stayed under rule 10 following acceptance of a sanctioned payment; and
 - (b) where the fact that there has or has not been a sanctioned payment may be relevant to the question of the costs of the issue of liability."

**PART 8
INTERIM REMEDIES AND MAREVA INJUNCTIONS
IN AID OF FOREIGN PROCEEDINGS**

Recommendations 49 to 51

91. Rule added

Order 29 is amended by adding immediately after rule 8 –

"8A. Application for interim relief under section 21M of the Ordinance

(O. 29, r. 8A)

- (1) An application for interim relief under section 21M(1) of the Ordinance shall be made by originating summons in Form No. 10 in Appendix A.
- (2) Rules 1, 2, 3, 4, 7(1), 7A and 8 of this Order apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.
- (3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court."

92. Rule added

Order 30 is amended by adding –

"9. Application for appointment of receiver under section 21M of the Ordinance

(O. 30, r. 9)

This Order applies to an application for appointment of a receiver under section 21M(1) of the Ordinance as it applies to an application for appointment of a receiver in an action or proceeding in the High Court subject to the following modifications –

- (a) the application shall be made by originating summons in Form No. 10 in Appendix A and accordingly rule 1(1) shall not apply; and
- (b) rule 1(3) and (4) shall not apply to the application."

93. Rule added

Order 73 is amended by adding –

"4. Application for interim injunction under section 2GC of Arbitration Ordinance (O. 73, r. 4)

(1) An application for interim injunction or any other interim measure under section 2GC(1) of the Arbitration Ordinance (Cap. 341) in relation to an arbitration proceeding (whether in Hong Kong or in a place outside Hong Kong) shall be made by originating summons in Form No. 10 in Appendix A.

(2) Where the application is in relation to an arbitration proceeding outside Hong Kong, rules 1, 2, 3, 4, 7(1), 7A and 8 of Order 29 apply with any necessary modifications to the application as they apply to an application for interlocutory relief in an action or proceeding in the High Court.

(3) Upon hearing of the originating summons, the Court may direct that all or any part of the hearing be conducted in open court."

PART 9**CASE MANAGEMENT TIMETABLING AND MILESTONES***Recommendations 52 to 60 and Recommendation 62***94. Heading amended**

The heading of Order 25 is amended by repealing "SUMMONS FOR DIRECTIONS" and substituting "CASE MANAGEMENT AND SUMMONS FOR DIRECTIONS".

95. Summons for directions

Order 25, rule 1 is amended –

- (a) in the heading, by repealing "**Summons for directions**" and substituting "**Case Management and Summons for directions**";
- (b) by **repealing** paragraph (1) and substituting -

"(1) For the purpose of facilitating the giving of directions for the management of a case, each party shall, within 14 days after the pleadings in an action to which this rule applies are deemed to be closed, complete a questionnaire prescribed in a practice direction issued for that purpose by providing the information requested in the manner specified in the questionnaire, and shall thereafter serve it on another party or lodge it with the Court in the manner and within the period specified in it.

(1A) Where, upon completion of the questionnaire, the parties are able to reach an agreement on –

- (a) the directions relating to the management of the case which they wish the Court to make; or
- (b) a timetable for the steps to be taken between the giving of those directions and the trial,

they shall record the agreement in the questionnaire.

(1B) Where there is no agreement on any of the matters specified in paragraph (1A)(a) and (b) –

- (a) each party shall in the questionnaire make a proposal on the matter; and
- (b) the plaintiff shall, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days, so that the Court may give directions relating to the management of the case."

- (c) in paragraph (3), by repealing "paragraph (1) of this rule" and substituting "paragraph (1B)(b) of this rule";
- (d) in paragraph (6), by adding "and rule 1A(1)(d)" after "this rule".

96. Rules added

Order 25 is amended by adding –

"1A. Case management timetable

(O. 25, r. 1A)

(1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been lodged with the Court, the Court shall, having regard to the questionnaire and the needs of the case –

- (a) give directions relating to the management of the case;
 - (b) fix the timetable for the steps to be taken between the giving of those directions and the trial;
 - (c) fix a case management conference if the Court is of the opinion that it is desirable to do so; and
 - (d) direct the plaintiff to take out a summons for directions if he has not already done so under rule 1(1B)(b).
- (2) Where the Court has fixed a case management conference –
- (a) the timetable fixed under paragraph (1)(b) may only relate to the steps to be taken between the giving of the directions and the date of the case management conference; and
 - (b) the Court shall during the case management conference fix a timetable for the steps to be taken between the date of the conference and the date of the trial, including –
 - (i) a date for a pre-trial review; and
 - (ii) the trial date or the period in which the trial is to take place.
- (3) Where the Court has not fixed a case management conference, the timetable fixed under paragraph (1)(b) must include –
- (a) a date for a pre-trial review; and
 - (b) the trial date or the period in which the trial is to take place.
- (4) The Court may, without a hearing of the summons for directions and having regard to the completed questionnaire, by an order nisi, give directions relating to the management of the case and fix the timetable for the steps to be taken between the giving of those directions and the trial.
- (5) The order nisi shall become absolute 14 days after the order is made unless a party has applied to the Court for not making the order absolute.
- (6) The Court shall, on an application made under paragraph (5), hear the summons for directions.

1B. Variation of case management timetable (O. 25, r. 1B)

- (1) The Court may, on the application of a party or of its own motion, give further directions relating to the management of the case or vary the timetable fixed by it under rule 1A.
- (2) A party shall apply to the Court if he wishes to vary a milestone date.
- (3) A non-milestone date may be varied by filing with the Court a written agreement between the parties.
- (4) A party shall apply to the Court if he wishes to vary a non-milestone date without the agreement of the other parties.
- (5) The Court shall not grant an application under paragraph (4) unless sufficient grounds have been shown to it.

(6) Whether or not sufficient grounds have been shown to it, the Court shall not grant an application under paragraph (4) if the variation would make it necessary to change a trial date or a trial period.

(7) In this rule –
"milestone date" () means –

- (a) a date which the Court has fixed for –
 - (i) a case management conference;
 - (ii) a pre-trial review; or
 - (iii) the trial; or
- (b) a trial period fixed by the Court;

"non-milestone date" () means a date or period fixed by the Court, other than a date or period specified in the definition of "milestone date".

1C. Failure to appear at case management conference or pre-trial review

(O. 25, r. 1C)

(1) Where the plaintiff does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the action.

(2) The Court shall prior to the case management conference or pre-trial review inform the plaintiff of the consequence set out in paragraph (1) for not appearing at the case management conference or pre-trial review.

(3) Where the Court has provisionally struck out an action under paragraph (1), the plaintiff may before the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be, apply to the Court for restoration of the action.

(4) The Court may restore the action subject to such conditions as it thinks fit or refuse to restore the action.

(5) The Court shall not restore the action unless good reasons have been shown to the satisfaction of the Court.

(6) If the plaintiff does not apply under paragraph (3) or his application under that paragraph is refused –

- (a) the action shall stand dismissed upon the expiry of 3 months from the date of the case-management conference or pre-trial review, as the case may be; and
- (b) the defendant shall be entitled to his costs of the action.

(7) If the plaintiff does not apply for restoration of the action under paragraph (3) and the defendant has made a counterclaim in the action, the defendant may, before the expiry of 3 months from the latest date on which the plaintiff may apply for restoration of the action, apply for restoration of his counterclaim.

(8) If the defendant does not apply for restoration of his counterclaim under paragraph (7) or his application under that paragraph is refused, the defendant's counterclaim shall stand dismissed with no order as to costs."

97. Rules added

Order 25 is amended by adding –

"10. Application to action in specialist list (O. 25, r. 10)

Notwithstanding anything in this Order, a specialist judge may, by a practice direction, determine the extent to which this Order is to apply to an action in a specialist list.

11. Transitional (O. 25, r. 11)

Where the pleadings in an action are deemed to have been closed before the commencement of Part 9 of the Amendment Rules 2007, then nothing in that Part is to apply in relation to that action, and this Order as in force immediately before the commencement is to continue to apply in relation to that action as if that Part had not been made."

**PART 10
VEXATIOUS LITIGANTS**

Recommendation 69

98. Jurisdiction of the Registrar and masters

Order 32, rule 11(1) is amended by adding –

"(da) applications under section 27 of the Ordinance (restriction of vexatious legal proceedings) for leave to institute or continue legal proceedings;"

99. Order added

The following is added immediately after Order 32 –

**"ORDER 32A
VEXATIOUS LITIGANTS**

1. Application under section 27(1) of the Ordinance (O. 32A, r. 1)

(1) An application under section 27(1) of the Ordinance for an order specified in section 27(2) of the Ordinance must be made by originating summons supported by affidavit and served on the person against whom the order is sought.

(2) The application must be heard in open court by single judge.

2. Application for leave for institution or continuance of proceedings, etc.

(O. 32A, r. 2)

(1) An application for leave to institute or continue any legal proceedings by a person against whom an order under section 27(2) of the Ordinance is in force shall be made by a notice in Form 110 in Appendix A containing a statement of –

- (a) the title and reference number of the proceedings in which that order was made;
- (b) the name and address of the applicant;
- (c) the order the applicant is seeking; and
- (d) briefly, why the applicant is seeking the order.

(2) The notice of application shall be filed together with any affidavit evidence on which the applicant relies in support of the application.

(3) Any previous applications for leave which the applicant has made under section 27 of the Ordinance, and the results of those applications, must be listed in the notice of application or in affidavit evidence filed in support of the application.

3. Hearing and determination of application for leave (O. 32A, r. 3)

(1) An application under rule 2 may be determined by a single judge without the attendance of the applicant unless the judge give directions for the hearing of the application.

(2) Where the judge gives directions for the hearing of the application, the hearing may be held in chambers.

(3) Directions for hearing of the application given under paragraph (2) may include an order that the notice of application be served on the Secretary for Justice and on any person against whom the applicant desires to institute or continue the proceedings for which leave is being sought.

(4) The judge may give directions for further affidavit evidence to be supplied by the applicant before an order is made on the application.

(5) If the leave sought, or the grounds advanced, substantially repeat those submitted in support of a previous application which has been refused, the judge may make an order dismissing the application.

(6) Where the applicant institutes the new proceedings or continues the proceedings for which leave has been granted, the applicant shall –

- (a) file the order granting the leave together with the instrument by which the proceedings are instituted or continued; and
- (b) serve the order granting the leave on every other person who is a party to the proceedings, together with the instrument by which the proceedings are instituted or continued.

4. Service of order (O. 32A, r. 4)

An order giving or refusing the leave sought or an order made under rule 3(3) shall be served on the applicant at the address given in the notice of application.

5. Setting aside grant of leave

(O. 32A, r. 5)

- (1) A person may apply to set aside the grant of leave if –
 - (a) the leave allows the applicant to institute or continue proceedings against that person; and
 - (b) the leave was granted other than at a hearing of which that person was given notice pursuant to a direction given under rule 3.
- (2) An application under paragraph (1) shall be made by an inter partes summons.

6. Leave required for inspection of documents relating to application under section 27 of the Ordinance

(O. 32A, r. 6)

- (1) A person may not without the leave of the Court inspect any document filed in the Registry relating to the application for leave under section 27 of the Ordinance.
- (2) Leave shall not be granted under paragraph (1) unless the Court is satisfied that there is reasonable ground for the inspection.
- (3) Leave granted under paragraph (1) may be granted on such terms and conditions as the Court thinks just.

7. Transitional (O. 32A, r. 7)

Where, immediately before the commencement of this Order, an application for an order or for leave under section 27 of the Ordinance as in force immediately before the commencement is pending, then the application is to be determined as if this Order had not been made."

100. Forms

Appendix A is amended by adding –

"No. 110
**Notice of application for leave to institute
 or continue proceedings in court**
 (O. 32A r. 2)

No.....

IN THE HIGH COURT OF HONG KONG
 COURT OF FIRST INSTANCE

Applicant

Notice of *Application* for leave to
 institute or continue proceedings
 in court
 (O. 32A, r. 2)

To the Registrar, High Court, Hong Kong.

Name and address of applicant	
Title and reference number of the proceedings in which the order under section 27(2) of the High Court Ordinance (Cap. 4) was made	
Order sought	
Previous applications for leave which the applicant has made under section 27 of the High Court Ordinance (Cap. 4), and the results of those applications	
Signed	Dated

Grounds On Which Leave is Sought

Note:—Grounds must be supported by the affidavit evidence on which the applicant relies in support of his application."

101. (Removed)

**PART 11
DISCOVERY**

Division 1 – Recommendations 76 and 79

**102. Application under section 41 or 42(1)
of the Ordinance**

Order 24, rule 7A is amended –

- (a) in the heading, by repealing "41" and substituting "**41, 41A**";
- (b) in paragraph (1), by adding "or 41A" after "41";
- (c) in paragraph (3)(a) and (b), by repealing "a claim for personal injuries" and substituting "a relevant claim";
- (d) by adding –

"(3A) Where a summons under paragraph (1) relates to an application for an order under section 41A of the Ordinance, paragraph (3)(b) shall be construed as if for the word "relevant" there were substituted the words "directly relevant (within the meaning of section 41A of the Ordinance)".";

- (e) in paragraphs (5) and (8), by adding ", 41A" after "41";
- (f) by repealing paragraph (7) and substituting –

"(7) In paragraph (3), "a relevant claim" () means –

- (a) if the summons relates to an application for an order under section 41 of the Ordinance, a claim in respect of personal injuries to a person or in respect of a person's death;
- (b) if the summons relates to an application for an order under section 41A of the Ordinance, a claim that is neither in respect of personal

injuries to a person nor in respect of a person's death; and

- (c) if the summons relates to an application for an order under section 42 of the Ordinance, any claim."

103. Discovery to be ordered only if necessary

Order 24, rule 8 is amended –

- (a) by renumbering it as Order 24, rule 8(1);
- (b) in paragraph (1), by repealing "an order under rule 3, 7 or 7A" and substituting "an order specified in paragraph (2)";
- (c) by adding –

"(2) The order referred to in paragraph (1) is –

- (a) an order under rule 3 or 7; or
- (b) an order under section 41 of the Ordinance; or
- (c) an order under section 42 of the Ordinance in relation to a claim in respect of personal injuries or in respect of a person's death.

(3) No order for the disclosure of documents shall be made under –

- (a) section 41A of the Ordinance; or
- (b) section 42 of the Ordinance in relation to a claim that is neither in respect of personal injuries nor in respect of a person's death,

unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

104. When costs to follow the event

Order 62, rule 3(12) is amended by repealing "41" and substituting "41, 41A".

Division 2 – Recommendation 80

105. Rule added

Order 24 is amended by adding –

"15A. Order for limiting discovery

(O. 24 r. 15A)

For the purpose of managing the case in question and furthering any of the objectives specified in Order 1A, the Court may make any one or more of the following orders –

- (a) an order limiting the discovery of documents which the parties to the case would otherwise be required to make to each other under rule 1(1);
- (b) an order directing that the discovery of documents required to be made under this Order to any party to the case shall, notwithstanding anything in this Order, be made in the manner specified in the order; and
- (c) an order directing that documents which may be inspected under this Order shall, notwithstanding anything in rule 9 or 10, be inspected at a time or times specified in the order."

PART 12
INTERLOCUTORY APPLICATIONS

Recommendations 83, 85 and 86

106. Services of summons

Order 32, rule 3 is amended by repealing "not less than 2 clear days before the day so specified" and substituting "within 7 clear days after its issue".

107. Rules added

Order 32 is amended by adding –

"11A. Interlocutory applications (O. 32, r. 11A)

- (1) A master may –
 - (a) determine an interlocutory application without an oral hearing; or
 - (b) arrange for the application to be heard before him or another master or a judge in chambers.
- (2) The master may fix a date on which he may –
 - (a) in the case of paragraph (1)(a), hand down his determination of the application; and
 - (b) in the case of paragraph (1)(b), make an order that the application be heard before him or another master or a judge in chambers on a date specified in the order.
- (3) The master may give such directions as he thinks necessary or desirable for the purpose of determining the application, including directions for –
 - (a) the setting of a timetable for the steps to be taken between the giving of these directions and the determination of the application;
 - (b) the filing of evidence and arguments;
 - (c) the filing of a statement of costs in respect of the application; and

(d) the filing of a statement of grounds in opposition to the statement referred to in sub-paragraph (c).

(4) Where the determination of the application is adjourned for hearing of the summons, no further evidence may be adduced unless it appears to the Court that there are exceptional circumstances making it desirable that further evidence should be adduced.

(5) This rule does not apply to –

- (a) an application under Order 2, rule 4 for relief from any sanction imposed by a court order; and
- (b) an application to extend or shorten the time for compliance with a court order.

11B. Court's power to specify the consequences of failure to comply with court order on interlocutory application (O. 32, r. 11B)

(1) Where the Court makes an order on an interlocutory application before –

- (a) the summons for directions in the action is taken out under Order 25;
- (b) it gives directions relating to the management of the case under Order 25, rule 1A(1)(a) or (4); or
- (c) the date of the case management conference (if any),

it may, if it thinks appropriate to do so, specify the consequences of failing to comply with the order.

(2) Where the Court makes an order on an interlocutory application after –

- (a) the summons for directions in the action taken out under Order 25 has been dealt with by the Court; or
- (b) it has given directions relating to the management of the case under Order 25, rule 1A(1)(a) or (4),

it shall, unless there are special circumstances which render it inexpedient to do so, specify the consequence of failing to comply with the Order.

(3) The consequences specified under paragraph (1) or (2) must be appropriate and proportionate in relation to the non-compliance."

PART 13
INTERLOCUTORY APPLICATIONS AND
SUMMARY ASSESSMENT OF COSTS

Recommendations 88, 89 and 92

108. Fractional or gross sums in place of taxed costs

Order 62, rule 9 –

- (a) by repealing the heading and substituting "**Taxed costs, fractional taxed costs or costs summarily assessed**";
- (b) by repealing paragraph (4)(b) and substituting –
 - "(b) to a sum summarily assessed in lieu of taxed costs, but where the person entitled to the sum is a litigant in person, rule 28A shall apply with the necessary modifications to the summary assessment as it applies to the taxation of the costs of a litigant in person.";
- (c) by adding –
 - "(5) This rule does not apply to costs of an interlocutory application.".

109. Rules substituted

Order 62, rule 9A is repealed and the following substituted –

"9A. Summary assessment of costs of interlocutory application

(O. 62, rule 9A)

- (1) Where the Court has determined an interlocutory application at any stage of proceedings and orders a party to pay costs in respect of the interlocutory application to any other party, it may, if it considers it appropriate to do so but subject to rule 9C –
 - (a) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs;
 - (b) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs but subject to the right of either party to have the costs taxed pursuant to paragraph (2); or
 - (c) order that the costs be taxed in accordance with this Order.
- (2) Where the Court has made an order under paragraph (1)(b), either party to the interlocutory application who is aggrieved by the order is entitled to have the costs in respect of the interlocutory application taxed in accordance with this Order.
- (3) Upon taxation pursuant to paragraph (2) –

- (a) if the taxed costs in respect of the interlocutory application equal the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall direct that no further amount is payable in respect of the taxed costs;
- (b) if the taxed costs in respect of the interlocutory application exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master may –
 - (i) direct the party against whom the order was made to pay the shortfall; or
 - (ii) set off the shortfall against any other costs to which the party against whom the order was made is entitled and direct payment of any balance; and
- (c) if the amount paid pursuant to an order made under paragraph (1)(b) exceeds the taxed costs in respect of the interlocutory application, the taxing master may –
 - (i) direct the party in whose favour the order was made to pay the difference; or
 - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.

(4) Where –

- (a) the amount paid pursuant to an order made under paragraph (1)(b) equals or exceeds the taxed costs in respect of the interlocutory application; or
- (b) the taxed costs in respect of the interlocutory application do not materially exceed the amount paid pursuant to an order made under paragraph (1)(b),

the Court may make such order as to the costs of the taxation or such other order as it considers appropriate.

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the Court shall, in addition to any other matter that it may consider relevant, have regard to –

- (a) the amount by which the taxed costs exceed the amount paid pursuant to the order made under paragraph (1)(b); and
- (b) whether the exceeded amount is disproportionate to the costs of the taxation.

(6) Where the party entitled to a payment of a sum of money under paragraph (1)(a) or (b) is a litigant in person, rule 28A applies with the necessary modifications to the assessment of the sum as it applies to the taxation of the costs of a litigation in person.

9B. Time for complying with an order for summary assessment (O. 62, rule 9B)

(1) A party shall comply with an order under rule 9A(1)(a) or (b) for payment of a sum of money within 14 days of –

- (a) the date of the order; or
- (b) such later date as the Court may specify.

(2) Paragraph (1) does not apply if the party is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91).

9C. When summary assessment not allowed

(O. 62, rule 9C)

(1) No order may be made under rule 9A(1)(a) or (b) for the payment of a sum of money if –

- (a) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily;
- (b) the paying party is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91), and the legal representative acting for the aided person has not waived the right to any further sum of money in respect of the costs of the interlocutory application; or
- (c) the receiving party is a person under disability as defined in Order 80, rule 1, and the legal representative (or the next friend or guardian and litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

(2) In this rule –

"paying party" () means the party against whom an order under rule 9A(1)(a) or (b) is made;

"receiving party" () means the party in whose favour an order under rule 9A(1)(a) or (b) is made.

9D. When to tax and pay costs

(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the order for costs is made is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91).

(4) Where it appears to a taxing master that there is no likelihood of any further order being made in a cause or matter, he may tax forthwith the costs of any interlocutory proceedings which have taken place.

- (5) Taxed costs shall be paid forthwith, whether or not the action has concluded.
- (6) Paragraph (5) does not apply if the person against whom the order for costs is made is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)."

110. Costs of a litigant in person

Order 62, rule 28A(6) is amended by adding "but includes a company or other corporation which is acting without a legal representative" after "practising solicitor".

**PART 14
WASTED COSTS**

Recommendations 94 to 97

111. Interpretation

Order 62, rule 1(1) is amended –

- (a) in the definition of "taxing master", by repealing the full stop and substituting a semicolon;
- (b) by adding –
 - ""legal representative" (), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;
 - "wasted costs order" () means an order made under section 52A(4) of the Ordinance."

112. Rule substituted

Order 62, rule 8 is repealed and the following substituted –

"8. Personal liability of legal representative for costs – wasted costs order (O. 62, r. 8)

- (1) The Court may make a wasted costs order against a legal representative, only if –
 - (a) the legal representative has caused a party to incur wasted costs defined in section 52A(5) of the Ordinance; and
 - (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.
- (2) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.
- (3) When the Court makes a wasted costs order, it shall –

- (a) specify the amount to be disallowed or paid; or
 - (b) direct a master to decide the amount of costs to be disallowed or paid.
- (4) The Court shall give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and as simple and summary as the circumstances permit.
- (5) The Court may direct that notice must be given to the legal representative's client, in such manner as the Court may direct –
- (a) of any proceedings under this rule; or
 - (b) of any order made under it against his legal representative.
- (6) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.
- (7) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.
- (8) The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

8A. Court may make wasted costs order on its own motion or on application (O. 62, r. 8A)

- (1) The Court may make a wasted costs order against a legal representative on its own motion.
- (2) A party may apply for a wasted costs order –
- (a) orally in the course of a hearing; or
 - (b) by making an interlocutory application by summons.
- (3) Where a party applies for a wasted costs order by making an interlocutory application by summons, the party shall serve the summons on –
- (a) the legal representative concerned;
 - (b) any party represented by that legal representative; and
 - (c) any other person as may be directed by the Court,
- not less than 2 clear days before the day specified in the summons for its hearing.
- (4) An application for a wasted costs order shall not be made or dealt with until the conclusion of the proceedings to which the order relates, unless the Court is satisfied that there is reasonable cause for the application to be made or dealt with before the conclusion of the proceedings.
- (5) Unless there are exceptional circumstances making it inappropriate to do so, an application for a wasted costs order shall be heard by the judge or master who conducted the proceedings to which the order relates.

8B. Stages of considering whether to make a wasted costs order

(O. 62, r. 8B)

- (1) The Court shall consider whether to make a wasted costs order in 2 stages –
 - (a) in the first stage, the Court must be satisfied –
 - (i) that it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and
 - (ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and
 - (b) in the second stage (even if the Court is satisfied under paragraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.

(2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before proceeding to the second stage.

- (3) On an application for a wasted costs order, any evidence in support must identify –
 - (a) what the legal representative is alleged to have done or failed to do; and
 - (b) the costs that he may be ordered to pay or which are sought against him.

8C. Application for wasted costs order not to be used as a means of intimidation (O. 62, r. 8C)

(1) A party shall not by himself or by another person on his behalf threaten another party or any of that party's legal representatives with an application for a wasted costs order with a view to coercing or intimidating either of them to do or refrain from doing anything.

- (2) A party shall not indicate to another party or any of that party's legal representatives that he intends to apply for a wasted costs order unless he is satisfied that he is able to –
 - (a) particularize the behaviour of the legal representative from which the waste costs concerned are alleged to result; and
 - (b) identify the evidence or other materials on which he relies in support of the allegation.

8D. Personal liability of legal representative for costs – supplementary provisions

(O. 62, r. 8D)

(1) Where in any proceedings before a taxing master, the legal representative representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing master may direct the legal representative to pay costs personally to any of the parties to those proceedings.

(2) Where any legal representative fails to leave his bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing master otherwise directs, the legal representative shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(3) If, on the taxation of costs to be paid out of a fund other than funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap. 91), one sixth or more of the amount of the bill for those costs is taxed off, the legal representative whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(4) In any proceeding in which the party by whom the fees prescribed by any enactment relating to court fees are payable is represented by a legal representative, if the fees or any part of the fees payable under that enactment are not paid as prescribed, the Court may, on the application of the Official Solicitor by summons, order the legal representative personally to –

- (a) pay that amount in the manner so prescribed; and
- (b) pay the costs of the Official Solicitor of the application."

113. Rule added

Order 62 is amended by adding immediately after rule 35 –

"TRANSITIONAL

36. Transitional provision relating to Part 14 of the Amendment Rules 2007 (O. 62, r. 36)

Rules 8, 8A, 8B, 8C and 8D do not apply in relation to any costs incurred before the commencement of Part 14 of the Amendment Rules 2007, and rule 8 as in force immediately before the commencement is to continue to apply in relation those costs as if that Part had not been made."

PART 15

WITNESS STATEMENTS AND EVIDENCE

Recommendation 100

114. Exchange of witness statements

Order 38, rule 2A is amended –

(a) by repealing paragraph (7)(b) and substituting –

"(b) the witness may with the leave of the Court –

(i) amplify his witness statement; and

(ii) give evidence in relation to new matters which have arisen since the witness statement was served on the other party.";

(b) by adding –

"(7A) The Court may give leave under paragraph (7)(b) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.".

PART 16

EXPERT EVIDENCE

Recommendations 102, 103 and 107

115. Rule added

Order 38 is amended by adding –

"4A. Evidence by a single joint expert

(O. 38, r. 4A)

(1) In any action in which any question for an expert witness arises, the Court may, at or before the trial of the action, order that two or more parties to the action shall appoint one expert witness only to give evidence on that question.

(2) An appointment pursuant to an order made under paragraph (1) may be subject to such terms and conditions as the Court thinks fit.

(3) The Court shall not make an order under paragraph (1) unless at least one of those parties applies for such an order.

(4) Notwithstanding that a party to the action disagrees with the appointment of one expert witness only to give evidence, the Court may make an order under paragraph (1) if, having taken into account such matters as are specified in a practice direction issued for the purpose of this rule, it is satisfied that the disagreement is unreasonable in all the circumstances of the case.

(5) Where the Court is satisfied that an order made under paragraph (1) is inappropriate, it may rescind the order and allow the parties concerned to appoint their own expert witnesses to give evidence."

116. Interpretation

Order 38, rule 35 is amended –

- (a) by renumbering it as Order 38, rule 35(1);
- (b) by adding –

"(2) A reference to an expert witness in this Part or Appendix D is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court."

117. Rule added

Order 38 is amended by adding –

"35A. Expert witness's overriding duty to Court (O. 38, r. 35A)

- (1) It is the duty of an expert witness to help the Court on the matters within his expertise.
- (2) The duty under paragraph (1) overrides any obligation to the person from whom the expert witness has received instructions or by whom he is paid."

118. Rules added

Order 38 is amended by adding after rule 37A –

"37B. Duty to provide expert witness with a copy of code of conduct (O. 38, r. 37B)

A party who instructs an expert witness shall as soon as practicable provide the expert witness with a copy of the code of conduct set out in Appendix D.

37C. Expert witness's declaration of duty to Court (O. 38, r. 37C)

- (1) A report disclosed under rule 37 is not admissible in evidence unless the report contains a declaration by the expert witness that –
 - (a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;
 - (b) he understands his duty to the Court; and
 - (c) he has complied with and will continue to comply with that duty.

(2) Oral expert evidence is not admissible unless the expert witness has declared in writing, whether in a report disclosed under rule 37 or otherwise in relation to the proceedings, that –

- (a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;
- (b) he understands his duty to the Court; and
- (c) he has complied with and will continue to comply with that duty.

(3) This rule does not apply in relation to an expert witness who was instructed before the commencement of this rule."

119. Appendix D added

The following is added after Appendix C –

"APPENDIX D
Code of conduct for expert witnesses
(O. 38 r. 37AA)

Application of code

1. This code of conduct applies to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court.

General duty to the Court

2. An expert witness has an overriding duty to assist the Court impartially and independently on matters relevant to the expert's area of expertise.

3. An expert witness's paramount duty is to the Court and not to the person from whom the expert has received instructions or by whom he is paid.

4. An expert witness is not an advocate for a party.

Declaration of Duty to Court

5. A report by an expert witness is not admissible in evidence unless the report contains a declaration by the expert witness that –

- (a) he has read this code of conduct and agrees to be bound by it;
- (b) he understands his duty to the Court; and
- (c) he has complied with and will continue to comply with that duty.

6. Oral expert evidence is not admissible unless an expert witness has declared in writing, whether in a report or otherwise in relation to the proceedings, that –
- (a) he has read this code of conduct and agrees to be bound by it;
 - (b) he understands his duty to the Court; and
 - (c) he has complied with and will continue to comply with that duty.

Expert report to be verified

7. A report by an expert witness must be verified by a statement of truth in accordance with Order 41A of the Rules of the High Court (Cap. 4 sub. leg. A).

The form of expert reports

8. A report by an expert witness must (in the body of the report or in an annexure) specify –
- (a) the person's qualifications as an expert;
 - (b) the facts, matters and assumptions on which the opinions in the report are based (a letter of instructions may be annexed);
 - (c) reasons for each opinion expressed;
 - (d) if applicable, that a particular question or issue falls outside his field of expertise;
 - (e) any literature or other materials utilised in support of the opinions; and
 - (f) any examinations, tests or other investigations on which he has relied and identify, and give details of the qualifications of, the person who carried them out.
9. If an expert witness who prepares a report believes that it may be incomplete or inaccurate without some qualification, that qualification must be stated in the report.
10. If an expert witness considers that his opinion is not a concluded opinion because of insufficient research or insufficient data or for any other reason, this must be stated when the opinion is expressed.
11. An expert witness who, after communicating an opinion to the party instructing him (or that party's legal representative), changes his opinion on a material matter shall forthwith provide the party (or that party's legal representative) with a supplementary report to that effect which must contain such of the information referred to in section 8(b), (c), (d), (e) and (f) as is appropriate.

Experts' conference

12. An expert witness shall abide by any direction of the Court to -
- (a) confer with any other expert witness;
 - (b) endeavour to reach agreement on material matters for expert opinion; and
 - (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non-agreement.
13. An expert witness shall exercise his independent, professional judgment in relation to such a conference and joint report, and shall not act on any instruction or request to withhold or avoid agreement.

Note: - Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false declaration or a false statement in a document verified by a statement of truth without an honest belief in its truth."

**PART 17
CASE MANAGING TRIALS**

Recommendation 108

120. Rule added

Order 35 is amended by adding –

"3A. Time, etc. limits at trial (O. 35, r. 3A)

- (1) At any time before or during a trial, the Court may by direction –
 - (a) limit the time to be taken in examining, cross-examining or re-examining a witness;
 - (b) limit the number of witnesses (including expert witnesses) that a party may call on a particular issue;
 - (c) limit the time to be taken in making any oral submission;
 - (d) limit the time to be taken by a party in presenting its case;
 - (e) limit the time to be taken by the trial;
 - (f) vary a direction made under this rule.
- (2) In deciding whether to make any such direction, the Court must have regard to the following matters in addition to any other matters that may be relevant –
 - (a) the time limited for a trial must be reasonable;
 - (b) any such direction must not detract from the principle that each party is entitled to a fair trial;

- (c) any such direction must not detract from the principle that each party must be given a reasonable opportunity to lead evidence and cross-examine witnesses;
- (d) the complexity or simplicity of the case;
- (e) the number of witnesses to be called by the parties;
- (f) the volume and character of the evidence to be led;
- (g) the state of the Court lists;
- (h) the time expected to be taken for the trial; and
- (i) the importance of the issues and the case as a whole."

PART 18
LEAVE TO APPEAL

Division 1 - Recommendation 109

121. Appeals from certain decisions of masters to a judge in chambers

Order 58, rule 1 is amended –

- (a) in paragraph (1), by adding ", irrespective of whether the judgment, order or decision is made on the basis of written submissions only or after hearing" after "decision of a master";
- (b) by adding –
 - "(5) No further evidence may be received on the hearing of an appeal under this rule except on special grounds."

Division 2 – Recommendations 110 and 112

122. Documents to be lodged by appellant

Order 59, rule 9(1) is amended by repealing "Not less than 7 days" and substituting "Not less than 14 days".

123. Rules added

Order 59 is amended by adding –

"Cases where Leave to Appeal is not
Required for Interlocutory Appeals

**21. Judgments and orders to which
section 14AA(1) of the Ordinance
not apply (O. 59, r. 21)**

(1) Judgments and orders to which section 14AA(1) of the Ordinance (leave to appeal required for interlocutory appeals) does not apply and accordingly an appeal lies as of right from them are the following –

- (a) a judgment or order determining in a summary way the substantive rights of a party to an action;
- (b) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);
- (c) an order for the imprisonment of a judgment debtor under Order 49B, rule 1B;
- (d) an order of committal for contempt of court under Order 52, rule 1;
- (e) an order granting any relief made at the hearing of an application for judicial review;
- (f) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;
- (g) an order granting an application for a writ of habeas corpus ad subjiciendum;
- (h) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap. 341));
- (i) a judgment given inter partes under Order 83A, rule 4, Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;
- (j) a restraint order under section 10 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
- (k) a charging order under section 11 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
- (l) an order for the appointment of a receiver in pursuance of a charging order specified in sub-paragraph (m) or under section 10 or 12 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);
- (m) an order under Order 115;
- (n) an order under Order 116;
- (o) an order under Order 117;
- (p) an order under Order 118;
- (q) an order under Order 119;
- (r) an order under Order 121.

- (2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party –
- (a) a summary judgment under Order 14 or Order 86;
 - (b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;
 - (c) a judgment or order determining any question of law or construction of any document under Order 14A, rule 1(1);
 - (d) an order or judgment under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;
 - (e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;
 - (f) an order dismissing or striking out an action or other proceedings for want of prosecution;
 - (g) a judgment obtained pursuant to an "unless" order;
 - (h) an order refusing to set aside a judgment in default;
 - (i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and
 - (j) a judgment or order on admissions under Order 27, rule 3.
- (3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) must be sought from the judge who made or will make the judgment or order.
- (4) A reference to an order specified in paragraph (1)(b), (c), (d), (e), (g), (h) and (j) to (r) includes an order refusing, varying or discharging the order.

22. Application for leave to appeal

(O. 59, r. 22)

(1) Subject to paragraph (2), an application for leave to appeal against an interlocutory judgment, order or decision of the Court may only be made to the Court in the first instance.

(2) Where the Court refuses an application for leave to appeal made under paragraph (1), a further application for leave to appeal may be made to the Court of Appeal.

(3) The Court of Appeal may determine the application without an oral hearing on the basis of written submissions only."

**PART 19
APPEALS**

Recommendation 120

124. Rule added

Order 59 is amended by adding -

"14A. Determination of interlocutory application (O. 59, r. 14A)

(1) The Court of Appeal (including a single judge thereof) may, in relation to a cause or matter pending before the Court of Appeal, determine an interlocutory application without an oral hearing on the basis of written submissions only.

(2) Where it considers it necessary or expedient, the Court of Appeal consisting of 2 Justices of Appeal may direct that the interlocutory application shall be heard before them or before the Court of Appeal consisting of 3 Justices of Appeal."

**PART 20
GENERAL APPROACH TO INTER-PARTY COSTS**

Recommendation 122

125. When costs to follow the event

Order 62, rule 3 is amended –

- (a) by repealing the heading and substituting "**Order as to entitlement to costs**";
- (b) in paragraph (2), by repealing "proceedings" and substituting "proceedings (other than interlocutory proceedings)";
- (c) by adding –
 - "(2A) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any interlocutory proceedings, it may, subject to this Order, order the costs to follow the event or make such other order as it sees fit.";
- (d) by repealing paragraph (8).

126. Rule added

Order 62 is amended by adding –

"3A. Making of other orders or directions under rule 3 (O. 62, r. 3A)

In considering whether to make any other order or direction under rule 3(3), (4), (5), (6) or (7), the Court shall have regard to rule 7."

127. Special matters to be taken into account in exercising discretion

Order 62, rule 5(1) is amended by repealing sub-paragraph (d) and substituting –

"(d) any written offer which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings, but the Court may not take the offer into account if, at the time it is made, the party making it could have protected his position as to costs by means of a sanctioned payment under Order 22;"

128. Costs arising from misconduct or neglect

Order 62, rule 7(2) is amended by adding before paragraph (a) –

"(aa) the underlying objectives set out in Order 1A, rule 1;"

PART 21

TAXING THE OTHER SIDE'S COSTS

Division 1 – Recommendation 131

129. First Schedule amended

The First Schedule to Order 62 is amended, in Part II, by repealing paragraph 2(5) and substituting –

"(5) The amount of fees to be allowed to counsel is in the discretion of the taxing master who shall, in exercising his discretion, have regard to all relevant circumstances and in particular to the matters set out in paragraph 1(2)."

Division 2 – Recommendation 134

130. Interpretation

Order 62, rule 1 is amended by adding –

"party entitled to be heard on taxation" () means –

(a) a person entitled to payment of costs; or

- (b) a person who has acknowledged service or taken any part in the proceedings which gave rise to the taxation proceedings and who is directly liable under an order for costs made against him; or
- (c) a person who has given the person entitled to payment of costs and the Registrar written notice that he has a financial interest in the outcome of the taxation; or
- (d) a person in respect of whom a direction has been given under rule 27."

131. Application

Order 62, rule 2(2) is amended by repealing "rule 21 (except paragraph (3))" and substituting "rules 21 (except paragraph (3)), 21A, 21B, 21C and 21D".

132. Powers of certain judicial clerks to tax costs

Order 62, rule 13 is amended –

- (a) in paragraph (1) –
 - (i) by repealing "paragraph (4) of rule 21" and substituting "rule 21B";
 - (ii) by repealing "Registrar" and substituting "taxing master";
- (b) by adding –
 - "(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200,000.";
- (c) in paragraph (2), by repealing "appointment to tax has been given" and substituting "appointment to tax under rule 21B(3) or 21C has been given".

133. Rule substituted

Order 62, rule 21 is repealed and the following substituted –

"21. Mode of beginning proceedings for taxation (O. 62, r. 21)

- (1) A party entitled to payment of the costs of any action to be taxed may begin proceedings for the taxation of those costs by filing in the Court –
 - (a) a notice of commencement of taxation; and
 - (b) his bill of costs.
- (2) The party shall serve a copy of the notice of commencement of taxation and of the bill of costs on every other party entitled to be heard on taxation within 7 days after the notice and the bill of costs were filed with the Court.
- (3) It is not necessary for a copy of the notice of commencement of taxation and of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation, except where an order for the taxation of the

bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap. 159) at the instance of the solicitor.

(4) A party shall, when he files his bill of costs, pay to the Court a prescribed taxing fee.

21A. Application for appointment to tax (O. 62, r. 21A)

(1) Upon compliance with the directions given by a taxing master under rule 13A relating to the steps to be taken or things to be done before taxation, the party who has commenced taxation proceedings under rule 21 may apply to the taxing master for an appointment to tax.

(2) A taxing master may refuse to proceed with taxation if he is of the opinion that any direction referred to in paragraph (1) has not been complied with.

(3) The party shall, within 7 days after making an application under paragraph (1), serve a copy of the application on every other party entitled to be heard on taxation.

21B. Provisional taxation (O. 62, r. 21B)

(1) Unless a party entitled to be heard on taxation applies for a hearing, the taxing master may –

(a) tax the bill of costs without a hearing; and

(b) make an order nisi as to –

(i) the amount which he allows in respect of the whole or part of the bill of costs; and

(ii) the costs of the taxation.

(2) The order nisi is to become absolute 14 days after it is made unless a party entitled to be heard on taxation applies to the taxing master within the 14 day period for a hearing.

(3) The taxing master shall fix an appointment for a hearing upon application made by a party under paragraph (2) and that party shall serve a notice of the appointment on every other person entitled to be heard on taxation within 7 days after the appointment is fixed.

(4) The taxing master may order that party to pay any costs of the hearing if the taxed costs do not materially exceed the amount allowed under paragraph (1)(b)(i).

(5) In determining whether the taxed costs materially exceed the amount allowed under paragraph (1)(b)(i), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to –

(a) the amount by which the costs taxed at the hearing exceed the amount allowed under paragraph (1)(b)(i); and

(b) whether the exceeded amount is disproportionate to the costs of the hearing.

21C. Taxation hearing (O. 62, r. 21C)

(1) Where the taxing master is satisfied that there is a good reason to do so, he may, either of his own volition or on application by a party entitled to be heard on taxation, give an appointment to tax the whole or part of the bill of costs.

(2) Where an appointment to tax is given, the party to whom the appointment is given shall serve a notice of the appointment to tax on every person entitled to be heard on taxation within 7 days after the appointment is given.

21D. Withdrawal of bill of costs

(O. 62, r. 21D)

(1) A party who has filed a bill of costs shall pay a prescribed fee to the Court if he withdraws the bill of costs less than 7 days before the appointment to tax.

(2) The Court shall deduct the fee payable under paragraph (1) from the amount paid under rule 21(4) and refund the balance to that party."

134. Rule substituted

Rule 22 is repealed and the following substituted-

"22. Delay in filing of bill of costs (O. 62, r. 22)

(1) If, within three months after an order of the Court requiring the payment of any costs to be taxed, the person entitled to payment of those costs has neither –

- (a) agreed the amount of those costs with the person liable to pay them; nor
- (b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2),

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment thereof, may make an order under paragraph (2).

(2) The taxing master –

- (a) may order that the person entitled to payment of the costs must proceed to taxation in accordance with rule 21 within such period as may be specified in the order; and
- (b) may further order that the costs order in favour of the person shall be wholly discharged unless –
 - (i) the person does commence taxation proceedings within the specified period or such extended period as may be allowed by the taxing master; or
 - (ii) the amount due is agreed between the parties within the specified period or extended period.

(3) The taxing master may make an order under paragraph (2) subject to such conditions as he thinks fit, including a condition that the person in whose favour the order is made shall pay a sum of money into court.

(4) On any order in accordance with paragraph (2) and on the taxation of a bill of costs, whether or not an order has been made under paragraph (2), the taxing master, if he is satisfied that there has been undue delay in the filing or service of the bill of costs or the notice of commencement of taxation -

- (a) may make such order as he thinks fit as to the costs of any application or of any order or as to the costs of the taxation;
- (b) may disallow any part of the costs awarded under the costs order; and
- (c) may, in relation to the taxed costs or any part of those costs, disallow interest or reduce the period for which interest is payable or the rate at which interest is payable.

(5) A costs order shall be discharged -

- (a) after the expiry of [2 years] from -
 - (i) unless sub-subparagraph (ii) or (iii) applies, the completion of the action;
 - (ii) where the court has ordered costs to be taxed forthwith, the date of the costs order;
 - (iii) where the court has ordered costs to be taxed by a particular date, that date; or
- (b) where the court has extended the period specified in paragraph (a), after the expiry of the period as extended,

whichever is the later.

135. Rule repealed

Order 62, rule 23 is repealed.

136. Notice of taxation

Order 62, rule 24 is amended -

- (a) by repealing the heading and substituting "**Taxation**";
- (b) by adding before paragraph (1) -

"(1A) The taxing master may proceed to taxation of a bill of costs under rule 21B(1) notwithstanding that a party entitled to be heard on taxation has failed to comply with any direction given by him relating to the steps to be taken or things to be done before taxation under that rule, if the taxing master is satisfied that a copy of the notice of commencement of taxation and of the bill of costs were duly served in accordance with rule 21(2) on the party.";

- (c) in paragraph (1) -

- (i) by adding "under 21B(3) or 21C" after "appointment to tax" where it twice appears";
- (ii) by repealing "rule 21" and substituting "rule 21B(3) or 21C(2) and in accordance with rule 21(2)";
- (d) by repealing paragraph (2) and substituting –
 - "(2) If the notice of appointment to tax under rule 21B(3) or 21C or the bill of costs has not been served upon the person referred to in paragraph (1), the taxing master –
 - (a) must adjourn the taxation for such period as he may consider necessary to enable service of the adjourned appointment to tax or of the bill of costs or both to be effected on that person; and
 - (b) may make such order as he may consider appropriate in relation to costs thrown away by the adjournment."

137. Power to adjourn

Order 62, rule 26 is amended –

- (a) by renumbering it as Order 62, rule 26(1);
- (b) by adding -

"(2) If the taxation proceedings are adjourned because a party has failed to comply with any directions given under rule 13A, the taxing master may make such order as to costs thrown away by such adjournment as he may consider appropriate."

Division 3 – Recommendations 135 and 136

138. Rule added

Order 62 is amended by adding –

"13A. Taxing master may give directions

(O. 62, r. 13A)

- (1) A taxing master may give directions –
 - (a) for the just and expeditious disposal of the taxation of a bill of costs; and
 - (b) for saving the costs of taxation.
- (2) Without limiting the generality of paragraph (1), a taxing master may give directions as to -
 - (a) the form and contents of a bill of costs;
 - (b) the filing of papers and vouchers;
 - (c) the manner in which –
 - (i) any objections to a bill of costs may be raised; and

- (ii) any reply to those objections may be made; and
- (d) the steps to be taken or things to be done before taxation under rule 21B or 21C commences."

139. Rules added

Order 62 is amended by adding immediately after rule 32 –

"32A. Liability for costs of taxation

(O. 62, r. 32A)

- (1) A party entitled to payment of any costs to be taxed is also entitled to his costs of the taxation except where –
 - (a) any Ordinance, any of these rules or any relevant practice direction provides otherwise; or
 - (b) the Court makes some other order in relation to all or part of the costs of the taxation.
- (2) In deciding whether to make some other order, the Court shall have regard to all the circumstances, including –
 - (a) the conduct of all the parties in relation to the taxation;
 - (b) the amount, if any, by which the bill of costs has been reduced; and
 - (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.

32B. Reimbursement for taxing fees

(O. 62, r. 32B)

Upon the issue of a final certificate under rule 17A, the party liable to pay costs shall pay to the party entitled to payment of the costs an amount of money equivalent to the prescribed taxing fee calculated on the basis of the amount of costs allowed.

32C. Court's powers in relation to misconduct (O. 62, r. 32C)

- (1) The Court may make an order under this rule where –
 - (a) a party or his legal representative, in connection with a summary assessment or taxation of costs, fails to comply with a rule, practice direction or an order of the Court; or
 - (b) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the summary assessment or taxation, was unreasonable or improper.
- (2) For the purpose of paragraph (1), the conduct of a party or his legal representative does not include any conduct before the commencement of the action unless the conduct is regulated by a pre-action protocol.
- (3) Where paragraph (1) applies, the Court may –

- (a) disallow all or part of the costs being summarily assessed or taxed; or
 - (b) order the party at fault or his legal representative, to pay costs that he has caused any other party to incur.
- (4) Where –
- (a) the Court makes an order under paragraph (3) against a legally represented party; and
 - (b) the party is not present when the order is made,
- the party's solicitor shall notify his client in writing of the order not later than 7 days after the solicitor receives notice of the order and shall inform the Court in writing that he has done so.
- (5) In this rule, "client" () includes a person on whose behalf the solicitor acts and any other person who has instructed the solicitor to act or who is liable to pay the solicitor's costs."

Division 4 - Miscellaneous

140. Rule added

Order 62 is amended by adding -

"17A. Final certificate (O. 62, rule 17A)

- (1) A taxing master shall, at the conclusion of taxation proceedings before him, issue a final certificate specifying –
 - (a) the amount of taxed costs and the amount of money payable under rule 32B;
 - (b) subject to paragraph (2), the time for payment.
- (2) If no time for payment is specified in a final certificate, payment shall be made forthwith.
- (3) A taxing master may set aside a final certificate upon good grounds shown and on such terms as he thinks fit.”.

141. Heading substituted

The heading immediately before Order 62, rule 28 is repealed and the following substituted –

"BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS".

142. Application to taxing master

for review (O. 62, r. 33)

Order 62, rule 33 is amended –

- (a) in paragraph (1), by repealing everything after "allowed by a taxing master" and substituting -
 - "in respect of any item –

- (a) may apply to the taxing master to review his decision in respect of that item; and
- (b) may not appeal against the decision in respect of that item until after its review.";
- (b) in paragraph (2), by repealing "certificate dealing finally" and substituting "final certificate dealing".

143. Review of taxing master's certificate by a judge

Order 62, rule 35(1) is amended by repealing "33 or".

144. First Schedule amended

The First Schedule to Order 62 is amended, in Part II –

- (a) by repealing paragraph 1(1);
- (b) in paragraph 2(3), by repealing "judge in chambers, unless the master or judge" and substituting "master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal".

145. Second Schedule amended

The Second Schedule to Order 62 is amended –

- (a) by repealing –

"FIXED COSTS

For the purposes of this Schedule there shall be five Scales, namely-

Scale Applicable	Sum of Money
Scale I	Exceeding \$ 50 but not exceeding \$ 200
Scale II	Exceeding \$ 200 but not exceeding \$ 500
Scale III	Exceeding \$ 500 but not exceeding \$2000
Scale IV	Exceeding \$2000 but not exceeding \$5000
Scale V	Exceeding \$5000

The Scale of Costs in garnishee proceedings shall be determined –

- (a) as regards the costs of the judgment creditor, by the amount recovered against the garnishee; and
- (b) as regards the costs of the garnishee or the judgment debtor, by the amount claimed by the judgment creditor in the garnishee proceedings.";

- (b) in Part II –
 - (i) by repealing item 3;
 - (ii) in item 4, by repealing "or judgment under Order 14, rule 3";
 - (iii) by repealing items 5, 6 and 7;
- (c) in Part III, by repealing items 2(b) and 3.

Division 5 – Transitional arrangement

146. Rule added

Order 62 is amended by adding –

"37. Transitional provisions relating to Part 21 of the Amendment Rules 2007 (O. 62, r. 37)

(1) Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of Division 2 of Part 21 of the Amendment Rules 2007, nothing in that Division is to apply in relation to the taxation, and the following provisions of these rules in force immediately before the commencement are to continue to apply in relation to the taxation as if they had not been amended by that Division –

- (a) rules 2(2), 13, 21, 22, 23, 24 and 26; and
- (b) items 19 and 19a in the First Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D).

(2) No costs for work undertaken before the commencement of Part 21 are to be disallowed if those costs would have been allowed under this Order in force immediately before the commencement."

**PART 22
JUDICIAL REVIEW**

Recommendations 144 to 148

147. Rules substituted

Order 53, rule 1 is repealed and the following substituted –

"1A. Interpretation (O. 53, r. 1A)

In this Order –

"application for judicial review" () means an application in accordance with this Order for a review of the lawfulness of –

- (a) an enactment; or
- (b) a decision, action or failure to act in relation to the exercise of a public function;

"interested party" (), in relation to an application for judicial review, means any person (other than the applicant and respondent) who is directly affected by the application.

1. Cases appropriate for application for judicial review (O. 53, r. 1)

- (1) An application for judicial review must be made if the applicant is seeking –
 - (a) an order for mandamus, prohibition or certiorari; or
 - (b) an injunction under section 21J of the Ordinance restraining a person from acting in any office in which he is not entitled to act.
- (2) An application for judicial review may be made if the applicant is seeking –
 - (a) a declaration; or
 - (b) an injunction (not being an injunction mentioned in paragraph (1)(b)).
- (3) An application for judicial review may include an application for an award of damages, restitution or the recovery of a sum due but may not seek such a remedy alone."

148. Rules added

Order 53 is amended by adding –

"2A. Application for leave to apply for judicial review (O. 53, r. 2A)

- (1) No application for judicial review may be made unless the leave of the Court has been obtained in accordance with this Order, or where the case is one of urgency, in accordance with the practice direction issued for the purposes of this paragraph.
- (2) An application for leave must be made by filing in the Registry –
 - (a) a notice in Form 86A containing a statement of –
 - (i) the name and description of the applicant;
 - (ii) the relief sought and the grounds upon which it is sought;
 - (iii) the name and description of all interested parties;
 - (iv) the name and address of the applicant's solicitors (if any); and
 - (v) the applicant's address for service; and
 - (b) an affidavit verifying the facts relied on.

2B. Service of notice of application for leave (O. 53, r. 2B)

The notice of application for leave together with the affidavit verifying the facts relied on must be served on –

- (a) the proposed respondent; and

(b) unless the Court otherwise directs, any person the applicant considers to be an interested party,
within 7 days after the date of the filing of the notice of application.

2C. Acknowledgment of service of notice of application for leave (O. 53, r. 2C)

(1) Any person served with the notice of application for leave who wishes to take part in the judicial review must file an acknowledgment of service in Form No. _____ in accordance with this rule.

(2) An acknowledgment of service must be –

(a) filed not more than 21 days after service of the notice of application for leave; and

(b) served on –

(i) the applicant; and

(ii) subject to any direction under rule 2B(b), any interested party named in the notice of application, as soon as practicable and, in any event, not later than 7 days after it is filed.

(3) The time limits under this rule may not be extended by agreement between the parties.

(4) The acknowledgment of service –

(a) must –

(i) where the person filing it intends to contest the application for leave, set out a summary of his grounds for doing so; and

(ii) where the person filing it intends to support the application for leave, set out a summary of his grounds (other than those stated in the notice of application for leave) for doing so;

(b) must state the name and address of any person whom the person filing it considers to be an interested party; and

(c) may include or be accompanied by an application for directions.

2D. Failure to file acknowledgment of service (O. 53, r. 2D)

(1) Where a person served with the notice of application for leave has failed to file an acknowledgment of service in accordance with rule 2C, he –

(a) may not take part in a hearing to decide whether leave should be given unless the Court allows him to do so; but

(b) may take part in the hearing of the judicial review if he complies with any direction of the Court regarding the filing and service of –

- (i) detailed grounds for contesting the application for judicial review or supporting it on additional grounds; and
- (ii) any affidavit evidence.

(2) Where the person takes part in the hearing of the judicial hearing, the Court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs."

149. Grant of leave to apply for judicial review

Order 53, rule 3 is amended –

- (a) by repealing paragraphs (1) and (2);
- (b) in paragraph (3), by repealing "The judge may determine the application" and substituting "The judge may determine the application for leave".

150. Rule added

Order 53 is amended by adding –

"3A. Respondent etc. may not apply to set aside (O. 53, r. 3A)

Neither the respondent nor any other person served with an application for leave to apply for judicial review may apply to set aside an order giving leave to make the application."

151. Rule added

Order 53 is amended by adding –

"4A. Service of order giving leave (O. 53, r. 4A)

(1) Where leave to make an application for judicial review is granted, the Court may also give directions as to the management of the case.

(2) The applicant for judicial review shall, within 14 days after the leave was granted, serve the order giving leave and any directions given under paragraph (1) on –

- (a) the respondent (whether or not he has filed an acknowledgment of service under rule 2C); and
- (b) all interested parties who have filed an acknowledgment of service under rule 2C."

152. Rules added

Order 53 is amended by adding –

"5A. Filing of grounds for contesting or supporting application for judicial review (O. 53, r. 5A)

If the respondent or any other person who has filed an acknowledgment of service under rule 2C wishes to contest the application for judicial review or support it on a ground other than one contained in the notice of application for leave, he shall, within 35 days after service of the order giving leave to apply for judicial leave, file in the Registry and serve on the applicant and all other interested parties –

- (a) detailed grounds for contesting the application for judicial review or supporting it on additional grounds; and
- (b) any affidavit evidence.

5B. Applicant may not rely on additional grounds unless leave given (O. 53, r. 5B)

At the hearing of the application for judicial review, the applicant may not seek to rely on grounds other than those for which he has been given leave to apply for it unless the leave of the Court has been given.

5C. Evidence (O. 53, r. 5C)

At the hearing of the application for judicial review, no affidavit evidence may be relied on unless –

- (a) it has been served in accordance with any –
 - (i) rule under this Order; or
 - (ii) direction of the Court; or
- (b) the Court gives leave.

5D. Court's powers to hear any person (O. 53, r. 5D)

- (1) Any person may apply for leave to –
 - (a) file evidence; or
 - (b) make representations at the hearing of the application for judicial review.
- (2) An application under paragraph (1) must be made promptly."

153. Rule repealed

Order 53, rule 6 is repealed.

154. Claim for damages

Order 53, rule 7(1)(a) is amended by repealing "rule 3" and substituting "rule 2A".

155. Hearing of application for judicial review

Order 53, rule 9(1) is amended by repealing "in opposition to" and substituting "in opposition to or in support of".

156. Rule added

Order 53 is amended by adding –

**"16. Transitional provision relating to
Part 22 of the Amendment Rules
2007 (O. 53, r. 16)**

Where, immediately before the commencement of Part 22 of the Amendment Rules 2007, an application for judicial review made in accordance with this Order as in force immediately before the commencement is pending, then nothing in that Part is to apply in relation to the application, and this Order in force immediately before the commencement is to continue to apply in relation to the application as if that Part had not been made."

157. Forms

Appendix A is amended by repealing Form No. 86A and substituting –

"No. 86A
**Notice of application for leave to
 apply for Judicial Review**
 (O. 53 r. 2A(2))

No.....

IN THE HIGH COURT OF HONG KONG
 COURT OF FIRST INSTANCE

Applicant

Notice of *Application* for leave to
 apply for Judicial Review (O. 53, r. 2A(2))

This form must be read together with Notes for Guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

Name and description of applicant	
Judgment, order, decision or other proceeding in respect of which relief is sought	
Relief Sought	
Name, address and description of interested parties	
Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant	
Signed	Dated

Grounds On Which Relief is Sought
 (If there has been any delay, include reasons here)."

Made this day of 2007.