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Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform

I. INTRODUCTION

1.1 The implementation of the majority of recommendations in the Final Report (“Final Report”) of the Working Party on Civil Justice Reform (“CJR”) requires legislative amendment. This Consultation Paper invites comments on the proposed legislative amendments. The proposed amendments to both primary and subsidiary legislation should be read in the context of the recommendations and text of the Final Report.

The Final Report

1.2 The Final Report of the Working Party on CJR was published on 3 March 2004. Having studied in detail the comments received on its Interim Report and Consultative Paper published in November 2001, the Working Party made a total of 150 recommendations in the Final Report. Most of the recommendations attracted considerable support from those who responded in the consultation exercise, including the Bar Association and the Law Society.

1.3 The majority of the recommendations involve amendments to the existing rules and practice of the High Court. Some involve amendments to primary legislation.

Steering Committee on CJR

1.4 In March 2004, the Chief Justice appointed the Steering Committee on CJR (“the Steering Committee”) with the following terms of reference -

“To oversee the implementation of the recommendations of the Final Report on Civil Justice Reform relating to the Judiciary.”

1.5 The Steering Committee is chaired by the Hon Mr Justice Ma, Chief Judge of the High Court. Other members are the Hon Mr Justice Woo, Vice-President of the Court of Appeal; the Hon Mr Justice

Hartmann, the Hon Madam Justice Chu, the Hon Mr Justice Barma and the Hon Mr Justice Reyes, Judges of the Court of First Instance; Deputy Registrar Poon, High Court; and HH Judge Au Yeung, Judge of the District Court and Acting Registrar of the Court of Final Appeal. Administrative and technical support is provided by the Judiciary Administration.

1.6 The work of the Steering Committee has so far focused mainly on the necessary amendments to the relevant primary and subsidiary legislation for the implementation of the CJR recommendations in the High Court. For the amendments to the Rules of the High Court (“RHC”) (Cap. 4A), the Steering Committee has consulted the High Court Rules Committee¹ in considering the proposed amendments. Where appropriate, reference has also been made to the relevant Civil Procedure Rules (“CPR”) in England and Wales.

Application to the District Court, Lands Tribunal and Employees’ Compensation Proceedings

1.7 As the practice and procedure in civil proceedings in the District Court largely mirror those in the High Court, it was considered appropriate for the two levels of Court to have the same set of procedures consequent on the CJR. To this end, the Chief Justice directed in December 2005 that the legislative amendment exercise for the implementation of CJR should apply to both the District Court and the High Court. The Chief Justice also directed that an assessment be made of the impact of the legislative amendments for CJR on proceedings in the Lands Tribunal and Employees’ Compensation (“EC”) proceedings.

1.8 With the assistance of Judges at the District Court and the Lands Tribunal, the Steering Committee has, since December 2005, identified those legislative amendments required for the extension of the CJR recommendations to the District Court, the Lands Tribunal and EC proceedings.

¹ The High Court Rules Committee is set up pursuant to section 55 of the High Court Ordinance (Cap. 4) to make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court.

II. AMENDMENTS TO PRIMARY LEGISLATION

2.1 In respect of the High Court, the Steering Committee has identified that, of the 150 recommendations in the Final Report, 21 require amendments to the following Ordinances -

- (a) High Court Ordinance (“HCO”) (Cap. 4);
- (b) Law Amendment and Reform (Consolidation) Ordinance (“LARCO”) (Cap. 23); and
- (c) Arbitration Ordinance (“AO”) (Cap. 341).

2.2 These 21 recommendations are related to the following eight areas in the Final Report –

- (1) Pre-action protocols with regard to costs-only proceedings (also applicable to the District Court);
- (2) Pleadings with regard to the defence of tender before action (also applicable to the District Court);
- (3) Interim remedies and Mareva injunctions in aid of foreign proceedings;
- (4) Vexatious litigants;
- (5) Discovery (also applicable to the District Court);
- (6) Wasted costs (also applicable to the District Court, Lands Tribunal and EC proceedings);
- (7) Leave to Appeal (also applicable to the District Court, Lands Tribunal and EC proceedings); and
- (8) Appeals.

2.3 The following Annexes are attached –

- (a) **Annex A** – a consultation draft of the Civil Justice (Miscellaneous Amendments) Bill (“the Draft Bill”), which contains amendments for the implementation of the 21 recommendations in the High Court and those applicable to the District Court. (Amendments for the recommendations applicable to the Lands Tribunal and the EC proceedings are expected to be along the similar lines as the amendments to the HCO, and will be incorporated in the Bill in due course); **Annex A**
- (b) **Annex B** – the marked-up version of the relevant statutory provisions affected by the amendments in the Draft Bill; and **Annex B**
- (c) **Annex C** – a summary table setting out the 21 recommendations, the statutory provisions affected and the relevant clauses in the Draft Bill. **Annex C**

Matters for Attention

2.4 Whilst the proposed amendments relate primarily to the recommendations in the Final Report, they have also taken into account developments and various other matters deliberated on by the Steering Committee since the publication of the Final Report –

- (a) Costs-only Proceedings
 - (i) The Steering Committee considered that costs-only proceedings in Recommendation 9² of the Final Report created a new cause of action. Amendments to the HCO and DCO are therefore necessary (see Clauses 2 to 5 of Draft Bill).
 - (ii) Moreover, costs-only proceedings should be dealt with at the High Court or the District Court only, depending on the amount of costs involved, i.e. costs exceeding \$1 million at the High Court, and costs not exceeding \$1

² Recommendation 9 – A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant settlement costs.

million at the District Court, as other levels of courts may not have the necessary expertise to deal with taxation of costs.

(iii) Amendments should be made to section 8 of the (“Lands Tribunal Ordinance (“LTO”) (Cap. 17) to make it clear that the Lands Tribunal will not hear costs-only proceedings even if such proceedings arise out of a dispute which is within the jurisdiction of the Lands Tribunal.

(iv) Consequential amendments should be made to the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) to make it clear that the Small Claims Tribunal shall not have jurisdiction to hear and determine costs-only proceedings, even if the amount of costs claimed is not more than \$50,000 (see Clause 23³ of Draft Bill).

(b) Costs Orders against Non-parties (Clause 2 of Draft Bill)

The Steering Committee considered that there should be amendments allowing costs orders to be made against non-parties.

(c) Interim Remedies and Mareva Injunctions in Aid of Foreign Proceedings (Clauses 8 to 11 of Draft Bill)

As the High Court has wide jurisdiction to deal with matters concerning foreign jurisdiction, the Steering Committee considers that the power to make interim remedies in aid of foreign proceedings should only be exercised by the High Court.

(d) Vexatious Litigants (Clause 12 of Draft Bill)

Section 27 of the HCO should be amended to take into account Recommendations 67 and 68 in the Final Report. It should be noted that the amended section 27 is not restricted to vexatious litigants in civil proceedings. Whilst it is rare for an individual to bring a private prosecution, it is not impossible. The Steering Committee therefore considers that the new section 27 in HCO need not be restricted to civil proceedings.

³ Clause 23 in Part 8 of the Draft Bill is to be moved to Part 2.

III. AMENDMENTS TO SUBSIDIARY LEGISLATION

High Court

3.1 The Steering Committee has identified 84 recommendations in the Final Report that require amendments to subsidiary legislation under the HCO, including the Rules of the High Court (“RHC”) (Cap. 4A) and the High Court Fees Rules (“HCFR”) (Cap. 4D). Some involve new Orders, and some require amendments to existing Orders.

3.2 The following Annexes are attached –

- (a) **Annex D** - a consultation draft of the Rules of the High Court (Amendment) Rules 2007 (hereafter referred to as the “Draft HC Amendment Rules”) which contains the amendments to the RHC; **Annex D**
- (b) **Annex E** - the marked-up version of the relevant Rules affected by the amendments in the Draft HC Amendment Rules; **Annex E**
- (c) **Annex F** - a consultation draft of the High Court Fees (Amendment) Rules 2007 (“HCF(A)R”); **Annex F**
- (d) **Annex G** - the marked-up version of the First Schedule of the HCFR affected by the amendments in the draft HCF(A)R; and **Annex G**
- (e) **Annex H** - a summary table setting out the 84 recommendations, the Rules they affect, and the relevant Rules in the Draft HC Amendment Rules and HCF(A)R. **Annex H**

Matters Requiring Attention

3.3 While most of the amendments in the Draft HC Amendment Rules are referable to the Recommendations in the Final Report, the Steering Committee has in the course of its deliberations proposed the following additional amendments –

(a) Order 15 – Costs Orders against Non-parties

As mentioned in paragraph 2.4(b) above, the Steering Committee considered that there should be amendments allowing costs orders to be made against non-parties. Amendments are proposed to Order 15 for this purpose.

(b) Order 22 – Offers to Settle and Payments into Court

Order 22 is to be changed almost entirely to introduce a system of sanctioned offers and payments along the lines of Part 36 of the CPR. However, the wording differs from Part 36. The Steering Committee considered it was important to make clear that the new scheme would apply equally to both claims and counterclaims. Accordingly, for example, in the interpretation part of the rule, the terms “plaintiff” and “defendant” can be used interchangeably where the context so permits or requires.

(c) Order 62 – Costs

(i) Rules 8, 8A to 8D and 32C - Wasted Costs

The draft amendments have taken into account Practice Direction 14.5 entitled “Application for Wasted Costs Order under Order 62 rule 8”, which came into effect on 1 March 2005.

(ii) Rules 9A to 9C – Summary assessment of costs

As presently drafted, these new rules do not apply to and in relation to a party who is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91). The Steering Committee proposed that, notwithstanding that a party is on legal aid, summary assessment of costs should apply to him subject to certain conditions laid down in the new Rules 9B and 9C.

(iii) Rule 13(1A) – Powers of Chief Judicial Clerks to tax costs

It is proposed that the Chief Judicial Clerk should have the power to tax costs if the amount of the bill of costs

does not exceed the sum of \$200,000 (currently \$100,000).

(iv) Rules 21(4) and 32B – Taxing fees

Taxing fees will be levied on the amount claimed in the bill of costs. There will be no refund after taxation. The receiving party will only receive reimbursement of taxing fees from the paying party based on the amount allowed.

(v) Rule 22 - Consequences for delay in filing bill of costs

The Steering Committee considered that the objective of CJR to ensure that a case is to be dealt with as expeditiously as is reasonably practicable and to facilitate settlement of disputes should be extended to taxation of costs as well. The Steering Committee proposes that taxation proceedings should be commenced within 3 months (see Rule 22(1)) of the costs order (currently it is one month) to enable parties to have more time to negotiate for settlement. If a receiving party delays in submitting the bill, the paying party can apply for an order that unless the receiving party commences taxation proceedings within a specified period or the amount due is agreed between the parties, the costs order shall be wholly discharged. The taxing master may make such an order subject to such conditions as he deems fit.

Under the current Rule 22(3), in the event of undue delay, a taxing master is empowered to disallow any item contained in the bill of costs. It is considered that a taxing master should not have the power arbitrarily to disallow an item. Instead, it is suggested that he should have the power to make a global deduction of the bill. Hence, the existing Rule 22(3) is amended to permit a taxing master to disallow any part of the costs awarded. Further, the power to disallow interest will also ensure that taxation is proceeded with expeditiously (see new Rule 22(4)).

(vi) Rule 22(5) – Limitation Period for Applications for Taxation

Currently, there is no limitation period for applications for taxation. (Compare this to taxation of criminal bills. The limitation period is 3 months from the date of the costs order unless extended by the taxing authority: rules 6 and 9 of the Costs in Criminal Cases Rules.) Whilst accepting that bills of costs in civil cases may be more complex, there is no justification for leaving taxation of a costs order outstanding indefinitely. The Steering Committee therefore proposes a limitation period of 2 years as suggested in Rule 22(5)(a) for application for taxation.

(vii) First Schedule - Fees to Counsel

Paragraph 2(3) of Part II in the First Schedule to Order 62 is amended to read as follows -

“(3) No costs shall be allowed in respect of counsel appearing before a master in chambers, or of more counsel than one appearing before a master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal, as the case may be, has certified the attendance as being proper in the circumstances of the case.”

It is not the intention of the reform to affect the present position on rights of audience of the profession. The purpose of the amendment is to avoid argument on taxation as to entitlement of counsel’s fees.

(viii) First and Second Schedules

The Steering Committee considers that the scale costs laid down in the First Schedule needs review. Further, the fixed costs laid down in the Second Schedule are grossly inadequate. Views are invited as to the deletion or addition of categories of such costs and the appropriate quantum.

(d) New Order 62A – Costs Offer and Payments into Court

This new Order, as presently drafted, does not apply to and in relation to a party who is an aided person within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91). It is proposed that, if a party is not legally aided, but is the subject of a pending costs taxation by the Director of Legal Aid (“DLA”), he should still be able to make an offer in terms of Order 62A. It would then be a matter for the DLA to make a decision whether it would be better to accept the offer or to proceed with taxation.

District Court

3.4 Most of the 84 CJR recommendations requiring amendments to subsidiary legislation at **Annex H** are applicable to the District Court as well. Accordingly, similar amendments should be introduced to the Rules of the District Court (“RDC”) (Cap. 336H). It is considered that provisions in the RDC should follow those in the RHC unless there are special considerations justifying differences between the two sets of Rules. Amendments are therefore proposed to the RDC, to (i) implement the relevant CJR recommendations, and (ii) achieve consistency with the RHC. A summary of the proposed amendments to RDC for these two objectives is at **Annex I**.

Annex I

3.5 However, the RDC will differ from the RHC in the following aspects -

- (a) The right of a director to represent a limited company is preserved in Order 5A of the RDC;
- (b) The present position is that leave is generally required to appeal against any decision made in the civil proceedings in the District Court. This position will be preserved. It will be different from the High Court, where leave to appeal is only required for interlocutory decisions; and
- (c) For taxation proceedings, the District Court will continue to follow its existing requirements of counsel’s certificates, which are different from those in the High Court. The “two-thirds cap” under Order 62, Rule 32(1A) of the RDC will also be preserved.

3.6 As mentioned in paragraph 3.3(c)(viii) above, the Steering Committee is inviting views as to the itemization and quantum of the scale costs and fixed costs as laid down in the First and Second Schedules of Order 62 of the RHC. Views are also invited as to the appropriate itemization and quantum of such costs in the District Court.

Lands Tribunal

3.7 Pursuant to section 10(1) of the LTO, the Lands Tribunal has a general power to adopt the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction in respect of the matters⁴ listed under that section. In a separate review of the procedures of the Lands Tribunal conducted in 2005, the Judiciary has proposed that section 10(1) be amended to make it clear that the Lands Tribunal has a general power to adopt all practice and procedure of the Court of First Instance as it thinks fit (and not restricted to the matters currently listed in section 10). With such wide powers therefore to adopt the practice and procedure of the Court of First Instance, any changes under CJR can likewise be utilized in the Lands Tribunal, as it thinks fit. However, rule 14(2) of the Lands Tribunal Rules (“LTR”) (Cap. 17A) has to be amended to make it clear that the powers conferred by that rule are in addition and without prejudice to the general case management powers of the Tribunal.

⁴ **Section 10 - Practice and procedure of Tribunal**

(1) The Tribunal shall have the powers which are vested in the Court of First Instance in the exercise of its civil jurisdiction in respect of the following matters -

- (a) the attendance, examination and payment of witnesses;
- (b) the hearing of any matter with the assistance of an assessor or assessors;
- (c) the consolidation or hearing of any matters;
- (d) the punishment of persons guilty of contempt;
- (e) the ordering of inspection of any premises or place;
- (f) the entering and viewing of any premises or place;
- (g) the enforcement of decisions, judgments and orders;
- (h) the making of orders as to interim payments;
- (i) the making of orders in default of any action by a party,

and, so far as it thinks fit, may follow the practice and procedure of the Court of First Instance in the exercise of its civil jurisdiction.

EC Proceedings

3.8 EC proceedings are governed by the provisions in the Employees' Compensation (Rules of the Court) Rules ("ECR"), Cap. (282B). Section 21⁵ of the Employees' Compensation Ordinance ("ECO") (Cap. 282) provides that, subject to the provisions in the ECR, the law, rules and practice relating to civil proceedings in the District Court shall *mutatis mutandis* apply to EC proceedings. Therefore, the RDC, after incorporation of the proposed amendments as set out at **Annex I** for the implementation of relevant CJR recommendations and consistency with the RHC, will be applicable to EC proceedings by virtue of section 21(1) of the ECO. There is no need for separate amendments to the ECR.

IV. COMMENTS SOUGHT

4.1 The Steering Committee would be grateful for comments on -

- (a) Proposed Amendments to Primary Legislation, including –
 - (i) the Draft Bill at **Annex A** (Marked-up version at **Annex B**); and
 - (ii) the matters set out in paragraph 2.4.
- (b) Proposed Amendments to Subsidiary Legislation, including –
 - (i) the Draft HC Amendment Rules at **Annex D** (Marked-up version at **Annex E**);
 - (ii) the Draft HCF(A)R at **Annex F** (Marked-up version at **Annex G**);

⁵ **Section 21 - Jurisdiction of the Court**

- (1) Save as is provided in this Ordinance and any rules made thereunder, the District Court shall, upon or in connection with any question to be investigated or determined thereunder, have all the powers and jurisdictions exercisable by the District Court in or in connection with civil actions in such Court in like manner as if the Court had by the District Court Ordinance (Cap 336) been empowered to determine all claims for compensation under this Ordinance whatever the amount involved and the law, rules and practice relating to such civil actions and to the enforcement of judgments and orders of the Court shall *mutatis mutandis* apply.

- (iii) the matters in paragraphs 3.3 and 3.6;
- (iv) proposed amendments to the RDC at **Annex I**; and
- (v) proposed amendments to the LTR in paragraph 3.7.

4.2 The draft / proposed amendments annexed to this Consultation Paper are subject to further revisions and refinements by the Steering Committee, in consultation with the Department of Justice, in the light of comments received before their introduction into the Legislative Council.

4.3. The Steering Committee would be grateful for comments by 12 July 2006. In view of the tight legislative timetable, the Steering Committee may find it difficult to give any extension of time for response, as this would affect and delay the progress of this legislative exercise. Please send your comments to the Steering Committee by any of the following means -:

Mail: Secretary,
Steering Committee on Civil Justice Reform
LG2, High Court Building,
38 Queensway

Fax: 2501 4636

E-mail: secretary@civiljustice.gov.hk

4.4 It may be useful for the Steering Committee, either in discussion with others or in any subsequent report, to be able to refer to and attribute comments received in response to this Consultation Paper. Any request to treat all or part of a response in confidence will, of course, be respected, but if no such request is made, the Steering Committee will assume that the response is not intended to be confidential.

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CONSULTATION DRAFT

A BILL

To

Amend several Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform.

Enacted by the Legislative Council.

**PART 1
PRELIMINARY**

1. Short title and commencement

(1) This Ordinance may be cited as the Civil Justice (Miscellaneous Amendments) Ordinance 2007.

(2) This Ordinance shall come into operation on a day to be appointed by [] by notice published in the Gazette.

**PART 2
PRE-ACTION PROTOCOLS**

Recommendation 9

High Court Ordinance

2. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction

Section 52A(2) of the High Court Ordinance (Cap. 4) is repealed.

3. Section added

The following is added immediately after section 52A –

"52B. Costs-only proceedings

(1) This section applies where –

(a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the

dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and

(b) no proceedings relating to the dispute have been commenced.

(2) Either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute in accordance with rules of court.

(3) In any proceedings commenced under subsection (2), the Court of First Instance may make an order for the costs of and incidental to the dispute.

(4) In subsection (3), "Court of First Instance" () includes the Registrar and a Master."

District Court Ordinance

4. Costs

Section 53(2) of the District Court Ordinance (Cap. 336) is repealed.

5. Section added

The following is added immediately after section 53 –

"53A. Costs-only proceedings

(1) This section applies where –

(a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and

(b) no proceedings relating to the dispute have been commenced.

(2) Either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute in accordance with rules of court.

(3) In any proceedings commenced under subsection (2), the Court may make an order for the costs of and incidental to the dispute.

(4) In subsection (3), "Court" () includes the Registrar and a master of the Court."

**PART 3
PLEADINGS**

Recommendation 25

Law Amendment and Reform (Consolidation) Ordinance

6. Long title amended

The long title to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) is amended by repealing the full stop and substituting ", and to amend the law relating to the defence of tender before action."

7. Section added

The following is added in Part VI –

"30. Defence of tender before action

(1) Notwithstanding any rule of law, in proceedings for a monetary claim, whether liquidated or unliquidated, it is a defence for the defendant to prove that before the claimant commenced the proceedings, the defendant had unconditionally offered to the claimant -

- (a) the amount due where the claim is liquidated; or
- (b) an amount sufficient to satisfy the claim where the claim is unliquidated.

(2) This section does not apply in relation to proceedings commenced before the commencement of this section."

**PART 4
INTERIM REMEDIES AND MAREVA INJUNCTIONS
IN AID OF FOREIGN PROCEEDINGS**

Recommendations 45 to 48

High Court Ordinance

8. Injunction and receiver

Section 21L(3) of the High Court Ordinance (Cap. 4) is amended by adding "or section 21M" after "subsection (1)".

9. Section added

The following is added –

"21M. Interim relief in the absence of substantive proceedings

- (1) Without prejudice to section 21L(1), the Court of First Instance may by order grant interim relief or appoint a receiver in relation to proceedings which –
 - (a) have been or are to be commenced in a place outside Hong Kong; and
 - (b) are capable of giving rise to a judgment which is capable of being enforced in Hong Kong under any Ordinance or at common law.
- (2) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.
- (3) Subsection (1) applies notwithstanding that –
 - (a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or
 - (b) the interim relief sought or the appointment of the receiver is not ancillary or incidental to any proceedings in Hong Kong.
- (4) The Court of First Instance may refuse an application for interim relief or appointment of a receiver under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.
- (5) The power to make rules of court under section 54 includes power to make rules of court for –
 - (a) the making of an application for interim relief or appointment of a receiver under subsection (1); and
 - (b) the service out of the jurisdiction of an application or order for such interim relief or appointment of a receiver.
- (6) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.
- (7) In this section, "interim relief" () includes an interlocutory injunction referred to in section 21L(3).

21N. Supplementary provisions as to interim relief in the absence of substantive proceedings

- (1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is –
 - (a) ancillary to the relevant proceedings that have been or are to be commenced in a place outside Hong Kong; and

- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong which has primary jurisdiction over such proceedings.

(2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong."

Arbitration Ordinance

10. Special powers of Court in relation to arbitration proceedings

Section 2GC of the Arbitration Ordinance (Cap. 341) is amended –

- (a) in subsection (1), by repealing "The Court or a judge of the Court may, in relation to a particular arbitration proceeding" and substituting "Subject to subsection (1A), the Court or a judge of the Court may, in relation to particular arbitration proceedings which have been or are to be commenced in Hong Kong or in a place outside Hong Kong";
- (b) by adding –

"(1A) In relation to arbitration proceedings which have been or are to be commenced in a place outside Hong Kong, the Court or a judge of the Court may make an order under subsection (1) or grant an interim injunction or direct any other interim measure to be taken under that subsection, only if the arbitration proceedings are capable of giving rise to an arbitral award (whether interim or final) which is capable of being enforced in Hong Kong under this Ordinance or any other Ordinance.

(1B) Subsection (1A) applies notwithstanding that –

- (a) the subject matter of the arbitration proceedings would not, apart from that subsection, give rise to a cause of action over which the Court or a judge of the Court would have jurisdiction; or
- (b) the order sought or the interim injunction or interim measure is not ancillary or incidental to any arbitration proceeding in Hong Kong.

(1C) In exercising the power under subsection (1) in relation to arbitration proceedings in a place outside Hong Kong, the Court or a judge of the Court shall have regard to the fact that the power is –

- (a) ancillary to the arbitration proceedings outside Hong Kong; and

- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong which has primary jurisdiction over the arbitration proceedings.

(1D) The Court or a judge of the Court has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an interim relief granted in relation to arbitration proceedings in a place outside Hong Kong as if the interim relief were granted in relation to arbitration proceedings in Hong Kong.

(1E) In subsection (1D), "interim relief" () means –

- (a) an order made under subsection (1);
- (b) an interim injunction granted under that subsection; or
- (c) any other interim measure directed to be taken under that subsection."

11. Section added

The following is added –

"49. Rules of court

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for –

- (a) the making of an application for an order under section 2GC(1) or for an interim injunction or any other interim measure under that section; and
- (b) the service out of the jurisdiction of an application or order for such order, interim injunction or other interim measure.

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the authority making the rules may consider necessary or expedient."

**PART 5
VEXATIOUS LITIGANTS**

Recommendations 67 and 68

High Court Ordinance

12. Section substituted

Section 27 of the High Court Ordinance (Cap. 4) is repealed and the following substituted –

"27. Restriction of vexatious legal proceedings

(1) If, on an application made under this section by the Secretary for Justice or an affected person, the Court of First Instance is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, make an order specified in subsection (2).

(2) The order referred to in subsection (1) is an order that –

- (a) no legal proceedings shall without the leave of the Court of First Instance be instituted by the person against whom the order is made; and
- (b) any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without the leave of the Court of First Instance.

(3) An order made under subsection (1) –

- (a) may be made on such terms and conditions as the Court of First Instance thinks just; and
- (b) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) Leave for the institution or continuance of any legal proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the Court of First Instance is satisfied that –

- (a) the proceedings are not an abuse of the process of the court in question; and
- (b) there are reasonable grounds for the proceedings.

(5) No appeal shall lie from a decision of the Court of First Instance refusing leave required under this section.

(6) A copy of an order made under subsection (1) shall be published in the Gazette.

(7) In subsection (1), "affected person" () means a person who –

- (a) is or has been a party to any of the vexatious legal proceedings; or
- (b) has directly suffered adverse consequences resulting from such proceedings."

**PART 6
DISCOVERY**

Division 1 – Recommendations 75 and 77

High Court Ordinance

13. Section added

The High Court Ordinance (Cap. 4) is amended by adding –

"41A. Extension of powers of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings

(1) On the application of a person who appears to the Court of First Instance to be likely to be a party to subsequent proceedings in that Court in which a claim (being a claim that is neither in respect of personal injuries nor in respect of a person's death) is likely to be made, the Court of First Instance may make an order specified in subsection (3) against a person who appears to the Court to be likely –

- (a) to be a party to the proceedings; and
- (b) to have or to have had in his possession, custody or power any documents which are directly relevant to an issue arising or likely to arise out of that claim.

(2) The application shall be made in accordance with rules of court, and the order shall only be made in such circumstances as may be specified in those rules.

(3) The order specified for the purposes of subsection (1) is an order which requires the person against whom the order is sought to –

- (a) disclose whether those documents are in his possession, custody or power; and
- (b) produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order –
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.

(4) For the purposes of subsection (1), a document is only to be regarded as directly relevant to an issue arising or likely to arise out of a claim in the anticipated proceedings if –

- (a) the document would be likely to be relied on by any party in the proceedings; or
- (b) the document supports or adversely affects any party's case."

14. Provisions supplementary to sections 41 and 42

Section 43 is amended –

- (a) in the heading, by repealing "**and 42**" and substituting "**, 41A and 42**";
- (b) in subsection (1), by repealing "or 42" and substituting ", 41A or 42";
- (c) in subsection (2), by repealing "sections 41 and and 42" and substituting "section 41, 41A or 42";
- (d) in subsection (3), by repealing "42" and substituting "41A".

15. Application to Government of sections 41 to 44

Section 45(2) and (3) is amended by adding "41A," after "41,".

District Court Ordinance

16. Section added

The District Court Ordinance (Cap. 336) is amended by adding after section 47A –

"47AA. Extension of powers of the Court to order disclosure, etc. of documents before commencement of proceedings

(1) A person who appears to the Court to be likely to be a party to subsequent proceedings (other than proceedings for personal injuries or arising out of the death of a person) may apply to the Court for an order for discovery of documents against a person who is likely to be a party to the proceedings and who has in his possession, custody or power documents directly relevant to an issue arising out of the claim.

(2) The application is to be made in accordance with rules of court.

(3) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any directly relevant documents –

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order –
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.

(4) For the purposes of subsections (1) and (3), a document is only to be regarded as directly relevant to an issue arising out of a claim in the anticipated proceedings if –

- (a) the document would be likely to be relied on by any party in the proceedings; or
- (b) the document supports or adversely affects any party's case."

17. Provisions supplementary to sections 47A and 47B

Section 47C is amended –

- (a) in the heading, by repealing "**and 47B**" and substituting ", **47AA and 47B**";
- (b) in subsection (1), by repealing "or 47B" and substituting ", 47AA or 47B";
- (c) in subsection (3), by repealing "sections 47A and 47B" and substituting "section 47A, 47AA or 47B".

18. Application to Government of sections 47A to 47D

Section 47E(2) and (3) is amended by adding "47AA," after "47A,".

Division 2 – Recommendation 78

High Court Ordinance

19. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.

Section 42(1) of the High Court Ordinance (Cap. 4) is amended by repealing "in respect of personal injuries to a person or in respect of a person's death".

District Court Ordinance

20. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.

Section 47B(1) and (3) of the District Court Ordinance (Cap. 336) is amended by repealing "for personal injuries or arising out of the death of a person".

**PART 7
WASTED COSTS**

Recommendations 94 to 97

High Court Ordinance

**21. Costs in Court of First Instance
and Court of Appeal in its civil
jurisdiction**

Section 52A of the High Court Ordinance (Cap. 4) is amended by adding –

"(4) In any proceedings mentioned in subsection (1), the Court of First Instance may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.

(5) In subsection (4), "wasted costs" () means any costs incurred by a party as a result of –

- (a) any improper or unreasonable act or omission; or
- (b) any undue delay or any other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(6) In this section, "legal representative" (), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party."

District Court Ordinance

22. Costs

Section 53 of the District Court Ordinance (Cap. 336) is amended by adding –

"(3) In any proceedings mentioned in subsection (1), the Court may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.

(4) In this section –

"legal representative" (), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party;"

"wasted costs" () means any costs incurred by a party as a result of –

- (a) any improper or unreasonable act or omission; or
- (b) any undue delay or any other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

Small Claims Tribunal Ordinance

23. Jurisdiction of Tribunal

The Schedule to the Small Claims Tribunal Ordinance (Cap. 338) is amended in the proviso to paragraph 1 –

- (a) in paragraph (e), by repealing the full stop and substituting a semicolon; and
- (b) by adding –
 - "(f) any action or proceeding for an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the tribunal."

PART 8

LEAVE TO APPEAL

Recommendations 110, 111, 112, 113 and 115

High Court Ordinance

24. Appeals in civil matters

Section 14(1) of the High Court Ordinance (Cap. 4) is amended by adding "and section 14AA" after "subsection (3)".

25. Section added

The following is added before section 14A –

"14AA. Leave to appeal required for interlocutory appeals

- (1) Except as provided by rules of court made under section 54, no appeal shall lie to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.
- (2) Rules of court made under section 54 may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.
- (3) Leave to appeal granted under subsection (1) may be granted –
 - (a) in respect of a particular issue arising out of the interlocutory judgment or order; and
 - (b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal under subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that –

- (a) the appeal has a reasonable prospect of success; or
- (b) there is some other compelling reason why the appeal should be heard.

(5) No appeal shall lie from a decision of the Court of Appeal as to whether or not leave to appeal should be granted under subsection (1)."

**26. Composition of Court of Appeal
in its civil jurisdiction**

Section 34B(4) is amended by adding –

- (a) by adding –
 - "(aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal);"; and
- (b) in paragraphs (a), (b), (c) and (e), by repealing "hearing and determining" and substituting "hearing or determining".

District Court Ordinance

27. Appeal to Court of Appeal

Section 63(3) of the District Court Ordinance (Cap. 336) is amended by repealing "or 52D" and substituting ", 52D or 52E".

**PART 9
APPEALS**

Recommendation 120

High Court Ordinance

**28. Composition of Court of Appeal
in its civil jurisdiction**

Section 34B(4) of the High Court Ordinance (Cap. 4) is amended by adding –

- "(ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it;".

Explanatory Memorandum

The purpose of this Bill is to amend certain Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("the Report"). The recommendations implemented by the Bill are set out in the attached Table.

Part 2 of the Bill – Pre-action Protocols

2. Clauses 2 and 3 relate to Recommendation 9 in section 5 of the Report. Clause 2 amends section 52A of the High Court Ordinance (Cap. 4) and clause 3 adds a new section 52B to that Ordinance to make it clear that the Court of First Instance has jurisdiction to make a costs order in costs-only proceedings. The new section 52B also sets out the circumstances in which a party may bring such proceedings. Clauses 4 and 5 make similar amendments to the District Court Ordinance (Cap. 336).

Part 3 - Pleadings

3. Clause 7 implements Recommendation 25 in section 9 of the Report. At present, the case law has established that the common law defence of tender before action only applies to a liquidated claim but not to a claim for unliquidated damages. Clause 7 adds a new section to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) to extend the defence of tender before action to a claim for unliquidated damages.

4. Clause 6 consequentially amends the long title of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) upon the addition of the new section 30 contained in clause 7.

Part 4 – Interim Remedies and Mareva Injunctions in aid of Foreign Proceedings

5. Clause 8 amends section 21L(3) of the High Court Ordinance (Cap. 4) so that the power of the Court of First Instance to grant a Mareva injunction under the new section 21M is also exercisable irrespective of whether the party against whom the Mareva injunction is made is domiciled, resident or present in Hong Kong.

6. Clause 9 adds 2 new sections to the High Court Ordinance (Cap. 4) to implement Recommendations 45 to 48 in section 12 of the Report. The new section 21M empowers the Court of First Instance to grant interim relief or appoint a receiver in aid of foreign proceedings which are capable of giving rise to a judgment that is capable of being enforced in Hong Kong. Under the new section, the interim relief or the appointment of a receiver may be sought as an independent,

free-standing form of relief without being ancillary or incidental to substantive proceedings in Hong Kong.

7. Recommendations 45 to 48 in section 12 of the Report relate to foreign proceedings and foreign arbitrations. Amendments to the Arbitration Ordinance (Cap. 341) are thus also necessary. Clause 10 amends section 2GC of that Ordinance to clarify that the power of the Court of First Instance to grant interim relief under that section applies in relation to arbitration proceedings in or outside Hong Kong. But the power may only be exercised in relation to arbitration proceedings outside Hong Kong if those proceedings are capable of being enforced in Hong Kong (new section 2GC(1A)). Clause 11 adds a new section to the Arbitration Ordinance (Cap. 341) to empower the Rules Committee to make rules of court relating to the making of applications for interim relief under that section 2GC and the service out of the jurisdiction of such applications and orders for interim relief.

Part 5 – Vexatious Litigants

8. Clause 12 implements Recommendations 67 and 68 in section 14 of the Report. The existing section 27 of the High Court Ordinance (Cap. 4) is replaced by a new section 27 which introduces the following changes –

- (a) it allows a vexatious litigant order to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been a party to the vexatious proceedings instituted by the respondent or who has directly suffered adverse consequences resulting from such proceedings;
- (b) it raises the threshold for granting leave to a vexatious litigant to issue fresh proceedings, requiring the Court of First Instance to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings;
- (c) it makes it clear that a vexatious litigant order may be made for a specific period or remain in force indefinitely; and
- (d) it also makes it clear that there is no appeal against a refusal of leave.

Part 6 - Discovery

9. Clause 13 implements Recommendations 75 and 77 in section 16 of the Report. Section 41 of the High Court Ordinance (Cap. 4) presently provides for pre-action disclosure in cases where the plaintiff is suing for personal injury or in respect of someone's death. Clause 13 adds a new section 41A to the Ordinance to widen the jurisdiction of the Court of First Instance to order disclosure before commencement of proceedings to cover cases other than those in relation to personal injury and death claims. It should be noted that an order granted under the new section 41A only relates to disclosure and inspection of documents which are directly relevant to an issue

in the anticipated proceedings, i.e. documents which would likely be relied on by the parties themselves and documents which affect adversely or support any party's case in the anticipated proceedings.

10. Clauses 14 and 15 consequentially amend sections 43 and 45 of the Ordinance upon the addition of the new section 41A.

11. Clauses 16, 17 and 18 make similar amendments to the District Court Ordinance (Cap. 336).

12. Clause 19 implements Recommendation 78 in section 16 of the Report. It amends section 42(1) of the High Court Ordinance (Cap. 4) so that the jurisdiction of the Court of First Instance to order post-commencement, pre-trial disclosure applies to all types of cases (and not merely to personal injury and death claims). Clause 20 makes similar amendments to the District Court Ordinance (Cap. 336).

Part 7 – Wasted Costs

13. Clause 21 relates to Recommendations 94 to 97 in section 18 of the Report. As these Recommendations concern wasted costs orders against counsel and solicitors, clause 21 empowers the Court of First Instance to make such an order against them. Clause 22 makes similar amendments to the District Court Ordinance (Cap. 336).

14. Clause 23 amends the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) to make it clear that the Small Claims Tribunal does not have jurisdiction to hear and determine costs-only proceedings.

Part 8 – Leave to Appeal

15. Clause 24 amends section 14 of the High Court Ordinance (Cap. 4) and clause 25 adds a new section 14AA to that Ordinance to implement Recommendations 110, 111, 112, 113 and 115 in section 22 of the Report. Under section 14(1) of the Ordinance, an appeal lies as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil matter. The new section 14AA introduces a requirement that an interlocutory appeal to the Court of Appeal be brought only with leave of the Court of First Instance or the Court of Appeal. Under the new section, rules of court to be made under section 54 of the Ordinance may however specify judgments or orders of the Court of First Instance to which the requirement does not apply.

16. Clause 26 relates to Recommendation 112 in section 22 of the Report. It adds a new paragraph (aa) to section 34B(4) of the Ordinance to provide that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application for leave to appeal.

17. Clause 27 amends section 63(3) of the District Court Ordinance (Cap. 336) so that a person against whom an order prohibiting him from leaving Hong Kong is also entitled to appeal to the Court of Appeal without leave.

Part 9 - Appeals

18. Clause 28 relates to Recommendation 120 in section 22 of the Report. It adds a new paragraph (ab) to section 34B(4) of the High Court Ordinance (Cap. 4) to clarify that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application that is interlocutory to an appeal pending before it.

TABLE

Recommendation 9

A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.

Recommendation 25

The defence of tender before action should be extended to apply to claims for unliquidated damages.

Recommendation 45

Proposal 17 (for introducing Mareva injunctions and incidental relief in aid of foreign proceedings) should be adopted as modified and supplemented by Recommendations 46 to 51.

Recommendation 46

The jurisdiction to grant a Mareva injunction in aid of foreign proceedings or arbitrations should be confined to proceedings and arbitrations capable of leading, in the ordinary course, to a judgment or arbitral award which can be enforced in Hong Kong.

Recommendation 47

Section 21L of the HCO should be amended to make it clear that a Mareva injunction can be sought in aid of foreign proceedings and arbitrations as an independent, free-standing form of relief, without being ancillary or incidental to substantive proceedings commenced in Hong Kong, followed by relevant amendments to O 29.

Recommendation 48

Section 21L or some other appropriate provision of the HCO should be amended to give the Rules Committee clear authority to amend O 11 with a view to making applications for free-standing Mareva injunctions an eligible category for the grant of leave to effect service of process abroad, followed by relevant amendments to O 11.

Recommendation 67

Section 27 of the HCO should be amended to introduce enhancements equivalent to those introduced by section 42 of the Supreme Court Act 1981 in England and Wales.

Recommendation 68

The HCO should furthermore make provision for vexatious litigant orders to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been party to vexatious proceedings presently instituted by or with the participation of the respondent or who has directly suffered adverse consequences resulting from such proceedings or from vexatious applications made by the respondent in such proceedings.

Recommendation 75

The HCO should be amended to broaden the jurisdiction of the court under section 41 to order disclosure before commencement of proceedings to encompass all types of cases (and not merely cases involving personal injury and death claims).

Recommendation 77

Orders for pre-action disclosure should relate to disclosure and inspection of specific documents or classes of documents which are "directly relevant" to the issues in the anticipated proceedings, being documents which would be likely to be relied on by the parties themselves or documents directly affecting adversely or directly supporting any party's case in the anticipated proceedings, the procedure for such applications being that prescribed by O 24 r 7A, subject to any necessary modifications.

Recommendation 78

Section 42(1) of the HCO should be amended so that the court's jurisdiction to order post-commencement, pre-trial disclosure from persons who are not parties to the proceedings applies to all types of cases (and not merely to personal injury and death claims).

Recommendation 94

Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.

Recommendation 95

Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.

Recommendation 96

Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.

Recommendation 97

Barristers should be made subject to liability for wasted costs under O 62 r 8.

Recommendation 110

Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.

Recommendation 111

Where leave to appeal is required, the court should have power to limit the grant of such leave to particular issues and to grant leave subject to conditions designed to ensure the fair and efficient disposal of the appeal.

Recommendation 112

A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.

Recommendation 113

A refusal of leave to appeal by the Court of Appeal in relation to such purely interlocutory questions should be final. Where, however, the Court of Appeal hears the appeal, it should be open to the parties to apply for leave to appeal to the Court of Final Appeal in accordance with section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance.

Recommendation 115

Leave to appeal from the CFI judge to the Court of Appeal should only be granted where the court considers that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

Recommendation 120

Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges (the last option being dictated where the two judges are unable to agree).

Civil Justice (Miscellaneous Amendments) Bill

A BILL
To

Amend several Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform.

Enacted by the Legislative Council.

Remarks

PART 1
PRELIMINARY

1. Short title and commencement

Clause 1

(1) This Ordinance may be cited as the Civil Justice (Miscellaneous Amendments) Ordinance 2007.

(2) This Ordinance shall come into operation on a day to be appointed by [] by notice published in the Gazette.

Civil Justice (Miscellaneous Amendments) Bill

High Court Ordinance (Cap 4)

Remarks

14AA. Leave to appeal required for interlocutory appeals

Clause 25,
Rec 110, 111, 112
113 and 115

(1) Except as provided by rules of court made under section 54, no appeal shall lie to the Court of Appeal from an interlocutory judgment or order of the Court of First Instance unless leave to appeal has been granted by the Court of First Instance or the Court of Appeal.

(2) Rules of court made under section 54 may specify a judgment or order of any prescribed description to which subsection (1) does not apply and accordingly an appeal lies as of right from the judgment or order.

(3) Leave to appeal granted under subsection (1) may be granted –
(a) in respect of a particular issue arising out of the interlocutory judgment or order; and
(b) subject to such conditions as the court hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.

(4) Leave to appeal under subsection (1) shall not be granted unless the court hearing the application for leave is satisfied that –
(a) the appeal has a reasonable prospect of success; or
(b) there is some other compelling reason why the appeal should be heard.

(5) No appeal shall lie from a decision of the Court of Appeal as to whether or not leave to appeal should be granted under subsection (1).

14. Appeals in civil matters

(1) Subject to subsection (3) and section 14AA, an appeal shall lie as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil cause or matter. (Amended 25 of 1998 s. 2)

Clause 24,
Rec 110, 111, 112,
113 and 115

(2) (Repealed 52 of 1987 s. 10)

(3) No appeal shall lie-
(a) from an order of the Court of First Instance allowing an extension of time for appealing from a judgment or order; (Amended 25 of 1998 s. 2) [cf. 1925 c. 49 s. 31 U.K.]
(b) (Repealed 52 of 1987 s. 10)

Remarks

- (c) from a judgment or order of the Court of First Instance, where it is provided by any Ordinance or by rules of court that the same is to be final; (Amended 25 of 1998 s. 2)
- (d) from an order absolute for the dissolution or nullity of marriage in favour of any party who, having had time and opportunity to appeal from the decree nisi on which the order was founded, has not appealed from that decree;
- (e) without the leave of the court or tribunal in question or of the Court of Appeal, from an order of the Court of First Instance or any other court or tribunal made with the consent of the parties or relating only to costs which are by law left to the discretion of the court or tribunal; (Replaced 52 of 1987 s. 10. Amended 25 of 1998 s. 2) [cf. 1981 c. 54 s. 18 U.K.]

- (ea) except as provided by the Arbitration Ordinance (Cap 341), from any decision of the Court of First Instance- (Amended 25 of 1998 s. 2)
 - (i) on an appeal under section 23 of that Ordinance on a question of law arising out of an arbitration award; or
 - (ii) under section 23A of that Ordinance on a question of law arising in the course of a reference; (Added 52 of 1987 s. 10)
- (eb) from a decision of the Court of First Instance in respect of which a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap 484) and leave to appeal is granted under section 27D of that Ordinance in any proceedings; (Added 11 of 2002 s. 6)
- (f) without the leave of the Court of First Instance or the Court of Appeal, from a judgment or order of the Court of First Instance given or made in summarily determining under rules of court any question at issue in interpleader proceedings: (Amended 25 of 1998 s. 2)

Provided that this paragraph shall have no effect in relation to any interpleader issue which is tried by a judge whether with or without a jury; (Amended 21 of 2001 s. 48)

- (g) from a determination, judgment or order of the Court of First Instance referred to in section 22(1)(c) of the Hong Kong Court of Final Appeal Ordinance (Cap 484). (Added 21 of 2001 s. 48)

(4) Rules of court made under section 54 may provide for orders or judgments of any prescribed description to be treated for any prescribed purpose connected with appeals to the Court of Appeal as final or as interlocutory. (Added 52 of 1987 s. 10) [cf. 1981 c. 54 s. 60 U.K.]

(5) No appeal shall lie from a decision of the Court of Appeal as to whether a judgment or order is, for any purpose connected with an appeal to that court, final or interlocutory. (Added 52 of 1987 s. 10)

21L. Injunction and receiver

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

(1) The Court of First Instance may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the Court of First Instance to be just or convenient to do so.

(2) Any such order may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3) The power of the Court of First Instance under subsection (1) **or section 21M** to grant an interlocutory injunction restraining a party to any proceedings from removing from the jurisdiction of the Court of First Instance, or otherwise dealing with, assets located within that jurisdiction shall be exercisable in cases where that party is, as well as in cases where he is not, domiciled or resident or present within that jurisdiction.

Clause 8,
Rec 45 to 48

(4) If, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction may be granted, if the Court of First Instance thinks fit, whether-

- (a) the person against whom the injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and
- (b) the estates claimed by both or by either of the parties are legal or equitable.

(5) The power of the Court of First Instance to appoint a receiver by way of equitable execution shall operate in relation to all legal estates and interests in land; and that power-

- (a) may be exercised in relation to an estate or interest in land whether or not a charge has been imposed on that land under section 20 for the purpose of enforcing the judgment, order, decree or award in question; and
- (b) shall be in addition to, and not in derogation of, any power of any court to appoint a receiver in proceedings for enforcing such a charge.

Remarks

(6) Where an order under section 20 imposing a charge for the purpose of enforcing a judgment, order, decree or award has been registered under section 2 of the Land Registration Ordinance (Cap 128), section 3(2) of that Ordinance shall not apply to an order appointing a receiver made either-

- (a) in proceedings for enforcing the charge; or
- (b) by way of equitable execution of the judgment, order, decree or award or, as the case may be, of so much of it as required payment of moneys secured by the charge.

(Added 52 of 1987 s. 18. Amended 25 of 1998 s. 2)
[cf. 1981 c. 54 s. 37 U.K.]

21M. Interim relief in the absence of substantive proceedings

Clause 9,
Rec 45 to 48

(1) Without prejudice to section 21L(1), the Court of First Instance may by order grant interim relief or appoint a receiver in relation to proceedings which –

- (a) have been or are to be commenced in a place outside Hong Kong; and**
- (b) are capable of giving rise to a judgment which is capable of being enforced in Hong Kong under any Ordinance or at common law.**

(2) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court of First Instance thinks just.

(3) Subsection (1) applies notwithstanding that –

- (a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court of First Instance would have jurisdiction; or**
- (b) the interim relief sought or the appointment of the receiver is not ancillary or incidental to any proceedings in Hong Kong.**

(4) The Court of First Instance may refuse an application for interim relief or appointment of a receiver under subsection (1) if, in the opinion of the Court, the fact that the Court has no jurisdiction apart from this section in relation to the subject matter of the proceedings concerned makes it unjust or inconvenient for the Court to grant the application.

(5) The power to make rules of court under section 54 includes power to make rules of court for –

- (a) the making of an application for interim relief or appointment of a receiver under subsection (1); and**
- (b) the service out of the jurisdiction of an application or order for such interim relief or appointment of a receiver.**

Remarks

(6) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the Rules Committee considers necessary or expedient.

(7) In this section, “interim relief” () includes an interlocutory injunction referred to in section 21L(3).

21N. Supplementary provisions as to interim relief in the absence of substantive proceedings

Clause 9,
Rec 45 to 48

(1) In exercising the power under section 21M(1), the Court of First Instance shall have regard to the fact that the power is –

(a) ancillary to the relevant proceedings that have been or are to be commenced in a place outside Hong Kong; and

(b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong which has primary jurisdiction over such proceedings.

(2) The Court of First Instance has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under section 21M as if the order were granted under section 21L in relation to proceedings commenced in Hong Kong.

27. Vexatious litigants Restriction of vexatious legal proceedings

Clause 12,
Rec 67 and 68

Remarks:

Adaptation amendments retroactively made—see 25 of 1998 s. 2

(1) If, on an application made by the Secretary for Justice under this section, the Court of First Instance is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the Court of First Instance or in any inferior court, and whether against the same person or against different persons, the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, order that no legal proceedings shall without the leave of the Court of First Instance be instituted by him in any court and that any proceedings instituted by him in any court before the making of the order shall not be continued by him without such leave and such leave shall not be given unless the Court of First Instance is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings. (Amended L.N. 362 of 1997; 25 of 1998 s. 2)

(2) A copy of any order made under subsection (1) shall be published in the Gazette. (Added 52 of 1987 s. 21)

[cf. 1925 c. 49 s. 51 U.K.]

Remarks

(1) If, on an application made under this section by the Secretary for Justice or an affected person, the Court of First Instance is satisfied that any person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior court, and whether against the same person or against different persons, the Court of First Instance may, after hearing that person or giving him an opportunity of being heard, make an order specified in subsection (2).

(2) The order referred to in subsection (1) is an order that –

(a) no legal proceedings shall without the leave of the Court of First Instance be instituted by the person against whom the order is made; and

(b) any legal proceedings instituted by that person in any court before the making of the order shall not be continued by him without the leave of the Court of First Instance.

(3) An order made under subsection (1) –

(a) may be made on such terms and conditions as the Court of First Instance thinks just; and

(b) may provide that it is to cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.

(4) Leave for the institution or continuance of any legal proceedings by a person who is the subject of an order for the time being in force under subsection (1) shall not be given unless the Court of First Instance is satisfied that –

(a) the proceedings are not an abuse of the process of the court in question; and

(b) there are reasonable grounds for the proceedings.

(5) No appeal shall lie from a decision of the Court of First Instance refusing leave required under this section.

(6) A copy of an order made under subsection (1) shall be published in the Gazette.

(7) In subsection (1), “affected person” () means a person who –

(a) is or has been a party to any of the vexatious legal proceedings; or

(b) has directly suffered adverse consequences resulting from such proceedings.

34B. Composition of Court of Appeal in Its Civil Jurisdiction

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

- (1) This section relates to the Court of Appeal in the exercise of its civil jurisdiction; and in this section “Court” (法庭) means the Court of Appeal exercising such jurisdiction.
- (2) The Court shall be duly constituted for the purpose of exercising any of its jurisdiction if it consists of an uneven number of Justices of Appeal not less than 3.
- (3) Where-
- (a) part of any proceedings before the Court has been heard by an uneven number of Justices of Appeal greater than 3; and
- (b) one or more members of the Court is or are unable to continue, the Court shall remain duly constituted for the purpose of those proceedings so long as the number of members (whether even or uneven) is not reduced to less than 3.
- (4) The Court shall, if it consists of 2 Justices of Appeal, be duly constituted for the purpose of-
- (a) ~~hearing and determining~~ **hearing or determining** any appeal against an interlocutory order or interlocutory judgment;
- (aa) hearing or determining any application for leave to appeal (except an application for leave to appeal to the Court of Final Appeal);**
- (ab) hearing or determining any interlocutory application in relation to a cause or matter pending before it;**
- (b) ~~hearing and determining~~ **hearing or determining** any appeal against a decision of single Justice of Appeal acting by virtue of section 35(1);
- (c) ~~hearing and determining~~ **hearing or determining** any appeal where all the parties have before the hearing filed a consent to the appeal being heard and determined by 2 Justices of Appeal;
- (d) hearing the remainder of, and determining, any appeal where part of it has been heard by 3 or more Justices of Appeal of whom one or more are unable to continue and all the parties have consented to the remainder of the appeal being heard, and the appeal being determined, by 2 remaining Justices of Appeal; or
- (e) ~~hearing and determining~~ **hearing or determining** an appeal of any such description or in any such circumstances not covered by paragraphs (a) to (d) as may be prescribed for the purposes of this

Clause 26,
Rec 110, 111, 112,
113 and 115

Clause 28,
Rec 120

Clause 26,
Rec 110, 111, 112,
113 and 115

subsection by an order made by the Chief Justice.

- (5) Where-
- (a) an appeal has been heard by the Court consisting of an even number of Justices of Appeal; and
 - (b) the members of the Court are equally divided,
- the case shall, on the application of any party to the appeal, be re-argued before and determined by an uneven number of Justices of Appeal not less than 3, before any appeal to the Court of Final Appeal. (Amended 79 of 1995 s. 50)
- (6) In any cause or matter pending before the Court a single Justice of Appeal may at any time during any vacation make an interim order to prevent prejudice to the claims of any parties pending an appeal.
- (7) Section 53 shall apply in relation to causes and matters before the Court as it applies in relation to causes and matters before the Court of First Instance.

(Added 52 of 1987 s. 27. Amended 25 of 1998 s. 2)
[cf. 1981 c. 54 s. 54 U.K.]

41A. Extension of powers of Court of First Instance to order disclosure, etc. of documents before commencement of proceedings

Clause 13,
Rec 75 and 77

(1) On the application of a person who appears to the Court of First Instance to be likely to be a party to subsequent proceedings in that Court in which a claim (being a claim that is neither in respect of personal injuries nor in respect of a person's death) is likely to be made, the Court of First Instance may make an order specified in subsection (3) against a person who appears to the Court to be likely –

- (a) to be a party to the proceedings; and**
- (b) to have or to have had in his possession, custody or power any documents which are directly relevant to an issue arising or likely to arise out of that claim.**

(2) The application shall be made in accordance with rules of court, and the order shall only be made in such circumstances as may be specified in those rules.

(3) The order specified for the purposes of subsection (1) is an order which requires the person against whom the order is sought to –

- (a) disclose whether those documents are in his possession, custody or power; and**
- (b) produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order –**
 - (i) to the applicant's legal advisers;**

Remarks

- (ii) to the applicant's legal advisers and any other professional adviser of the applicant; or
- (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.

(4) For the purposes of subsection (1), a document is only to be regarded as directly relevant to an issue arising or likely to arise out of a claim in the anticipated proceedings if –

- (a) the document would be likely to be relied on by any party in the proceedings; or
- (b) the document supports or adversely affects any party's case.

42. Extension of powers of Court of First Instance to order disclosure of documents, inspection of property, etc.

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) On the application, in accordance with rules of court, of a party to any proceedings in which a claim ~~in respect of personal injuries to a person or in respect of a person's death~~ is made, the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to order a person who is not a party to the proceedings and who appears to the Court of First Instance to be likely to have or to have had in his possession, custody or power any documents which are relevant to an issue arising out of that claim-

Clause 19,
Rec 78

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce such of those documents as are in his possession, custody or power to the applicant or, on such conditions as may be specified in the order-
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and any medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to any medical or other professional adviser of the applicant. (Replaced 52 of 1987 s. 34) [cf. 1981 c. 54 s. 34 U.K.]

(2) On the application, in accordance with rules of court, of a party to any such proceedings as are referred to in subsection (1), the Court of First Instance shall, in such circumstances as may be specified in the rules, have power to make an order providing for any one or more of the following matters-

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, any party to the proceedings but which is the subject matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of any such property as is mentioned in paragraph (a) and the carrying out of any experiment on or with any such property.

Remarks

(3) Subsections (1) and (2) are without prejudice to the exercise by the Court of First Instance of any power to make orders which is exercisable apart from those provisions.

(4) In this section-
“property” (財產) includes any land, chattel or other corporeal property of any description.

(Amended 25 of 1998 s. 2)
[cf. 1970 c. 31 s. 32 U.K.]

43. Provisions supplementary to sections 41 and ~~42~~, 41A and 42

Clause 14,
Rec 75 and 77

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) The power to make rules of court under section 54 shall include power to make rules of court as to the circumstances in which an order under section 41 ~~or 42~~, 41A or 42 can be made; and any such rules may include such incidental, supplementary and consequential provisions as the Rules Committee may consider necessary or expedient.

(2) Without prejudice to the generality of subsection (1), rules of court shall be made for the purpose of ensuring that the costs of and incidental to proceedings for an order under ~~sections 41 and 42~~ section 41, 41A or 42 incurred by the person against whom the order is sought shall be awarded to that person unless the Court of First Instance otherwise directs. (Amended 25 of 1998 s. 2)

(3) In sections 41, ~~42~~ 41A and 45-
“personal injuries” (人身傷害) includes any disease and any impairment of a person's physical or mental condition.

[cf. 1970 c. 31 s. 33 U.K.]

45. Application to Government of sections 41 to 44

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2; 29 of 1998 s. 105

Remarks

(1) Section 44 shall bind the Government so far as it relates to property (within the meaning of that section) as to which it appears to the Court of First Instance that it may become the subject matters of subsequent proceedings involving a claim in respect of personal injuries to a person or in respect of a person's death.

(2) Sections 41, 41A, 42 and 43 shall bind the Government.

Clause 15,
Rec 75 and 77

(3) The Court of First Instance shall not make an order under section 41, 41A, 42 or 44 if it considers that compliance with the order, if made, would be likely to be injurious to the public interest.

(Amended 25 of 1998 s. 2; 29 of 1998 s. 105)
[cf. 1970 c. 31 s. 35 U.K.]

52A. Costs in Court of First Instance and Court of Appeal in its civil jurisdiction

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Subject to the provisions of rules of court, the costs of and incidental to all proceedings in the Court of Appeal in its civil jurisdiction and in the Court of First Instance, including the administration of estates and trusts, shall be in the discretion of the Court, and the Court shall have full power to determine by whom and to what extent the costs are to be paid. (Amended 25 of 1998 s. 2)

~~(2) Subject to specific provision made in this or any other Ordinance (other than subsidiary legislation) nothing in subsection (1) shall authorize an award of costs against a person who is not a party to the relevant proceedings.~~

Clause 2

(3) Nothing in subsection (1) shall alter the practice in any criminal cause or matter, or in bankruptcy.

(Added 52 of 1987 s. 39)
[cf. 1981 c. 54 s. 51 U.K.]

Remarks

(4) In any proceedings mentioned in subsection (1), the Court of First Instance may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.

Clause 21,
Rec 94 to 97

(5) In subsection (4), “wasted costs” () means any costs incurred by a party as a result of –

(a) any improper or unreasonable act or omission; or

(b) any undue delay or any other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(6) In this section, “legal representative” (), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party.

52B. Costs-only proceedings

Clause 3,
Rec 9

(1) This section applies where –

(a) the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and

(b) no proceedings relating to the dispute have been commenced.

(2) Either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute in accordance with rules of court.

(3) In any proceedings commenced under subsection (2), the Court of First Instance may make an order for the costs of and incidental to the dispute.

(4) In subsection (3), “Court of First Instance” () includes the Registrar and a Master.

Civil Justice (Miscellaneous Amendments) Bill

Law Amendment and Reform (Consolidation) Ordinance (Cap 23)

Remarks

Long Title

Clause 6,
Rec 25

To consolidate Ordinances relating to interests in land, assignments, contract, tort, breach of promise and foreign corporations-, **and to amend the law relating to the defence of tender before action.**

[1 July 1901]

(Originally 4 of 1901; 13 of 1864; 7 of 1886; 6 of 1901; 31 of 1911; 1 of 1920; 27 of 1935(Cap 23, 1964); 11 of 1936(Cap 28, 1970); 26 of 1948 (Cap 25, 1964); 36 of 1951(Cap 271, 1964))

30. Defence of tender before action

Clause 7,
Rec 25

(1) Notwithstanding any rule of law, in proceedings for a monetary claim, whether liquidated or unliquidated, it is a defence for the defendant to prove that before the claimant commenced the proceedings, the defendant had unconditionally offered to the claimant -

(a) the amount due where the claim is liquidated; or

(b) an amount sufficient to satisfy the claim where the claim is unliquidated.

(2) This section does not apply in relation to proceedings commenced before the commencement of this section.

Civil Justice (Miscellaneous Amendments) Bill

District Court ordinance (Cap. 336)

Remarks

47AA. Extension of powers of the Court to order disclosure, etc. of documents before commencement of proceedings

Clause 16,
Rec 75 and 77

(1) A person who appears to the Court to be likely to be a party to subsequent proceedings (other than proceedings for personal injuries or arising out of the death of a person) may apply to the Court for an order for discovery of documents against a person who is likely to be a party to the proceedings and who has in his possession, custody or power documents directly relevant to an issue arising out of the claim.

(2) The application is to be made in accordance with rules of court.

(3) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any directly relevant documents –

- (a) to disclose whether those documents are in his possession, custody or power; and**
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order –**
 - (i) to the applicant’s legal advisers;**
 - (ii) to the applicant’s legal advisers and any other professional adviser of the applicant; or**
 - (iii) if the applicant has no legal adviser, to any professional adviser of the applicant.**

(4) For the purposes of subsections (1) and (3), a document is only to be regarded as directly relevant to an issue arising out of a claim in the anticipated proceedings if –

- (a) the document would be likely to be relied on by any party in the proceedings; or**
- (b) the document supports or adversely affects any party’s case.**

47B. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.

Clause 20,
Rec 78

(1) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court in accordance with rules of court for an order for discovery of documents against a person who is not a party to the proceedings and who is likely to have or to have had in his possession, custody or power documents relevant to an issue arising out of the claim.

Remarks

(2) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any relevant documents-

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order-
 - (i) to the applicant's legal advisers;
 - (ii) to the applicant's legal advisers and a medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to a medical or other professional adviser of the applicant.

(3) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court for an order against a person who is not a party to the proceedings for, and the Court may order-

Clause 20,
Rec 78

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, a party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of the property mentioned in paragraph (a) and the carrying out of any experiment on or with the property.

(4) An application under this section is to be made in accordance with rules of court.

(5) The powers in this section are in addition to the power of the Court to make orders which is exercisable apart from this section.

(6) In this section, “property” (財產) includes any land, chattel or other physical property of any description.

(Added 28 of 2000 s. 24)

47C. Provisions supplementary to sections ~~47A and 47B~~ 47AA and 47B

Clause 17,
Rec 75 and 77

(1) The power to make rules of court includes power to make rules of court as to the circumstances in which an order under section 47A ~~or 47B~~, 47AA or 47B can be made.

(2) Rules may include the incidental, supplementary and consequential provisions which the Rules Committee may consider necessary or expedient.

(3) The Court shall award costs of and incidental to the proceedings to the person against whom an order is sought under ~~sections 47A and 47B~~ section 47A, 47AA or 47 unless the Court otherwise directs.

(Added 28 of 2000 s. 24)

Remarks**47E. Application to Government of sections 47A to 47D**

(1) Section 47D binds the Government so far as it relates to property (within the meaning of that section) which appears to the Court to be likely to become the subject-matter of subsequent proceedings for personal injuries or arising out of the death of a person.

(2) Sections 47A, **47AA**, 47B and 47C bind the Government.

Clause 18,
Rec 75 and 77

(3) The Court shall not make an order under section 47A, **47AA**, 47B or 47D if it considers that compliance with an order would be likely to be injurious to the public interest.

(Added 28 of 2000 s. 24)

53. Costs

(1) The costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, are in the discretion of the Court, and the Court has full power to determine by whom and to what extent the costs are to be paid.

~~(2) Subject to specific provision made in this or any other Ordinance (other than subsidiary legislation made under this or any other Ordinance), subsection (1) does not authorize an award of costs against a person who is not a party to the relevant proceedings.~~

Clause 4,
Rec 9

~~(Added 28 of 2000 s. 28)~~

(3) In any proceedings mentioned in subsection (1), the Court may by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs in accordance with rules of court.

Clause 22,
Rec 94 to 97

(4) In this section –
“legal representative” (), in relation to a party to any proceedings,
means a counsel or solicitor conducting litigation on behalf of the party.

“wasted costs” () means any costs incurred by a party as a result of –
(a) any improper or unreasonable act or omission; or
(b) any undue delay or any other misconduct or default,
on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

Remarks

Clause 5,
Rec 9

53A. Costs-only proceedings

- (1) **This section applies where –**
- (a) **the parties to a dispute have reached an agreement on all issues (including which party is to pay the costs of and incidental to the dispute) which is made or confirmed in writing, but they have failed to agree the amount of those costs; and**
 - (b) **no proceedings relating to the dispute have been commenced.**
- (2) **Either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute in accordance with rules of court.**
- (3) **In any proceedings commenced under subsection (2), the Court may make an order for the costs of and incidental to the dispute.**
- (4) **In subsection (3), “Court” () includes the Registrar and a master of the Court.”.**

63. Appeal to Court of Appeal

Appeals

- (1) Subject to subsection (3), an appeal can, with leave, be made to the Court of Appeal from every judgment, order or decision of a judge in any civil cause or matter.
- (2) An appeal is subject to rules of court.
- (3) A person against whom an order is made pursuant to section 20, 29, 48B or ~~52D~~, **52D or 52E** is entitled to appeal to the Court of Appeal without leave.

Clause 27,
Rec 110, 111, 112,
113 and 115

(Replaced 28 of 2000 s. 33)

Civil Justice (Miscellaneous Amendments) Bill

Small Claims Tribunal Ordinance (Cap 338)

Remarks

Schedule

JURISDICTION OF TRIBUNAL

1. Any monetary claim founded in contract, quasi-contract or tort where the amount claimed is not more than \$50000, whether on balance of account or otherwise: (Amended L.N. 81 of 1982; 14 of 1986 s. 11; 49 of 1988 s. 2; 28 of 1999 s. 17)

Provided that the tribunal shall not have jurisdiction to hear and determine-

- (a) any action in respect of-
 - (i) defamation;
 - (ii)-(iii) (Repealed 40 of 1986 s. 6)
- (b) any action or proceeding in respect of a maintenance agreement within the meaning of section 14 of the Matrimonial Proceedings and Property Ordinance (Cap 192);
- (c) any action by a money lender licensed under the Money Lenders Ordinance (Cap 163) for the recovery of any money lent, or the enforcement of any agreement or security made or taken in respect of money lent;
- (ca) any action that lies within the jurisdiction of the Minor Employment Claims Adjudication Board established by section 3 of the Minor Employment Claims Adjudication Board Ordinance (Cap 453); (Added 61 of 1994 s. 56)
- (d) any action that lies within the jurisdiction of the Labour Tribunal established under the Labour Tribunal Ordinance (Cap 25);
- (e) any action which is submitted to the jurisdiction of the Estate Agents Authority established by section 4 of the Estate Agents Ordinance (Cap 511) and in respect of which the Estate Agents Authority has not declined jurisdiction, under or pursuant to section 49 of that Ordinance; (Added 48 of 1997 s. 58)

Clause 23,
Rec 94 to 97¹

(f) any action or proceeding for an order for the costs of and incidental to a dispute in relation to which no proceedings have been commenced in the tribunal.

1A. Notwithstanding subparagraph (d) of the proviso to paragraph 1, the tribunal shall have jurisdiction to hear and determine a claim transferred to the tribunal under section 10(2) of the Labour Tribunal Ordinance (Cap 25). (Added 25 of 1999 s. 19)

¹ Clause 23 in Part 7 will be moved to Part 2.

Remarks

2. Any claim for the recovery of any penalty, expenses, contribution or other amount which is recoverable by virtue of any enactment and for the recovery of any amount which is declared by any enactment to be recoverable as a civil debt if-

- (a) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and
- (b) the amount claimed does not exceed \$50000. (Amended L.N. 81 of 1982; 14 of 1986 s. 11; 49 of 1988 s. 2; 28 of 1999 s. 17)

For the purposes of this paragraph, “penalty” (罰金) shall not include a fine imposed on the conviction of any person for an offence.

Civil Justice (Miscellaneous Amendments) Bill

Arbitration Ordinance (Cap 341)

Remarks

2GC. Special powers of Court in relation to arbitration proceedings

(1) ~~The Court or a judge of the Court may, in relation to a particular arbitration proceeding~~ **Subject to subsection (1A), the Court or a judge of the Court may, in relation to particular arbitration proceedings which have been or are to be commenced in Hong Kong or in a place outside Hong Kong,** do any of the following-

Clause 10,
Rec 45 to 48

- (a) make an order directing an amount in dispute to be secured;
- (b) in relation to relevant property-
 - (i) make an order directing the inspection, photographing, preservation, custody, detention or sale of the property by the tribunal, a party to the proceedings or an expert; or
 - (ii) make an order directing samples to be taken from, observations to be made of, or experiments to be conducted on the property;
- (c) grant an interim injunction or direct any other interim measure to be taken.

(1A) In relation to arbitration proceedings which have been or are to be commenced in a place outside Hong Kong, the Court or a judge of the Court may make an order under subsection (1) or grant an interim injunction or direct any other interim measure to be taken under that subsection, only if the arbitration proceedings are capable of giving rise to an arbitral award (whether interim or final) which is capable of being enforced in Hong Kong under this Ordinance or any other Ordinance.

Clause 10,
Rec 45 to 48

(1B) Subsection (1A) applies notwithstanding that –

- (a) the subject matter of the arbitration proceedings would not, apart from that subsection, give rise to a cause of action over which the Court or a judge of the Court would have jurisdiction; or**
- (b) the order sought or the interim injunction or interim measure is not ancillary or incidental to any arbitration proceeding in Hong Kong.**

(1C) In exercising the power under subsection (1) in relation to arbitration proceedings in a place outside Hong Kong, the Court or a judge of the Court shall have regard to the fact that the power is –

- (a) ancillary to the arbitration proceedings outside Hong Kong; and**
- (b) for the purpose of facilitating the process of a court or arbitral tribunal outside Hong Kong which has primary jurisdiction over the arbitration proceedings.**

(1D) The Court or a judge of the Court has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an interim relief granted in relation to arbitration proceedings in a place outside

Hong Kong as if the interim relief were granted in relation to arbitration proceedings in Hong Kong.

(1E) In subsection (1D), “interim relief”() means –

- (a) an order made under subsection (1);**
- (b) an interim injunction granted under that subsection; or**
- (c) any other interim measure directed to be taken under that subsection.**

(2) Property is relevant property for the purposes of subsection (1)(b) if-

- (a) the property is owned by or is in the possession of a party to the arbitration proceedings concerned; and
- (b) the property is subject to the proceedings, or any question relating to the property has arisen in those proceedings.

(3) The Court or a judge of the Court may order a person to attend proceedings before an arbitral tribunal to give evidence or to produce documents or other material evidence.

(4) The Court or a judge of the Court may also order a writ of habeas corpus ad testificandum to be issued requiring a prisoner to be taken for examination before an arbitral tribunal.

(5) The powers conferred by this section can be exercised irrespective of whether or not similar powers may be exercised under section 2GB in relation to the same dispute.

(6) The Court or a judge of the Court may decline to make an order under this section in relation to a matter referred to in subsection (1) on the ground that-

- (a) the matter is currently the subject of arbitration proceedings; and
- (b) the Court or the judge considers it more appropriate for the matter to be dealt with by the relevant arbitral tribunal.

(Added 75 of 1996 s. 7)

49. Rules of court

Clause 11,
Rec 45 to 48

(1) The power to make rules of court under section 54 of the High Court Ordinance (Cap. 4) includes power to make rules of court for –

- (a) the making of an application for an order under section 2GC(1) or for an interim injunction or any other interim measure under that section; and**
- (b) the service out of the jurisdiction of an application or order for such order, interim injunction or other interim measure.**

(2) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the authority making the rules may consider necessary or expedient.

Civil Justice (Miscellaneous Amendments) Bill

Explanatory Memorandum

The purpose of this Bill is to amend certain Ordinances to implement some of the recommendations made in the Final Report of the Chief Justice's Working Party on Civil Justice Reform ("the Report"). The recommendations implemented by the Bill are set out in the attached Table.

Part 2 of the Bill – Pre-action Protocols

2. Clauses 2 and 3 relate to Recommendation 9 in section 5 of the Report. Clause 2 amends section 52A of the High Court Ordinance (Cap. 4) and clause 3 adds a new section 52B to that Ordinance to make it clear that the Court of First Instance has jurisdiction to make a costs order in costs-only proceedings. The new section 52B also sets out the circumstances in which a party may bring such proceedings. Clauses 4 and 5 make similar amendments to the District Court Ordinance (Cap. 336).

Part 3 - Pleadings

3. Clause 7 implements Recommendation 25 in section 9 of the Report. At present, the case law has established that the common law defence of tender before action only applies to a liquidated claim but not to a claim for unliquidated damages. Clause 7 adds a new section to the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) to extend the defence of tender before action to a claim for unliquidated damages.

4. Clause 6 consequentially amends the long title of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) upon the addition of the new section 30 contained in clause 7.

Part 4 – Interim Remedies and Mareva Injunctions in aid of Foreign Proceedings

5. Clause 8 amends section 21L(3) of the High Court Ordinance (Cap. 4) so that the power of the Court of First Instance to grant a Mareva injunction under the new section 21M is also exercisable irrespective of whether the party against whom the Mareva injunction is made is domiciled, resident or present in Hong Kong.

6. Clause 9 adds 2 new sections to the High Court Ordinance (Cap. 4) to implement Recommendations 45 to 48 in section 12 of the Report. The new section 21M empowers the Court of First Instance to grant interim relief or appoint a receiver in aid of foreign proceedings which are capable of giving rise to a judgment that is capable of being enforced in Hong Kong. Under the new section, the interim relief or the appointment of a receiver may be sought as an independent, free-standing form of relief without being ancillary or incidental to substantive proceedings in Hong Kong.

7. Recommendations 45 to 48 in section 12 of the Report relate to foreign proceedings and foreign arbitrations. Amendments to the Arbitration Ordinance (Cap. 341) are thus also necessary. Clause 10 amends section 2GC of that Ordinance to clarify that the power of the Court of First Instance to grant interim relief under that section applies in relation to arbitration proceedings in or outside Hong Kong. But the power may only be exercised in relation to arbitration proceedings outside Hong Kong if those proceedings are capable of being enforced in Hong Kong (new section 2GC(1A)). Clause 11 adds a new section to the Arbitration Ordinance (Cap. 341) to empower the Rules Committee to make rules of court relating to the making of applications for interim relief under that section 2GC and the service out of the jurisdiction of such applications and orders for interim relief.

Part 5 – Vexatious Litigants

8. Clause 12 implements Recommendations 67 and 68 in section 14 of the Report. The existing section 27 of the High Court Ordinance (Cap. 4) is replaced by a new section 27 which introduces the following changes –

- (a) it allows a vexatious litigant order to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been a party to the vexatious proceedings instituted by the respondent or who has directly suffered adverse consequences resulting from such proceedings;
- (b) it raises the threshold for granting leave to a vexatious litigant to issue fresh proceedings, requiring the Court of First Instance to be satisfied that the proceedings are not an abuse of the process and that there are reasonable, not just prima facie, grounds for the proceedings;
- (c) it makes it clear that a vexatious litigant order may be made for a specific period or remain in force indefinitely; and
- (d) it also makes it clear that there is no appeal against a refusal of leave.

Part 6 - Discovery

9. Clause 13 implements Recommendations 75 and 77 in section 16 of the Report. Section 41 of the High Court Ordinance (Cap. 4) presently provides for pre-action disclosure in cases where the plaintiff is suing for personal injury or in respect of someone's death. Clause 13 adds a new section 41A to the Ordinance to widen the jurisdiction of the Court of First Instance to order disclosure before commencement of proceedings to cover cases other than those in relation to personal injury and death claims. It should be noted that an order granted under the new section 41A only relates to disclosure and inspection of documents which are directly relevant to an issue in the anticipated proceedings, i.e. documents which would likely be relied on by the parties themselves and documents which affect adversely or support any party's case in the anticipated proceedings.

10. Clauses 14 and 15 consequentially amend sections 43 and 45 of the Ordinance upon the addition of the new section 41A.

11. Clauses 16, 17 and 18 make similar amendments to the District Court Ordinance (Cap. 336).

12. Clause 19 implements Recommendation 78 in section 16 of the Report. It amends section 42(1) of the High Court Ordinance (Cap. 4) so that the jurisdiction of the Court of First Instance to order post-commencement, pre-trial disclosure applies to all types of cases (and not merely to personal injury and death claims). Clause 20 makes similar amendments to the District Court Ordinance (Cap. 336).

Part 7 – Wasted Costs

13. Clause 21 relates to Recommendations 94 to 97 in section 18 of the Report. As these Recommendations concern wasted costs orders against counsel and solicitors, clause 21 empowers the Court of First Instance to make such an order against them. Clause 22 makes similar amendments to the District Court Ordinance (Cap. 336).

14. Clause 23 amends the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) to make it clear that the Small Claims Tribunal does not have jurisdiction to hear and determine costs-only proceedings.

Part 8 – Leave to Appeal

15. Clause 24 amends section 14 of the High Court Ordinance (Cap. 4) and clause 25 adds a new section 14AA to that Ordinance to implement Recommendations 110,

111, 112, 113 and 115 in section 22 of the Report. Under section 14(1) of the Ordinance, an appeal lies as of right to the Court of Appeal from every judgment or order of the Court of First Instance in any civil matter. The new section 14AA introduces a requirement that an interlocutory appeal to the Court of Appeal be brought only with leave of the Court of First Instance or the Court of Appeal. Under the new section, rules of court to be made under section 54 of the Ordinance may however specify judgments or orders of the Court of First Instance to which the requirement does not apply.

16. Clause 26 relates to Recommendation 112 in section 22 of the Report. It adds a new paragraph (aa) to section 34B(4) of the Ordinance to provide that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application for leave to appeal.

17. Clause 27 amends section 63(3) of the District Court Ordinance (Cap. 336) so that a person against whom an order prohibiting him from leaving Hong Kong is also entitled to appeal to the Court of Appeal without leave.

Part 9 - Appeals

18. Clause 28 relates to Recommendation 120 in section 22 of the Report. It adds a new paragraph (ab) to section 34B(4) of the High Court Ordinance (Cap. 4) to clarify that the Court of Appeal comprising 2 Justices of Appeal has jurisdiction to hear or determine an application that is interlocutory to an appeal pending before it.

TABLE

Recommendation 9

A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.

Recommendation 25

The defence of tender before action should be extended to apply to claims for unliquidated damages.

Recommendation 45

Proposal 17 (for introducing Mareva injunctions and incidental relief in aid of foreign proceedings) should be adopted as modified and supplemented by Recommendations 46 to 51.

Recommendation 46

The jurisdiction to grant a Mareva injunction in aid of foreign proceedings or

arbitrations should be confined to proceedings and arbitrations capable of leading, in the ordinary course, to a judgment or arbitral award which can be enforced in Hong Kong.

Recommendation 47

Section 21L of the HCO should be amended to make it clear that a Mareva injunction can be sought in aid of foreign proceedings and arbitrations as an independent, free-standing form of relief, without being ancillary or incidental to substantive proceedings commenced in Hong Kong, followed by relevant amendments to O 29.

Recommendation 48

Section 21L or some other appropriate provision of the HCO should be amended to give the Rules Committee clear authority to amend O 11 with a view to making applications for free-standing Mareva injunctions an eligible category for the grant of leave to effect service of process abroad, followed by relevant amendments to O 11.

Recommendation 67

Section 27 of the HCO should be amended to introduce enhancements equivalent to those introduced by section 42 of the Supreme Court Act 1981 in England and Wales.

Recommendation 68

The HCO should furthermore make provision for vexatious litigant orders to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been party to vexatious proceedings presently instituted by or with the participation of the respondent or who has directly suffered adverse consequences resulting from such proceedings or from vexatious applications made by the respondent in such proceedings.

Recommendation 75

The HCO should be amended to broaden the jurisdiction of the court under section 41 to order disclosure before commencement of proceedings to encompass all types of cases (and not merely cases involving personal injury and death claims).

Recommendation 77

Orders for pre-action disclosure should relate to disclosure and inspection of specific documents or classes of documents which are "directly relevant" to the issues in the anticipated proceedings, being documents which would be likely to be relied on by the parties themselves or documents directly affecting adversely or directly supporting any party's case in the anticipated proceedings, the procedure for such applications being that prescribed by O 24 r 7A, subject to any necessary modifications.

Recommendation 78

Section 42(1) of the HCO should be amended so that the court's jurisdiction to order post-commencement, pre-trial disclosure from persons who are not parties to the

proceedings applies to all types of cases (and not merely to personal injury and death claims).

Recommendation 94

Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.

Recommendation 95

Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.

Recommendation 96

Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.

Recommendation 97

Barristers should be made subject to liability for wasted costs under O 62 r 8.

Recommendation 110

Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.

Recommendation 111

Where leave to appeal is required, the court should have power to limit the grant of such leave to particular issues and to grant leave subject to conditions designed to ensure the fair and efficient disposal of the appeal.

Recommendation 112

A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered

necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.

Recommendation 113

A refusal of leave to appeal by the Court of Appeal in relation to such purely interlocutory questions should be final. Where, however, the Court of Appeal hears the appeal, it should be open to the parties to apply for leave to appeal to the Court of Final Appeal in accordance with section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance.

Recommendation 115

Leave to appeal from the CFI judge to the Court of Appeal should only be granted where the court considers that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.

Recommendation 120

Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges (the last option being dictated where the two judges are unable to agree).

Civil Justice Reform
Recommendations Requiring Amendments to Primary Legislation

The Steering Committee has identified that 21 recommendations in the Final Report on CJR require amendments to primary legislation. These 21 recommendations, the statutory provisions affected and the relevant clauses in the Draft Bill at **Annex A** are tabulated below.

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
Section 5: Pre-action protocols Recommendation 9			
1.	<p>Recommendation 9 A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.</p>	<p><u>High Court Ordinance</u> (“HCO”) (Cap. 4) :</p> <ul style="list-style-type: none"> • Sections 52A and 52B <p><u>District Court Ordinance</u> (“DCO”) (Cap. 336) :</p> <ul style="list-style-type: none"> • Section 53 <p><u>Small Claims Tribunal Ordinance</u> (Cap. 338) :</p> <ul style="list-style-type: none"> • Schedule <p><u>Lands Tribunal Ordinance</u> (“LTO”) (Cap. 17) :</p> <ul style="list-style-type: none"> • Section 8 <p><u>N.B.</u> Rules of the High Court (“RHC”) (Cap. 4A) also affected. See Item No. 8 of Annex H.</p>	<p>Clauses 2-3</p> <p>Clauses 4-5</p> <p>Clause 23</p> <p>Amendments to be made to make it clear that the Lands Tribunal shall not have jurisdiction to hear costs-only proceedings.</p>

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
Section 9: Pleadings Recommendation 25			
2.	<p>Recommendation 25 The defence of tender before action should be extended to apply to claims for unliquidated damages.</p>	<p><u>Law Amendment and Reform (Consolidation) Ordinance (“LARCO”)</u> (Cap. 23) :</p> <ul style="list-style-type: none"> • Long title • New section 30 added 	Clauses 6-7
Section 12: Interim Remedies and Mareva Injunctions in Aid of Foreign Proceedings Recommendations 45 - 48			
3.	<p>Recommendation 45 Proposal 17 (for introducing Mareva injunctions and incidental relief in aid of foreign proceedings) should be adopted as modified and supplemented by Recommendations 46 to 51.</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Section 21L • New sections 21M and 21N added. <p><u>Arbitration Ordinance (“AO”)</u> (Cap. 341) :</p> <ul style="list-style-type: none"> • section 2GC • New section 49 added 	Clauses 8-9
4.	<p>Recommendation 46 The jurisdiction to grant a Mareva injunction in aid of foreign proceedings or arbitrations should be confined to proceedings and arbitrations capable of leading, in the ordinary course, to a judgment or arbitral award which can be enforced in Hong Kong.</p>	<p><u>N.B.</u> RHC Orders 29, 30 and 73 also affected. See Item Nos. 39-41 of Annex H.</p>	Clauses 10-11
5.	<p>Recommendation 47 Section 21L of the HCO should be amended to make it clear that a Mareva injunction can be sought in aid of foreign proceedings and arbitrations as an independent, free-standing form of relief, without being ancillary or incidental to substantive proceedings commenced in Hong Kong, followed by relevant amendments to O 29.</p>		

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
6.	<p>Recommendation 48 Section 21L or some other appropriate provision of the HCO should be amended to give the Rules Committee clear authority to amend O 11 with a view to making applications for free-standing Mareva injunctions an eligible category for the grant of leave to effect service of process abroad, followed by relevant amendments to O 11.</p>		
<p>Section 14: Docket System, Specialist Lists and Vexatious Litigants Recommendations 67 - 68</p>			
7.	<p>Recommendation 67 Section 27 of the HCO should be amended to introduce enhancements equivalent to those introduced by section 42 of the Supreme Court Act 1981 in England and Wales.</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Section 27 <p><u>N.B.</u> RHC Orders 32 and 32A also affected. See Item No. 52 of Annex H.</p>	Clause 12
8.	<p>Recommendation 68 The HCO should furthermore make provision for vexatious litigant orders to be made not only on the application of the Secretary for Justice but also on the application of any person who is or has been party to vexatious proceedings presently instituted by or with the participation of the respondent or who has directly suffered adverse consequences resulting from such proceedings or from vexatious applications made by the respondent in such proceedings.</p>		

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
Section 16: Discovery Recommendations 75, 77 and 78			
9.	<p>Recommendation 75 The HCO should be amended to broaden the jurisdiction of the court under section 41 to order disclosure before commencement of proceedings to encompass all types of cases (and not merely cases involving personal injury and death claims).</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Sections 42, 43 and 45 • New section 41A added <p><u>DCO</u></p> <ul style="list-style-type: none"> • Sections 47B, 47C and 47E • New Section 47AA added 	<p>Clauses 13-15, 19</p> <p>Clauses 16-18, 20</p>
10.	<p>Recommendation 77 Orders for pre-action disclosure should relate to disclosure and inspection of specific documents or classes of documents which are “directly relevant” to the issues in the anticipated proceedings, being documents which would be likely to be relied on by the parties themselves or documents directly affecting adversely or directly supporting any party’s case in the anticipated proceedings, the procedure for such applications being that prescribed by O 24 r 7A, subject to any necessary modifications.</p>	<p><u>N.B.</u> RHC Orders 24 and 62 also affected. See Item nos. 53-55 of Annex H.</p>	
11.	<p>Recommendation 78 Section 42(1) of the HCO should be amended so that the court’s jurisdiction to order pre-trial disclosure from persons who are not parties to the proceedings applies to all types of cases (and not merely to personal injury and death claims).</p>		

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
Section 18: Wasted Costs Recommendations 94 - 97			
12.	<p>Recommendation 94 Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court’s discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Section 52A <p><u>DCO</u> :</p> <ul style="list-style-type: none"> • Section 53 <p><u>LTO</u> :</p> <ul style="list-style-type: none"> • Section 12 	<p>Clause 21</p> <p>Clause 22</p>
13.	<p>Recommendation 95 Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.</p>		<p>Amendments along similar lines as those to HCO to be incorporated</p>
14.	<p>Recommendation 96 Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side’s lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.</p>	<p><u>Employees’ Compensation Ordinance (“ECO”)</u> (Cap. 282):</p> <ul style="list-style-type: none"> • Section 21 <p><u>N.B.</u> RHC Order 62 also affected. See Item No. 62-65 of Annex H.</p>	<p>Amendments along similar lines as those to HCO to be incorporated</p>
15.	<p>Recommendation 97 Barristers should be made subject to liability for wasted costs under O 62 r 8.</p>		

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
Section 22: Leave to Appeal Recommendations 110 – 113 and 115			
16.	<p>Recommendation 110 Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Section 14 • Section 34B • New section 14AA added <p><u>DCO</u> :</p> <ul style="list-style-type: none"> • Section 63 <p><u>LTO</u> :</p> <ul style="list-style-type: none"> • Section 11 <p><u>ECO</u></p> <ul style="list-style-type: none"> • Section 23 	<p>Clauses 24-26</p> <p>Clause 27</p> <p>Amendments along similar lines as those to HCO to be incorporated</p> <p>Amendments along similar lines as those to HCO to be incorporated</p>
17.	<p>Recommendation 111 Where leave to appeal is required, the court should have power to limit the grant of such leave to particular issues and to grant leave subject to conditions designed to ensure the fair and efficient disposal of the appeal.</p>	<p><u>N.B.</u> RHC Order 59 also affected. See Item Nos. 72 and 73 of Annex H.</p>	
18.	<p>Recommendation 112 A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.</p>	<p><u>N.B.</u> RHC Order 59 also affected. See Item Nos. 72 and 73 of Annex H.</p>	

Item No.	Recommendations	Statutory Provisions Affected	Relevant Clauses
19.	<p>Recommendation 113 A refusal of leave to appeal by the Court of Appeal in relation to such purely interlocutory questions should be final. Where, however, the Court of Appeal hears the appeal, it should be open to the parties to apply for leave to appeal to the Court of Final Appeal in accordance with section 22(1)(b) of the Hong Kong Court of Final Appeal Ordinance.</p>		
20.	<p>Recommendation 115 Leave to appeal from the CFI judge to the Court of Appeal should only be granted where the court considers that the appeal would have a reasonable prospect of success or that there is some other compelling reason why the appeal should be heard.</p>		
Section 23: Appeals Recommendation 120			
21.	<p>Recommendation 120 Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges.</p>	<p><u>HCO</u> :</p> <ul style="list-style-type: none"> • Section 34B <p><u>N.B.</u> RHC Order 59 also affected. See Item No. 74 of Annex H</p>	Clause 28

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PART 2

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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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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

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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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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 1 – CITATION, APPLICATION, INTERPRETATION AND FORMS

Remarks

PRELIMINARY

1. Citation (O. 1, r. 1)

These rules may be cited as the Rules of the High Court.

(25 of 1998 s. 2)

2. Application (O. 1, r. 2)

(1) Subject to the following provisions of this rule, these rules shall have effect in relation to all proceedings in the High Court.

(2) These rules shall not have effect in relation to proceedings of the kinds specified in the first column of the following Table (being proceedings in respect of which rules may be made under the enactments specified in the second column of that Table)-

TABLE	
Proceedings	Enactments
1. Bankruptcy proceedings.	Bankruptcy Ordinance (Cap 6), section 113.
2. Proceeding relating to the winding-up of companies.	Companies Ordinance (Cap 32), section 296.
3. Non-contentious or common form probate proceedings.	Probate and Administration Ordinance (Cap 10), section 72.
4. Proceedings in the Court when acting as a Prize Court.	Prize Courts Act 1894, section 3.
5. (Repealed 81 of 1997 s. 59)	
6. Matrimonial proceedings.	Matrimonial Causes Ordinance (Cap 179), sections 10 and 54.
(HK)7. Adoption proceedings.	Adoption Ordinance (Cap 290), section 12.
(HK)8. Proceedings in respect of domestic violence.	Domestic Violence Ordinance (Cap 189), section 8.

(3) These rules shall not have effect in relation to any criminal proceedings other than any criminal proceedings to which Order 53, Order 59, Order 62, Order

Remarks

70, Order 115, Order 116, Order 117, Order 118 or Order 119 applies. (L.N. 282 of 1989; L.N. 403 of 1992; L.N. 156 of 1995; L.N. 242 of 1996; L.N. 222 of 1997)

(4) In the case of the proceedings mentioned in paragraphs (2) and (3), nothing in those paragraphs shall be taken as affecting any provision of any rules (whether made under the Ordinance or any other Ordinance) by virtue of which the Rules of the High Court or any provisions thereof are applied in relation to any of those proceedings.

(25 of 1998 s. 2)

(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 –

Rule 9,
Rec 10-16

TABLE

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

3. Application of Interpretation and General Clauses Ordinance
(O. 1, r. 3)

The Interpretation and General Clauses Ordinance (Cap 1) shall apply for the interpretation of these rules as it applies to subsidiary legislation made after the commencement of that Ordinance.

4. Definitions (O. 1, r. 4)

(1) In these rules, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, namely-

“Amendment Rules 2007” () means the Rules of the High Court (Amendment) Rules 2007 (L.N. of 2007);

Rule 10
Rec 10-16

Remarks

“an action for personal injuries” (就人身傷害而提出的訴訟) means an action in which there is a claim for damages in respect of personal injuries to the plaintiff or any other person or in respect of a person's death, and "personal injuries" (人身傷害) includes any disease and any impairment of a person's physical or mental condition;

(HK) “bailiff” (執達主任) means a bailiff of the Court and any person lawfully authorized to execute the process of the Court;

“cause book” (訟案登記冊) means the book or other record kept in the Registry in which the letter and number of, and other details relating to, a cause or matter are entered; (L.N. 275 of 1998)

(HK) “Full Bench” (合議庭) means a Bench consisting of 2 or more Judges of the Court of First Instance; (25 of 1998 s. 2)

“judgment rate” (判定利率) means the rate of interest determined by the Chief Justice under section 49(1)(b) of the Ordinance; (18 of 2003 s. 12)

“master” (聆案官) means a master of the High Court and includes the Registrar of the High Court and a Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court; (L.N. 99 of 1993; 25 of 1998 s. 2; 10 of 2005 s. 165)

(HK) “money lender's action” (放債人訴訟) has the meaning assigned to it by Order 83A;

“notice of intention to defend” (擬抗辯通知書) means an acknowledgment of service containing a statement to the effect that the person by whom or on whose behalf it is signed intends to contest the proceedings to which the acknowledgment relates;

“officer” (人員) means an officer of the High Court; (25 of 1998 s. 2)

“originating summons” (原訴傳票) means every summons other than a summons in a pending cause or matter;

“pleading” (狀書) does not include a petition, summons or preliminary act;

“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;”

Rule 2,
Rec 7-9, 84

Remarks

“probate action” (遺囑認證訴訟) has the meaning assigned to it by Order 76;

“receiver” (接管人) includes a manager or consignee;

(HK) “Registrar” (司法常務官) means the Registrar of the High Court; and includes a Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the High Court; (25 of 1998 s. 2; 10 of 2005 s. 165)

(HK) “Registry” (登記處) means the Registry of the High Court; (25 of 1998 s. 2)

(HK) “the Ordinance” (本條例) means the High Court Ordinance (Cap 4); (25 of 1998 s. 2)

“vacation” (休庭期) means the interval between sittings of the High Court as prescribed by Order 64; (25 of 1998 s. 2)

“writ” (令狀) means a writ of summons;

(HK) “written law” (成文法) includes “imperial enactment” and “Ordinance” and “enactment” as defined in section 3 of the Interpretation and General Clauses Ordinance (Cap 1).

(2) In these rules, unless the context otherwise requires, “the Court” (法院、法庭) means the Court of First Instance or any one or more of the judges thereof whether sitting in court or in chambers or the Registrar or any master but the foregoing provision shall not be taken as affecting any provision of these rules and, in particular, Order 32, rule 11 by virtue of which the authority and jurisdiction of the Registrar is defined and regulated. (25 of 1998 s. 2)

(3) In these rules unless the context otherwise requires, any reference to acknowledging service of a document or giving notice of intention to defend any proceedings is a reference to lodging in the Registry an acknowledgment of service of that document or, as the case may be, a notice of intention to defend those proceedings.

5. Construction of references to Orders, rules, etc. (O. 1, r. 5)

(1) Unless the context otherwise requires, any reference in these rules to a specified Order, rule or Appendix is a reference to that Order or rule of, or that Appendix to, these rules and any reference to a specified rule, paragraph or sub-paragraph is a reference to that rule of the Order, that paragraph of the rule, or that sub-paragraph of the paragraph, in which the reference occurs.

(2) Any reference in these rules to anything done under a rule of these rules includes a reference to the same thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement

Remarks

of that rule.

(3) Except where the context otherwise requires, any reference in these rules to any written law shall be construed as a reference to that written law as amended, extended or applied by or under any other written law.

6. Construction of references to action, etc. for possession of land

(O. 1, r. 6)

Except where the context otherwise requires, references in these rules to an action or claim for the possession of land shall be construed as including references to proceedings against the Government for an order declaring that the plaintiff is entitled as against the Government to the land or to the possession thereof.

(29 of 1998 s. 105)

(HK)7A. Construction of references to Registrar (O. 1, r. 7A)

(HK) Wherever the word "Registrar" appears in these rules and forms there may be substituted the word "Master" when and where appropriate.

9. Forms (O. 1, r. 9)

(1) The forms in the Appendices shall be used where applicable with such variations as the circumstances of the particular case require.

10. Rules not to exclude conduct of business by post (O. 1, r. 10)

Nothing in these rules shall prejudice any power to regulate the practice of the Court by giving directions enabling any business or class of business to be conducted by post.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 1A - OBJECTIVE

Remarks

Rule 1
Rec 2-4, 81-82

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.

Remarks

- (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.**

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 1B - CASE MANAGEMENT POWERS

Remarks

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

Rule 1
Rec 2-4, 81-82

(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.

Remarks2. 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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 2 - EFFECT OF NON-COMPLIANCE

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Non-compliance with Rules (O. 2, r. 1)

(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of any thing done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

(2) Subject to paragraph (3), the Court may, on the ground that there has been such failure as is mentioned in paragraph (1), and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein or exercise its powers under these rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.

~~(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 were required by any of these rules to be begun by an originating process other than the one employed.~~

Rule 11
Rec 10-16

(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.

2. Application to set aside for irregularity (O. 2, r. 2)

(1) An application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order therein shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Remarks

(2) An application under this rule may be made by summons ~~or motion~~ and the grounds of objection must be stated in the summons ~~or notice of motion~~.
(Enacted 1988)

Rule 12
Rec 10 to 16

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

Rule 3
Rec 7-9, 84

(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)

Rule 3
Rec 7-9, 84

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)

Rule 3
Rec 7-9, 84

(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**

Remarks

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.

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

Rule 13
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 5 - MODE OF BEGINNING CIVIL PROCEEDINGS IN THE COURT OF FIRST INSTANCE

Remarks

1. Mode of beginning civil proceedings (O. 5, r. 1)

Rule 14
Rec 10-16

Subject to the provisions of any written law and of these rules, civil proceedings in the Court of First Instance may be begun by writ, ~~originating summons, originating motion or petition~~ **or originating summons.**

(25 of 1998 s. 2)

2. ~~Proceedings which must be begun by writ~~ (O. 5, r. 2)

Rule 15
Rec 10-16

Subject to any provision of any written law, or of these rules, by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ, that is to say, proceedings—

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law, or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

3. ~~Proceedings which must be begun by originating summons~~ (O. 5, r. 3)

Rule 15
Rec 10-16

Proceedings by which an application is to be made to the Court of First Instance or a judge thereof under any written law must be begun by originating summons except where by these rules or by or under any written law the application in question is expressly required or authorized to be made by some other means. This rule does not apply to an application made in pending proceedings.

(25 of 1998 s. 2)

Remarks**4. Proceedings which may be begun by writ or originating summons**

(O. 5, r. 4)

~~(1) Except in the case of proceedings which by these rules or by or under any written law are required to be begun by writ or originating summons or are required or authorized to be begun by originating motion or petition, proceedings may be begun either by writ or by originating summons as the plaintiff considers appropriate.~~

Rule 16
Rec 10-16

(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.

(2) Proceedings-

- (a) in which the sole or principal question at issue is, or is likely to be, one of the construction of any written law or of any instrument made under any written law or of any deed, will, contract or other document, or some other question of law, or
- (b) in which there is unlikely to be any substantial dispute of fact, are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

5. Proceedings to be begun by motion or petition (O. 5, r. 5)

Proceedings may be begun by originating motion or petition if, but only if, ~~by these rules or by or under any written law the proceedings in question are required or~~ authorized to be so begun.

Rule 17
Rec 10-16

6. Right to sue in person (O. 5, r. 6)

(1) Subject to paragraph (2) and to Order 80, rule 2, any person (whether or not he sues as a trustee or personal representative, or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person. (25 of 1998 s. 2)

(2) A body corporate may not begin or carry on any such proceedings in the Court otherwise than by a solicitor except-

- (a) as expressly provided by or under any enactment; or
 - (b) where leave is given under paragraph (3) for it to be represented by one of its directors.
- (3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating

Remarks

and verifying the reasons why leave should be given for the body corporate to be represented by the director.

(L.N. 99 of 1993; L.N. 108 of 2002)

- (b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(4) No appeal shall lie from an order of the Registrar under paragraph (3) giving or refusing leave.

(5) Leave given by a Registrar under paragraph (3) may be revoked by the Court at any time.

(6) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(Enacted 1988)

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

Rule 18
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 7 - ORIGINATING SUMMONS: GENERAL PROVISIONS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Application (O. 7, r. 1)

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any written law.

2. Form of summons, etc. (O. 7, r. 2)

(1) Every originating summons (other than an ex parte summons) shall be in Form No. 8 or, if so authorized or required, in Form No. 10 in Appendix A, and every ex parte originating summons shall be in Form No. 11 in Appendix A.

(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.

~~(1) Every originating summons (other than an ex parte summons) shall be in Form No. 8 or, if so authorized or required, in Form No. 10 in Appendix A, and every ex parte originating summons shall be in Form No. 11 in Appendix A.~~

(2) The party taking out an originating summons (other than an ex parte summons) shall be described as a plaintiff, and the other parties shall be described as defendants.

3. Contents of summons (O. 7, r. 3)

(1) Every originating summons must include a statement of the questions on which the plaintiff seeks the determination or direction of the Court of First

Rule 19
Rec 10-16

Remarks

Instance or, as the case may be, a concise statement of the relief or remedy claimed in the proceedings begun by the originating summons with sufficient particulars to identify the cause or causes of action in respect of which the plaintiff claims that relief or remedy. (25 of 1998 s. 2)

(2) Order 6, rules 3 and 5, shall apply in relation to an originating summons as they apply in relation to a writ.

4. Concurrent summons (O. 7, r. 4)

Order 6, rule 6, shall apply in relation to an originating summons as it applies in relation to a writ.

5. Issue of summons (O. 7, r. 5)

(1) An originating summons shall be issued out of the Registry.

(3) Order 6, rule 7 (except paragraph (2)), shall apply in relation to an originating summons as it applies in relation to a writ.

6. Duration and renewal of summons (O. 7, r. 6)

Order 6, rule 8, shall apply in relation to an originating summons as it applies in relation to a writ.

7. Ex parte originating summonses (O. 7, r. 7)

(1) Rules 2(1), 3(1), and 5(1) shall, so far as applicable, apply to ex parte originating summonses; but, save as aforesaid, the foregoing rules of this Order shall not apply to ex parte originating summonses.

(2) Order 6, rule 7(3) and (5), shall, with the necessary modifications, apply in relation to an ex parte originating summons as they apply in relation to a writ. (Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 8 - ORIGINATING AND OTHER MOTIONS: GENERAL PROVISIONS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

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

~~— The provisions of this Order apply to all motions subject, in the case of originating motions of any particular class, to any special provisions relating to motions of that class made by these rules or by or under any written law.~~

Rule 20
Rec 10-16

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.

2. Notice of motion (O. 8, r. 2)

(1) Except where an application by motion may properly be made ex parte, no motion shall be made without previous notice to the parties affected thereby, but the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make an order ex parte on such terms as to costs or otherwise, and subject to such undertaking, if any, as it thinks just; and any party affected by such order may apply to the Court to set it aside.

(2) Unless the Court gives leave to the contrary, there must be at least 2 clear days between the service of notice of a motion and the day named in the notice for hearing the motion.

3. Form and issue of notice of motion (O. 8, r. 3)

(1) The notice of an originating motion must be in Form No. 13 in Appendix A and the notice of any other motion in Form No. 38 in that Appendix. Where leave has been given under rule 2(2) to serve short notice of motion, that fact must be stated in the notice.

(2) The notice of a motion must include a concise statement of the nature of the

claim made or the relief or remedy required.

(3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to notice of an originating motion as it applies in relation to a writ.

(4) The notice of an originating motion by which proceedings are begun must be issued out of the Registry.

(6) Issue of the notice of an originating motion takes place upon its being sealed by an officer of the Registry.

4. Service of notice of motion with writ, etc. (O. 8, r. 4)

Notice of a motion to be made in an action may be served by the plaintiff on the defendant with the writ of summons or originating summons or at any time after service of such writ or summons, whether or not the defendant has acknowledged service in the action.

5. Adjournment of bearing (O. 8, r. 5)

The hearing of any motion may be adjourned from time to time on such terms, if any, as the Court thinks fit.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 9 - PETITIONS: GENERAL PROVISIONS

Remarks

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

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~~Rules 2 to 4 apply to petitions by which civil proceedings in the Court of First Instance are begun, subject, in the case of petitions of any particular class, to any special provisions relating to petitions of that class made by these rules or by or under any written law.~~

~~(25 of 1998 s. 2)~~

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.

2. Contents of petition (O. 9, r. 2)

- (1) Every petition must include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby.
- (2) Every petition must include at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served, a statement to that effect.
- (3) Order 6, rule 5, shall, with the necessary modifications, apply in relation to a petition as it applies in relation to a writ.

3. Presentation of petition (O. 9, r. 3)

A petition may be presented by leaving it at the Registry.

4. Fixing time for hearing petition (O. 9, r. 4)

- (1) A day and time for the hearing of a petition which is required to be heard shall be fixed by the Registrar.
- (2) Unless the Court otherwise directs, a petition which is required to be served on any person must be served on him not less than seven days before the day fixed

for the hearing of the petition.

5. Certain applications not to be made by petition (O. 9, r. 5)

No application in any cause or matter may be made by petition.

6. Right to defend in person (O. 9, r. 6)

(1) Subject to paragraph (2) and to Order 80, rule 2, a respondent to proceedings begun by petition may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) defend the proceedings by a solicitor or in person.

(2) Where the respondent to such proceedings is a body corporate, except as expressly provided by or under any enactment or where leave is given under paragraph (3) for such respondent to be represented by one of its directors, such respondent may not take any step in the proceedings otherwise than by a solicitor.

- (3) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director.
- (b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(4) No appeal shall lie from an order of the Registrar under paragraph (3) giving or refusing leave.

(5) The Court may at any time revoke the leave given by a Registrar under paragraph (3).

(6) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(L.N. 108 of 2002)

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 11 - SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Remarks

1. Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1)

- (1) Provided that the writ is not a writ to which paragraph (2) of this rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ- (L.N. 363 of 1990)
- (a) relief is sought against a person domiciled or ordinarily resident within the jurisdiction;
 - (b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);
 - (c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;
 - (d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which-
 - (i) was made within the jurisdiction, or
 - (ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or
 - (iii) is by its terms, or by implication, governed by Hong Kong law, or
 - (iv) contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of the contract; (25 of 1998 s. 2)
 - (e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;
 - (f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;
 - (g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;
 - (h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate

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- within the jurisdiction;
- (i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;
 - (j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to Hong Kong law and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;
 - (k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;
 - (l) the claim is brought in a probate action within the meaning of Order 76;
 - (m) the claim is brought to enforce any judgment or arbitral award;
 - (n) the claim is brought under the Carriage by Air Ordinance (Cap 500). (13 of 1997 s. 20)
 - (o) (Repealed L.N. 296 of 1996)
 - (oa) the claim is made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525); (87 of 1997 s. 36)

(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;

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- (p) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction. (L.N. 404 of 1991)

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is-

- (b) a claim which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction. (25 of 1998 s. 2)

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall-

- (c) be limited in accordance with the practice adopted under rule 4(4).

(HK)(4) This rule shall not apply to a writ-

- (a) to enforce a claim for damage, loss of life or personal injury arising out of-
 - (i) a collision between ships;
 - (ii) the carrying out of or omission to carry out a manoeuvre in the

Remarks

- case of one or more of 2 or more ships; or
- (iii) non-compliance, on the part of one or more of 2 or more ships, with the regulations made under section 93, 100 or 107 of the Merchant Shipping (Safety) Ordinance (Cap 369);
- (b) for the limitation of liability in a limitation action as defined in Order 75, rule 1(2); or
- (c) to enforce a claim under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 (1971 c. 59 U.K.) or section 4 of the Merchant Shipping Act 1974 (1974 c. 43 U.K.)⁹. (L.N. 363 of 1990)

4. Application for, and grant of, leave to serve writ out of jurisdiction

(O. 11, r. 4)

- (1) An application for the grant of leave under rule 1(1) must be supported by an affidavit stating-
 - (a) the grounds on which the application is made;
 - (b) that in the deponent's belief the plaintiff has a good cause of action;
 - (c) in what place the defendant is, or probably may be found; and
 - (d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.
- (2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.
- (4) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must acknowledge service.

5. Service of writ out of jurisdiction: general (O. 11, r. 5)

- (1) Subject to the following provisions of this rule, Order 10, rule 1(1), (4) and (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.
- (2) Nothing in this rule, rule 5A or any order or direction of the Court made by virtue of it shall authorize or require the doing of anything in a country or place in which service is to be effected which is contrary to the law of that country or place. (L.N. 39 of 1999)
- (3) A writ which is to be served out of the jurisdiction-
 - (a) need not be served personally on the person required to be served so

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- long as it is served on him in accordance with the law of the country or place in which service is effected; and
- (b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 5A, rule 6 or rule 7. (L.N. 39 of 1999)
- (5) An official certificate stating that a writ as regards which rule 5A or rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country or place in which service was effected, on a specified date, being a certificate-
- (a) by a British consular authority in that country or place, or
- (b) by the government or judicial authorities of that country or place, or
- (c) by any other authority designated in respect of that country or place under the Hague Convention,
- shall be evidence of the facts so stated. (L.N. 39 of 1999)
- (6) An official certificate by the Chief Secretary for Administration stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact. (L.N. 362 of 1997)
- (7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.
- (8) In this rule and rule 6 "the Hague Convention" means the Convention on the service abroad of judicial or extra-judicial documents in civil or commercial matters signed at The Hague on 15 November 1965.

5A. Service of writ in the Mainland of China through judicial authorities
(O. 11, r. 5A)

- (1) Where in accordance with these rules, a writ is to be served on a person to be served in the Mainland of China, the writ shall be served through the judicial authorities of the Mainland of China.
- (2) A person who wishes to serve a writ under paragraph (1) must lodge in the Registry a request for such service, together with 2 copies of the writ and 2 additional copies thereof for the person to be served.
- (3) The request lodged under paragraph (2) must contain-
- (a) the full name and address of the person to be served;
- (b) a description of the nature of proceedings; and
- (c) if a particular method of service by the judicial authorities of the Mainland of China is desired by the person making the request, an indication of that particular method.
- (4) Every copy of a writ lodged under paragraph (2) must be in Chinese or accompanied by a Chinese translation.

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(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (2) shall be sent by the Registrar to the judicial authorities of the Mainland of China with a request that they arrange for the writ to be served or, where a particular method of service is indicated under paragraph (3)(c), to be served by that method.

(L.N. 39 of 1999)

6. Service of writ abroad through foreign governments, judicial authorities and British consuls (O. 11, r. 6)

(1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in-

- (HK)(a) The United Kingdom of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;
- (b) any independent Commonwealth country;
- (HK)(c) any British protectorate;
- (HK)(d) any British colony;
- (e) the Republic of Ireland.

(2) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served-

- (a) through the judicial authorities of that country; or
- (b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2A) Where in accordance with these rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served-

- (a) through the authority designated under the Convention in respect of that country; or
- (b) if the law of that country permits-
 - (i) through the judicial authorities of that country, or
 - (ii) through a British consular authority in that country.

(3) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure Convention providing for service in that country of process of the Court of First Instance, the writ may be served- (25 of 1998 s. 2)

- (a) through the government of that country, where that government is willing to effect service; or
- (b) through a British consular authority in that country, except where

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service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (2), (2A) or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualification for making the translation.

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Chief Secretary for Administration with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient. (L.N. 362 of 1997)

7. Service of process on a foreign State (O. 11, r. 7)

(1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in section 14 of the State Immunity Act 1978 (1978 c. 33 U.K.), wishes to have the writ served on that State, he must lodge in the Registry-

- (a) a request for service to be arranged by the Chief Secretary for Administration; and (L.N. 362 of 1997)
- (b) a copy of the writ; and
- (c) except where the official language of the State is, or the official languages of that party include, English, a translation of the writ in the official language or one of the official languages of the State.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

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(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the State or the government in question, as the case may be. (L.N. 362 of 1997)

(4) Where section 12(6) of the State Immunity Act 1978 (1978 c. 33 U.K.) applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

7A. Service of writ in certain actions under Carriage by Air Ordinance
(O. 11, r. 7A)

(HK)(1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party certified under section 4 of Carriage by Air Ordinance (Cap 500), being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the writ served on that Party, he must lodge in the Registry- (13 of 1997 s. 20)

- (a) a request for service to be arranged by the Chief Secretary for Administration; and
- (b) a copy of the writ; and
- (c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of the High Contracting Party.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the High Contracting Party.
(L.N. 362 of 1997)

8. Undertaking to pay expenses of service by the Chief Secretary for Administration (O. 11, r. 8)

Every request lodged under rule 6(4), rule 7 or rule 7A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Chief Secretary for Administration in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 362 of 1997)

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8A. Undertaking to pay expenses of service by the Registrar (O. 11, r. 8A)

Every request lodged under rule 5A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Registrar in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 39 of 1999)

9. Service of originating summons, petition, notice of motion, etc.

(O. 11, r. 9)

(1) Subject to Order 73, rule 7, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(4) Subject to Order 73, rule 7, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any written law be served out of the jurisdiction without leave.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(7) Rules 5, 5A, 6, 8 and 8A shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ. (L.N. 39 of 1999)

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007**The Rules of the High Court (Cap 4A)****Order 12 - ACKNOWLEDGMENT OF SERVICE OF WRIT OR
ORIGINATING SUMMONS****Remarks****1. Mode of acknowledging service (O. 12, r. 1)**

(1) Subject to paragraph (2) and to Order 80, rule 2, a defendant to an action begun by writ may (whether or not he is sued as a trustee or personal representative or in any other representative capacity) acknowledge service of the writ and defend the action by a solicitor or in person.

(2) The defendant to such an action who is a body corporate may acknowledge service of the writ and give notice of intention to defend the action either by a solicitor or by a person duly authorized to act on the defendant's behalf but, except as expressly provided by or under any enactment or where leave is given under paragraph (2A) for such defendant to be represented by one of its directors, such defendant may not take any further step in the action otherwise than by a solicitor.

(2A) (a) An application by a body corporate for leave to be represented by one of its directors shall be made ex parte to a Registrar and supported by an affidavit, made by the director and filed with the application, stating and verifying the reasons why leave should be given for the body corporate to be represented by the director. (L.N. 103 of 1994; L.N. 108 of 2002)

(b) The relevant resolution of the board of the body corporate authorizing the director to appear on its behalf if leave is granted shall be exhibited to the affidavit.

(2B) No appeal shall lie from an order of the Registrar under paragraph (2A) giving or refusing leave.

(2C) Leave given by a Registrar under paragraph (2A) may be revoked by the Court at any time.

(2D) No appeal shall lie from an order of the Court revoking leave given by a Registrar.

(3) Service of a writ may be acknowledged by properly completing an acknowledgment of service as defined by rule 3 and handing it in at, or sending it by post to, the Registry.

(4) If two or more defendants to an action acknowledge service by the same solicitor and at the same time, only one acknowledgment of service need be

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completed and delivered for those defendants.

(5) The date on which service is acknowledged is the date on which the acknowledgment of service is received at the Registry.

3. Acknowledgment of service (O. 12, r. 3)

(1) An acknowledgment of service must be in Form No. 14 or 15 in Appendix A, whichever is appropriate, and except as provided in rule 1(2), must be signed by the solicitor acting for the defendant specified in the acknowledgment or, if the defendant is acting in person, by that defendant.

(2) An acknowledgment of service must specify-

(a) in the case of a defendant acknowledging service in person, the address of his place of residence and, if his place of residence is not within the jurisdiction or if he has no place of residence, the address of a place within the jurisdiction at or to which documents for him may be delivered or sent, and

(b) in the case of a defendant acknowledging service by a solicitor, a business address to which may be added a numbered box at a document exchange of his solicitor within the jurisdiction;

and where the defendant acknowledges service in person the address within the jurisdiction specified under sub-paragraph (a) shall be his address for service, but otherwise his solicitor's business address shall be his address for service.

In relation to a body corporate the references in sub-paragraph (a) to the defendant's place of residence shall be construed as references to the defendant's registered or principal office.

(3) Where the defendant acknowledges service by a solicitor who is acting as agent for another solicitor having a place of business within the jurisdiction, the acknowledgment of service must state that the first-named solicitor so acts and must also state the name and address of that other solicitor.

(4) If an acknowledgment of service does not specify the defendant's address for service or the Court is satisfied that any address specified in the acknowledgment for service is not genuine, the Court may on application by the plaintiff set aside the acknowledgment or order the defendant to give an address or, as the case may be, a genuine address for service and may in any case direct that the acknowledgment shall nevertheless have effect for the purpose of Order 10, rule 1(5), and Order 65, rule 9.

4. Procedure on receipt of acknowledgment of service (O. 12, r. 4)

On receiving an acknowledgment of service an officer of the Registry must-

(a) affix to the acknowledgment an official stamp showing the date on which he received it;

(b) enter the acknowledgment in the cause book with a note showing, if it

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- be the case, that the defendant has indicated in the acknowledgment an intention to contest the proceedings or to apply for a stay of execution in respect of any judgment obtained against him in the proceedings;
- (c) make a copy of the acknowledgment, having affixed to it an official stamp showing the date on which he received the acknowledgment, and send by post to the plaintiff or, as the case may be, his solicitor at the plaintiff's address for service.

5. Time limited for acknowledging service (O. 12, r. 5)

References in these rules to the time limited for acknowledging service are references-

- (a) in the case of a writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or, where that time has been extended by or by virtue of these rules, to that time as so extended; and
- (b) in the case of a writ served out of the jurisdiction, to the time limited under Order 10, rule 2(2), Order 11, rule 1(3), or Order 11, rule 4(4), or, where that time has been extended as aforesaid, to that time as so extended.

6. Late acknowledgment of service (O. 12, r. 6)

- (1) Except with the leave of the Court, a defendant may not give notice of intention to defend in an action after judgment has been obtained therein.
- (2) Except as provided by paragraph (1) nothing in these rules or any writ or order thereunder shall be construed as precluding a defendant from acknowledging service in an action after the time limited for so doing, but if a defendant acknowledges service after that time, he shall not, unless the Court otherwise orders, be entitled to serve a defence or do any other act later than if he had acknowledged service within that time.

7. Acknowledgment not to constitute waiver (O. 12, r. 7)

The acknowledgment by a defendant of service of a writ shall not be treated as a waiver by him of any irregularity in the writ or service thereof or in any order giving leave to serve the writ or extending the validity of the writ for the purpose of service.

8. Dispute as to jurisdiction (O. 12, r. 8)

- (1) A defendant who wishes to dispute the jurisdiction of the court in the proceedings by reason of any such irregularity as is mentioned in rule 7 or on any other ground shall give notice of intention to defend the proceedings and shall, within the time limited for service of a defence, apply to the Court for-

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- (a) an order setting aside the writ or service of the writ on him, or
- (b) an order declaring that the writ has not been duly served on him, or
- (c) the discharge of any order giving leave to serve the writ on him out of the jurisdiction, or
- (d) the discharge of any order extending the validity of the writ for the purpose of service, or
- (e) the protection or release of any property of the defendant seized or threatened with seizure in the proceedings, or
- (f) the discharge of any order made to prevent any dealing with any property of the defendant, or
- (g) a declaration that in the circumstances of the case the court has no jurisdiction over the defendant in respect of the subject-matter of the claim or the relief or remedy sought in the action, or

(ga) an order staying the proceedings, or

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- (h) such other relief as may be appropriate.

(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 –

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- (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.

~~(3) An application under paragraph (1) must be made-~~

- ~~(a) in an Admiralty action in rem, by motion;~~
- ~~(c) in any other action, by summons or motion,~~

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~~and the notice of motion or summons must state the grounds of the application.~~

(3) An application under paragraph (1) or (2) must be made by summons and the summons must state the grounds of the application.

- (4) An application under paragraph (1) or (2) must be supported by an affidavit verifying the facts on which the application is based and a copy of the affidavit

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must be served with the ~~notice of motion or~~ summons by which the application is made.

(5) Upon hearing an application under paragraph (1) or (2), the Court, if it does not dispose of the manner in dispute, may give such directions for its disposal as may be appropriate, including directions for the trial thereof as a preliminary issue.

(6) A defendant who makes an application under paragraph (1) or (2) shall not be treated as having submitted to the jurisdiction of the court by reason of his having given notice of intention to defend the action; and if the Court makes no order on the application or dismisses it, the notice shall cease to have effect, but the defendant may, subject to rule 6(1), lodge a further acknowledgment of service and in that case paragraph (7) shall apply as if the defendant had not made any such application.

(7) Except where the defendant makes an application in accordance with paragraph (1) or (2), the acknowledgment by a defendant of service of a writ shall, unless the acknowledgment is withdrawn by leave of the Court under Order 21, rule 1, be treated as a submission by the defendant to the jurisdiction of the Court in the proceedings.

8A. Application by defendant where writ not served (O. 12, r. 8A)

(1) Any person named as a defendant in a writ which has not been served on him may serve on the plaintiff a notice requiring him within a specified period not less than 14 days after service of the notice either to serve the writ on the defendant or to discontinue the action as against him.

(2) Where the plaintiff fails to comply with a notice under paragraph (1) within the time specified the Court may, on the application of the defendant by summons, order the action to be dismissed or make such other order as it thinks fit.

(3) A summons under paragraph (2) shall be supported by an affidavit verifying the facts on which the application is based and stating that the defendant intends to contest the proceedings and a copy of the affidavit must be served with the summons.

(4) Where the plaintiff serves the writ in compliance with a notice under paragraph (1) or with an order under paragraph (2) the defendant must acknowledge service within the time limited for so doing.

9. Acknowledgment of service of originating summons (O. 12, r. 9)

(1) Each defendant named in and served with an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) must acknowledge service of the summons as if it were a writ.

Remarks

(3) The foregoing rules of this Order shall apply in relation to an originating summons (other than an ex parte originating summons or an originating summons under Order 113 or an application under Order 121) as they apply to a writ except that after the word "extended" wherever it occurs in rule 5(a), there shall be inserted the words "or abridged" and for the reference in rule 5(b) to Order 11, rules 1(3) and 4(4), there shall be substituted a reference to Order 11, rule 9(6).
(L.N. 119 of 1998)

10. Acknowledgment of service to be treated as entry of appearance
(O. 12, r. 10)

For the purpose of any enactment referring expressly or impliedly to the entry of appearance as a procedure provided by rules of court for responding to a writ or other process issuing out of the Court of First Instance, or of any rule of law, the acknowledgment of service of the writ or other process in accordance with these rules shall be treated as the entry of an appearance to it, and related expressions shall be construed accordingly.
(25 of 1998 s. 2)

(Enacted 1988)

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

Rule 64
Rec 17

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 13A – ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

Remarks

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

Rule 65
Rec 18

(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.

Remarks3. 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.

Remarks

- 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.**

Remarks

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.**

Remarks

(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.

Remarks

(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

Remarks

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 15 - CAUSES OF ACTION, COUNTERCLAIMS AND PARTIES

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Joinder of causes of action (O. 15, r. 1)

- (1) Subject to rule 5(1), a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action-
- (a) if the plaintiff claims, and the defendant is alleged to be liable, in the same capacity in respect of all the causes of action, or
 - (b) if the plaintiff claims or the defendant is alleged to be liable in the capacity of executor or administrator of an estate in respect of one or more of the causes of action and in his personal capacity but with reference to the same estate in respect of all the others, or
 - (c) with the leave of the Court.
- (2) An application for leave under this rule must be made ex parte by affidavit before the issue of the writ or originating summons, as the case may be, and the affidavit must state the grounds of the application.

2. Counterclaim against plaintiff (O. 15, r. 2)

- (1) Subject to rule 5(2), a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he must add the counterclaim to his defence.
- (2) Rule 1 shall apply in relation to a counterclaim as if the counterclaim were a separate action and as if the person making the counterclaim were the plaintiff and the person against whom it is made a defendant.
- (3) A counterclaim may be proceeded with notwithstanding that judgment is given for the plaintiff in the action or that the action is stayed, discontinued or dismissed.
- (4) Where a defendant establishes a counterclaim against the claim of the plaintiff and there is a balance in favour of one of the parties, the Court may give judgment for the balance, so, however, that this provision shall not be taken as affecting the Court's discretion with respect to costs.

Remarks**3. Counterclaim against additional parties (O. 15, r. 3)**

(1) Where a defendant to an action who makes a counter-claim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject-matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject-matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counter-claim is made.

(2) Where a defendant joins a person as a party against whom he makes a counterclaim, he must add that person's name to the title of the action and serve on him a copy of the counterclaim and, in the case of a person who is not already a party to the action, the defendant must issue the counterclaim out of the Registry and serve on the person concerned a sealed copy of the counterclaim together with a form of acknowledgment of service in Form No. 14 in Appendix A (with such modifications as the circumstances may require) and a copy of the writ or originating summons by which the action was begun and of all other pleadings served in the action; and a person on whom a copy of a counterclaim is served under this paragraph shall, if he is not already a party to the action, become a party to it as from the time of service with the same rights in respect of his defence to the counterclaim and otherwise as if he had been duly sued in the ordinary way by the party making the counterclaim.

(3) A defendant who is required by paragraph (2) to serve a copy of the counterclaim made by him on any person who before service is already a party to the action must do so within the period within which, by virtue of Order 18, rule 2, he must serve on the plaintiff the defence to which the counterclaim is added.

(4) The appropriate office for issuing and acknowledging service of a counterclaim against a person who is not already a party to the action is the Registry.

(5) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on a person who is not already a party to the action, the following provisions of these rules, namely, Order 6, rule 7(3) and (5), Order 10, Order 11, Orders 12 and 13 and Order 75, rule 4, shall, subject to the last foregoing paragraph, apply in relation to the counterclaim and the proceedings arising from it as if-

- (a) the counterclaim were a writ and the proceedings arising from it in an action; and
- (b) the party making the counterclaim were a plaintiff and the party against whom it is made a defendant in that action.

(5A) Where by virtue of paragraph (2) a copy of a counterclaim is required to be served on any person other than the plaintiff, who before service is already a party to the action, the provisions of Order 14, rule 5 shall apply in relation to the counterclaim and the proceedings arising therefrom, as if the party against whom the counterclaim is made were the plaintiff in the action. (L.N. 363 of 1990)

(6) A copy of a counterclaim required to be served on a person who is not

Remarks

already a party to the action must be indorsed with a notice, in Form No. 17 in Appendix A, addressed to that person.

(L.N. 404 of 1991)

4. Joinder of parties (O. 15, r. 4)

(1) Subject to rule 5(1), two or more persons may be joined together in one action as plaintiffs or as defendants with the leave of the Court or where-

- (a) if separate actions were brought by or against each of them, as the case may be, some common question of law or fact would arise in all the actions, and
- (b) all rights to relief claimed in the action (whether they are joint, several or alternative) are in respect of or arise out of the same transaction or series of transactions.

(2) Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.

This paragraph shall not apply to a probate action.

(HK)(3) Where relief is claimed in an action against a defendant who is jointly liable with some other person and also severally liable, that other person need not be made a defendant to the action; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in an action in respect of that contract, the Court may, on the application of any defendant to the action, by order stay proceedings in the action until the other persons so liable are added as defendants.

5. Court may order separate trials, etc. (O. 15, r. 5)

(1) If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.

(2) If it appears on the application of any party against whom a counterclaim is made that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

Remarks**5A. Costs orders in favour of or against non-parties (O. 15, r. 5A)**

Rule 5

(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. Misjoinder and nonjoinder of parties (O. 15, r. 6)

(1) No cause or matter shall be defeated by reason of the misjoinder or nonjoinder of any party; and the Court may in any cause or matter determine the issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the cause or matter. (L.N. 167 of 1994)

(2) Subject to the provision of this rule, at any stage of the proceedings in any cause or matter the Court may on such terms as it thinks just and either of its own motion or on application-

- (a) order any person who has been improperly or unnecessarily made a party or who has for any reason ceased to be a proper or necessary party, to cease to be a party;
- (b) order any of the following persons to be added as a party, namely-
 - (i) any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon, or
 - (ii) any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which in the opinion of the Court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter.

(3) An application by any person for an order under paragraph (2) adding him as a party must, except with the leave of the Court, be supported by an affidavit showing his interest in the matters in dispute in the cause or matter or, as the case may be, the question or issue to be determined as between him and any party to the cause or matter.

(4) No person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorized.

Remarks

- (5) No person shall be added or substituted as a party after the expiry of any relevant period of limitation unless either-
- (a) the relevant period was current at the date when proceedings were commenced and it is necessary for the determination of the action that the new party should be added, or substituted; or
 - (b) the relevant period arises under the provisions of section 27 or 28 of the Limitation Ordinance (Cap 347) and the Court directs that those provisions should not apply to the action by or against the new party.

In this paragraph “any relevant period of limitation” (任何有關的時效期) means a time limit under the Limitation Ordinance (Cap 347).

- (6) The addition or substitution of a new party shall be treated as necessary for the purposes of paragraph (5)(a) if, and only if, the Court is satisfied that-
- (a) the new party is a necessary party to the action in that property is vested in him at law or in equity and the plaintiff's claim in respect of an equitable interest in that property is liable to be defeated unless the new party is joined, or
 - (b) the relevant cause of action is vested in the new party and the plaintiff jointly but not severally, or
 - (c) the new party is the Secretary for Justice and the proceedings should have been brought by relator proceedings in his name, or (L.N. 362 of 1997)
 - (d) the new party is a company in which the plaintiff is a shareholder and on whose behalf the plaintiff is suing to enforce a right vested in the company, or
 - (e) the new party is sued jointly with the defendant and is not also liable severally with him and failure to join the new party might render the claim unenforceable.

6A. Proceedings by and against estates (O. 15, r. 6A)

- (1) Where any person against whom an action would have lain has died but the cause of action survives, the action may, if no grant of probate or administration has been made, be brought against the estate of the deceased.
- (2) Without prejudice to the generality of paragraph (1), an action brought against "the personal representatives of A.B. deceased" shall be treated, for the purposes of that paragraph, as having been brought against his estate.
- (3) An action purporting to have been commenced by or against a person shall be treated, if he was dead at its commencement and the cause of action survives, as having been commenced by his estate or against it in accordance with paragraph (1) as the case may be, whether or not a grant of probate or administration was made before its commencement. (L.N. 363 of 1990)
- (4) In any such action as is referred to in paragraph (1) or (3)-

Remarks

- (a) the plaintiff shall, and the defendant, the personal representatives of the deceased or any person interested in the deceased's estate may, during the period of validity for service of the writ or originating summons, apply to the Court for an order appointing a person to represent the deceased's estate for the purpose of the proceedings or, if a grant of probate or administration has been made, for an order that the personal representative of the deceased be made a party to the proceedings, and in either case for an order that the proceedings be carried on against the person so appointed or, as the case may be, against the personal representative, as if he had been substituted for the estate; (L.N. 363 of 1990)
- (b) the Court may, at any stage of the proceedings and on such terms as it thinks just and either of its own motion or on application, make any such order as is mentioned in sub-paragraph (a) and allow such amendments (if any) to be made and make such other order as the Court thinks necessary in order to ensure that all matters in dispute in the proceedings may be effectually and completely determined and adjudicated upon.

(5) Before making an order under paragraph (4) the Court may require notice to be given to any insurer of the deceased who has an interest in the proceedings and to such (if any) of the persons having an interest in the estate as it thinks fit.

(5A) Where an order is made under paragraph (4) at the instance of a plaintiff appointing the Official Solicitor to represent the deceased's estate, the appointment shall be limited to his accepting service of the writ or originating summons by which the action was begun unless, either on making such an order or on a subsequent application, the Court, with the consent of the Official Solicitor, directs that the appointment shall extend to taking further steps in the proceedings. (L.N. 363 of 1990; L.N. 375 of 1991)

(6) Where an order is made under paragraph (4), rules 7(4) and 8(3) and (4) shall apply as if the order had been made under rule 7 on the application of the plaintiff.

(7) Where no grant of probate or administration has been made, any judgment or order given or made in the proceedings shall bind the estate to the same extent as it would have been bound if a grant had been made and a personal representative of the deceased had been a party to the proceedings. (L.N. 363 of 1990)

7. Change of parties by reason of death, etc. (O. 15, r. 7)

(1) Where a party to an action dies or becomes bankrupt but the cause of action survives, the action shall not abate by reason of the death or bankruptcy.

(2) Where at any stage of the proceedings in any cause or matter the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the Court may, if it thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and

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adjudicated upon, order that other person to be made a party to the cause or matter and the proceedings to be carried on as if he had been substituted for the first mentioned party.

An application for an order under this paragraph may be made ex parte.

(3) An order may be made under this rule for a person to be made a party to a cause or matter notwithstanding that he is already a party to it on the other side of the record, or on the same side but in a different capacity; but-

- (a) if he is already a party on the other side, the order shall be treated as containing a direction that he shall cease to be a party on that other side, and
- (b) if he is already a party on the same side but in another capacity, the order may contain a direction that he shall cease to be a party in that other capacity.

(4) The person on whose application an order is made under this rule must procure the order to be noted in the cause book, and after the order has been so noted that person must, unless the Court otherwise directs, serve the order on every other person who is a party to the cause or matter or who becomes or ceases to be a party by virtue of the order and serve with the order on any person who becomes a defendant a copy of the writ or originating summons by which the cause or matter was begun and of all other pleadings served in the proceedings and a form of acknowledgment of service in Form No. 14 or 15 in Appendix A, whichever is appropriate. (L.N. 404 of 1991)

(5) Any application to the Court by a person served with an order made ex parte under this rule for the discharge or variation of the order must be made within 14 days after the service of the order on that person.

8. Provisions consequential on making of order under rule 6 or 7

(O. 15, r. 8)

(1) Where an order is made under rule 6 the writ by which the action in question was begun must be amended accordingly and must be indorsed with-

- (a) a reference to the order in pursuance of which the amendment is made, and
- (b) the date on which the amendment is made;

and the amendment must be made within such period as may be specified in the order or, if no period is so specified, within 14 days after the making of the order.

(2) Where by an order under rule 6 a person is to be made a defendant, the rules as to service of a writ of summons shall apply accordingly to service of the amended writ on him, but before serving the writ on him the person on whose application the order was made must procure the order to be noted in the cause book.

(2A) Together with the writ of summons served under paragraph (2) shall be

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served a copy of all other pleadings served in the action. (L.N. 404 of 1991)

(3) Where by an order under rule 6 or 7 a person is to be made a defendant, the rules as to acknowledgment of service shall apply accordingly to acknowledgment of service by him subject, in the case of a person to be made a defendant by an order under rule 7, to the modification that the time limited for acknowledging service shall begin with the date on which the order is served on him under rule 7(4) or, if the order is not required to be served on him, with the date on which the order is noted in the cause book.

(4) Where by an order under rule 6 or 7 a person is to be added as a party or is to be made a party in substitution for some other party, that person shall not become a party until-

- (a) where the order is made under rule 6, the writ has been amended in relation to him under this rule and (if he is a defendant) has been served on him, or
- (b) where the order is made under rule 7, the order has been served on him under rule 7(4) or, if the order is not required to be served on him, the order has been noted in the cause book;

and where by virtue of the foregoing provision a person becomes a party in substitution for some other party, all things done in the course of the proceedings before the making of the order shall have effect in relation to the new party as they had in relation to the old except that acknowledgment of service by the old party shall not dispense with acknowledgment of service by the new.

(5) The foregoing provisions of this rule shall apply in relation to an action begun by originating summons as they apply in relation to an action begun by writ.

9. Failure to proceed after death of party (O. 15, r. 9)

(1) If after the death of a plaintiff or defendant in any action the cause of action survives, but no order under rule 7 is made substituting as plaintiff any person in whom the cause of action vests or, as the case may be, the personal representatives of the deceased defendant, the defendant or, as the case may be, those representatives may apply to the Court for an order that unless the action is proceeded with within such time as may be specified in the order the action shall be struck out as against the plaintiff or defendant, as the case may be, who has died; but where it is the plaintiff who has died, the Court shall not make an order under this rule unless satisfied that due notice of the application has been given to the personal representatives (if any) of the deceased plaintiff and to any other interested persons who, in the opinion of the Court, should be notified.

(2) Where in any action a counterclaim is made by a defendant, this rule shall apply in relation to the counterclaim as if the counterclaim were a separate action and as if the defendant making the counterclaim were the plaintiff and the person against whom it is made a defendant.

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10. Actions for possession of land (O. 15, r. 10)

(1) Without prejudice to rule 6, the Court may at any stage of the proceedings in an action for possession of land order any person not a party to the action who is in possession of the land (whether in actual possession or by a tenant) to be added as a defendant.

(2) An application by any person for an order under this rule may be made ex parte, supported by an affidavit showing that he is in possession of the land in question and if by a tenant, naming him.
The affidavit shall specify the applicant's address for service and Order 12, rule 3(2), (3) and (4), shall apply as if the affidavit were an acknowledgment of service.

(3) A person added as a defendant by an order under this rule must serve on the plaintiff a copy of the order giving the added defendant's address for service specified in accordance with paragraph (2).

10A. (Repealed L.N. 127 of 1995)

11. Relator actions (O. 15, r. 11)

Before the name of any person is used in any action as relator, that person must give a written authorization so to use his name to his solicitor and the authorization must be filed in the Registry.

12. Representative proceedings (O. 15, r. 12)

(1) Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) At any stage of proceedings under this rule the Court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons as representing whom the defendants are sued to represent all, or all except one or more, of those persons in the proceedings; and where, in exercise of the power conferred by this paragraph, the Court appoints a person not named as a defendant, it shall make an order under rule 6 adding that person as a defendant.

(3) A judgment or order given in proceedings under this rule shall be binding on all the persons as representing whom the plaintiffs sue or, as the case may be, the defendants are sued, but shall not be enforced against any person not a party to the proceedings except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by

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summons which must be served personally on the person against whom it is sought to enforce the judgment or order.

(5) Notwithstanding that a judgment or order to which any such application relates is binding on the person against whom the application is made, that person may dispute liability to have the judgment or order enforced against him on the ground that by reason of facts and matters particular to his case he is entitled to be exempted from such liability.

(6) The Court hearing an application for the grant of leave under paragraph (3) may order the question whether the judgment or order is enforceable against the person against whom the application is made to be tried and determined in any manner in which any issue or question in an action may be tried and determined.

13. Representation of interested persons who cannot be ascertained, etc.

(O. 15, r. 13)

- (1) In any proceedings concerning-
- (a) the estate of a deceased person, or
 - (b) property subject to a trust, or
 - (c) the construction of a written instrument, including an Ordinance or any other written law,

the Court, if satisfied that it is expedient so to do, and that one or more of the conditions specified in paragraph (2) are satisfied, may appoint one or more persons to represent any person (including an unborn person) or class who is or may be interested (whether presently or for any future, contingent or unascertained interest) in or affected by the proceedings.

- (2) The conditions for the exercise of the power conferred by paragraph (1) are as follows-
- (a) that the person, the class or some member of the class, cannot be ascertained or cannot readily be ascertained;
 - (b) that the person, class or some member of the class, though ascertained, cannot be found;
 - (c) that, though the person or the class and the members thereof can be ascertained and found, it appears to the Court expedient (regard being had to all the circumstances, including the amount at stake and the degree of difficulty of the point to be determined) to exercise the power for the purpose of saving expense.

(3) Where in any proceedings to which paragraph (1) applies, the Court exercises the power conferred by that paragraph, a judgment or order of the Court given or made when the person or persons appointed in exercise of that power are before the Court shall be binding on the person or class represented by the person or persons so appointed.

(4) Where, in any such proceedings, a compromise is proposed and some of the persons who are interested in, or who may be affected by, the compromise are not

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parties to the proceedings (including unborn or unascertained persons) but-

- (a) there is some other person in the same interest before the Court who assents to the compromise or on whose behalf the Court sanctions the compromise, or
- (b) the absent persons are represented by a person appointed under paragraph (1) who so assents,

the Court, if satisfied that the compromise will be for the benefit of the absent persons and that it is expedient to exercise this power, may approve the compromise and order that it shall be binding on the absent persons, and they shall be bound accordingly except where the order has been obtained by fraud or non-disclosure of material facts.

13A. Notice of action to non-parties (O. 15, r. 13A)

(1) At any stage in an action to which this rule applies, the Court may, on the application of any party or of its own motion, direct that notice of the action be served on any person who is not a party thereto but who will or may be affected by any judgment given therein.

(2) An application under this rule may be made ex parte and shall be supported by an affidavit stating the grounds of the application.

(3) Every notice of an action under this rule shall be in Form No. 52 in Appendix A and the copy to be served shall be a sealed copy and accompanied by a copy of the originating summons or writ and of all other pleadings served in the action, and by a form of acknowledgment of service in Form No. 14 or 15 in Appendix A with such modifications as may be appropriate.

(4) A person may, within 14 days of service on him of a notice under this rule, acknowledge service of the writ or originating summons and shall thereupon become a party to the action, but in default of such acknowledgment and subject to paragraph (5) he shall be bound by any judgment given in the action as if he was a party thereto.

(5) If at any time after service of such notice on any person the writ or originating summons is amended so as substantially to alter the relief claimed, the Court may direct that the judgment shall not bind such person unless a further notice together with a copy of the amended writ or originating summons is issued and served upon him under this rule.

(6) This rule applies to any action relating to-

- (a) the estate of a deceased person; or
- (b) property subject to a trust.

(7) Order 6, rule 7(3) and (5) shall apply in relation to a notice of an action under this rule as if the notice were a writ and the person by whom the notice is issued were the plaintiff.

(L.N. 404 of 1991)

Remarks**14. Representation of beneficiaries by trustees, etc. (O. 15, r. 14)**

(1) Any proceedings, including proceedings to enforce a security by foreclosure or otherwise, may be brought by or against trustees, executors or administrators in their capacity as such without joining any of the persons having a beneficial interest in the trust or estate, as the case may be; and any judgment or order given or made in those proceedings shall be binding on those persons unless the Court in the same or other proceedings otherwise orders on the ground that the trustees, executors or administrators, as the case may be, could not or did not in fact represent the interests of those persons in the first-mentioned proceedings.

(2) Paragraph (1) is without prejudice to the power of the Court to order any person having such an interest as aforesaid to be made a party to the proceedings or to make an order under rule 13.

15. Representation of deceased person interested in proceedings

(O. 15, r. 15)

(1) Where in any proceedings it appears to the Court that a deceased person was interested in the matter in question in the proceedings and that he has no personal representative, the Court may, on the application of any party to the proceedings, proceed in the absence of a person representing the estate of the deceased person or may by order appoint a person to represent that estate for the purposes of the proceedings; and any such order, and any judgment or order subsequently given or made in the proceedings, shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceedings.

(2) Before making an order under this rule, the Court may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate as it thinks fit.

16. Declaratory judgment (O. 15, r. 16)

No action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether or not any consequential relief is or could be claimed.

17. Conduct of proceedings (O. 15, r. 17)

The Court may give the conduct of any action, inquiry or other proceedings to such person as it thinks fit.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 17 - INTERPLEADER

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Entitlement to relief by way of interpleader (O. 17, r. 1)

(1) Where-

- (a) a person is under a liability in respect of a debt or in respect of any money, goods or chattels and he is, or expects to be, sued for or in respect of that debt or money or those goods or chattels by two or more persons making adverse claims thereto, or
- (b) claim is made to any money, goods or chattels taken or intended to be taken by a bailiff in execution under any process, or to the proceeds or value of any such goods or chattels, by a person other than the person against whom the process is issued,

the person under liability as mentioned in sub-paragraph (a), or (subject to rule 2) the bailiff, may apply to the Court for relief by way of interpleader.

(2) References in this Order to a bailiff shall be construed as including references to any other officer charged with the execution of process by or under the authority of the Court of First Instance.

(25 of 1998 s. 2)

2. Claim to goods, etc., taken in execution (O. 17, r. 2)

(1) Any person making a claim to or in respect of any money, goods or chattels taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such goods or chattels, must give notice of his claim to the bailiff charged with the execution of the process and must include in his notice a statement of his address, and that address shall be his address for service.

(2) On receipt of a claim made under this rule the bailiff must forthwith give notice thereof to the execution creditor and the execution creditor must, within 7 days after receiving the notice, give notice to the bailiff informing him whether he admits or disputes the claim.

An execution creditor who gives notice in accordance with this paragraph admitting a claim shall only be liable to the bailiff for any fees and expenses incurred by the bailiff before receipt of that notice.

(3) Where-

- (a) the bailiff receives a notice from an execution creditor under paragraph

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(2) disputing a claim, or the execution creditor fails, within the period mentioned in that paragraph, to give the required notice, and
 (b) the claim made under this rule is not withdrawn,
 the bailiff may apply to the Court for relief under this Order.

(4) A bailiff who receives a notice from an execution creditor under paragraph (2) admitting a claim made under this rule shall withdraw from possession of the money, goods or chattels claimed and may apply to the Court for relief under this Order of the following kind, that is to say, an order restraining the bringing of an action against him for or in respect of his having taken possession of that money or those goods or chattels.

3. Mode of application (O. 17, r. 3)

(1) An application for relief under this Order ~~must be made~~ **may be made** by originating summons unless made in a pending action, in which case it ~~must be made~~ **may be made** by summons in the action.

Rule 22
Rec 10-16

(2) Where the applicant is a bailiff who has withdrawn from possession of money, goods or chattels taken in execution and who is applying for relief under rule 2(4), the summons must be served on any person who made a claim under that rule to or in respect of that money or those goods or chattels, and that person may attend the hearing of the application.

(3) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(4) Subject to paragraph (5), a summons under this rule must be supported by evidence that the applicant-

- (a) claims no interest in the subject-matter in dispute other than for charges or costs,
- (b) does not collude with any of the claimants to that subject-matter, and
- (c) is willing to pay or transfer that subject-matter into court or to dispose of it as the Court may direct.

(5) Where the applicant is a bailiff, he shall not provide such evidence as is referred to in paragraph (4) unless directed by the Court to do so.

(6) Any person who makes a claim under rule 2 and who is served with a summons under this rule shall within 14 days serve on the execution creditor and the bailiff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based.

(7) Where the applicant is a bailiff a summons under this rule must give notice of the requirement in paragraph (6).

Remarks**5. Powers of Court hearing summons (O. 17, r. 5)**

- (1) Where on the hearing of a summons under this Order all the persons by whom adverse claims to the subject-matter in dispute (hereafter in this Order referred to as "the claimants") appear, the Court may order-
- (a) that any claimant be made a defendant in any action pending with respect to the subject-matter in dispute in substitution for or in addition to the applicant for relief under this Order, or
 - (b) that an issue between the claimants be stated and tried and may direct which of the claimants is to be plaintiff and which defendant.
- (2) Where-
- (a) the applicant on a summons under this Order is a bailiff, or
 - (b) all the claimants consent or any of them so requests, or
 - (c) the question at issue between the claimants is a question of law and the facts are not in dispute,
- the Court may summarily determine the question at issue between the claimants and make an order accordingly on such terms as may be just.
- (3) Where a claimant, having been duly served with a summons for relief under this Order, does not appear on the hearing of the summons or, having appeared, fails or refuses to comply with an order made in the proceedings, the Court may make an order declaring the claimant, and all persons claiming under him, for ever barred from prosecuting his claim against the applicant for such relief and all persons claiming under him, but such an order shall not affect the rights of the claimants as between themselves.

6. Power to order sale of goods taken in execution (O. 17, r. 6)

Where an application for relief under this Order is made by a bailiff who has taken possession of any goods or chattels in execution under any process, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court may order those goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just and as may be specified in the order.

7. Power to stay proceedings (O. 17, r. 7)

Where a defendant to an action applies for relief under this Order in the action, the Court may by order stay all further proceedings in the action.

8. Other powers (O. 17, r. 8)

Subject to the foregoing rules of this Order, the Court may in or for the purposes of any interpleader proceedings make such order as to costs or any other matter as it thinks just.

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9. One order in several causes or matters (O. 17, r. 9)

Where the Court considers it necessary or expedient to make an order in any interpleader proceedings in several causes or matters pending before the Court, the Court may make such an order; and the order shall be entitled in all those causes or matters and shall be binding on all the parties to them.

10. Discovery (O. 17, r. 10)

Orders 24 and 26 shall, with the necessary modifications, apply in relation to an interpleader issue as they apply in relation to any other cause or matter.

11. Trial of interpleader issue (O. 17, r. 11)

(1) Order 35 shall, with the necessary modifications, apply to the trial of an interpleader issue as it applies to the trial of an action.

(2) The Court by whom an interpleader issue is tried may give such judgment or make such order as finally to dispose of all questions arising in the interpleader proceedings.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 18 - PLEADINGS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Service of statement of claim (O. 18, r. 1)

Unless the Court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant or, if there are two or more defendants, on each defendant, and must do so either when the writ is served on that defendant or at any time after service of the writ but before the expiration of 14 days after that defendant gives notice of intention to defend.

2. Service of defence (O. 18, r. 2)

(1) Subject to paragraphs (2) and (3), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on every other party to the action who may be affected thereby before the expiration of ~~14 days~~ **28 days** after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later. (L.N. 383 of 1996)

Rule 70
Rec 26-32, 35

(2) If a summons under Order 14, rule 1, or under Order 86, rule 1, is served on a defendant before he serves his defence, paragraph (1) shall not have effect in relation to him unless by the order made on the summons he is given leave to defend the action and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the making of the order or within such other period as may be specified therein.

(3) Where an application is made by a defendant under Order 12, rule 8(1), paragraph (1) shall not have effect in relation to him unless the application is dismissed or no order is made on the application and, in that case, shall have effect as if it required him to serve his defence within ~~14 days~~ **28 days** after the final determination of the application or within such other period as may be specified by the Court. (L.N. 383 of 1996)

3. Service of reply and defence to counterclaim (O. 18, r. 3)

(1) A plaintiff on whom a defendant serves a defence must serve a reply on that

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defendant if it is needed for compliance with rule 8; and if no reply is served, rule 14(1) will apply.

(2) A plaintiff on whom a defendant serves a counterclaim must, if he intends to defend it, serve on that defendant a defence to counterclaim.

(3) Where a plaintiff serves both a reply and a defence to counterclaim on any defendant, he must include them in the same document.

(4) A reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence, and a defence to counterclaim must be served by the plaintiff before the expiration of 14 days after the service on him of the counterclaim to which it relates.

4. Pleadings subsequent to reply (O. 18, r. 4)

No pleading subsequent to a reply or a defence to counter-claim shall be served except with the leave of the Court.

5. Service of pleadings in Summer Vacation (O. 18, r. 5)

Pleadings or amended pleadings shall not be served during the Summer Vacation, except with the leave of the Court or with the consent of all the parties to the action.

(HK)5A. Filing of pleadings and originating process (O. 18, r. 5A)

(1) Subject to Order 3, rule 5(3) and subject to the provisions of this rule, every pleading and originating process shall be filed in the Registry within the time during which that pleading or originating process may be served by him on any other party.

(2) A party may apply to the court for further time to file a pleading or originating process on a summons stating the further time required.

(3) If a party fails to file a pleading or originating process within the time allowed under paragraph (1) or further time allowed under paragraph (2), he shall not be at liberty to file that pleading or originating process without the leave of the Court.

6. Pleadings: formal requirements (O. 18, r. 6)

(1) Every pleading in an action must bear on its face-

- (a) the year in which the writ in the action was issued and the number of the action,
- (b) the title of the action,

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- (d) the description of the pleading, and
- (e) the date on which it was served.

(2) Every pleading must, if necessary, be divided into paragraphs numbered consecutively, each allegation being so far as convenient contained in a separate paragraph.

(3) Dates, sums and other numbers must be expressed in a pleading in figures and not in words.

(4) Every pleading must be indorsed-

- (a) where the party sues or defends in person, with his name and address;
- (b) in any other case, with the name or firm and business address of the solicitor by whom it was served, and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(5) Every pleading must be signed by counsel, if settled by him, and, if not, by the party's solicitor or by the party, if he sues or defends in person.

7. Facts, not evidence, to be pleaded (O. 18, r. 7)

(1) Subject to the provisions of this rule and rules 7A, 10, 11 and 12, every pleading must contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which those facts are to be proved, and the statement must be as brief as the nature of the case admits.

(2) Without prejudice to paragraph (1), the effect of any document or the purport of any conversation referred to in the pleading must, if material, be briefly stated, and the precise words of the document or conversation must not be stated, except in so far as those words are themselves material.

(3) A party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party, unless the other party has specifically denied it in his pleading.

(4) A statement that a thing has been done or that an event has occurred, being a thing or event the doing or occurrence of which, as the case may be, constitutes a condition precedent necessary for the case of a party is to be implied in his pleading.

7A. Conviction, etc. to be adduced in evidence: matter to be pleaded

(O. 18, r. 7A)

(1) If in any action which is to be tried with pleadings any party intends, in reliance on section 62 of the Evidence Ordinance (Cap 8) (convictions as evidence

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in civil proceedings) to adduce evidence that a person was convicted of an offence by or before a court in Hong Kong, he must include in his pleading a statement of his intention with particulars of-

- (a) the conviction and the date thereof,
- (b) the court which made the conviction, and
- (c) the issue in the proceedings to which the conviction is relevant.

(2) If in any action which is to be tried with pleadings any party intends, in reliance on section 63 of the Evidence Ordinance (Cap 8) (findings of adultery as evidence in civil proceedings) to adduce evidence that a person was found guilty of adultery in matrimonial proceedings, he must include in his pleading a statement of his intention with particulars of-

- (a) the finding and the date thereof,
- (b) the court which made the finding and the proceedings in which it was made, and
- (c) the issue in the proceedings to which the finding is relevant.

(3) Where a party's pleading includes such a statement as is mentioned in paragraph (1) or (2), then if the opposite party-

- (a) denies the conviction or finding of adultery to which the statement relates, or
- (b) alleges that the conviction or finding was erroneous, or
- (c) denies that the conviction or finding is relevant to any issue in the proceedings,

he must make the denial or allegation in his pleading.

8. Matters which must be specifically pleaded (O. 18, r. 8)

(1) A party must in any pleading subsequent to a statement of claim plead specifically any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality-

- (a) which he alleges makes any claim or defence of the opposite party not maintainable; or
- (b) which, if not specifically pleaded, might take the opposite party by surprise; or
- (c) which raises issues of fact not arising out of the preceding pleading.

(2) Without prejudice to paragraph (1), a defendant to an action for recovery of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient.

(3) A claim for exemplary damages or for provisional damages must be specifically pleaded together with the facts on which the party pleading relies.

(4) A party must plead specifically any claim for interest under section 48 of the Ordinance or otherwise.

Remarks**9. Matter may be pleaded whenever arising** (O. 18, r. 9)

Subject to rules 7(1), 10 and 15(2), a party may in any pleading plead any matter which has arisen at any time, whether before or since the issue of the writ.

10. Departure (O. 18, r. 10)

- (1) A party shall not in any pleading make any allegation of fact, or raise any new ground of claim, inconsistent with a previous pleading of his.
- (2) Paragraph (1) shall not be taken as prejudicing the right of a party to amend, or apply for leave to amend, his previous pleading so as to plead the allegations or claims in the alternative.

11. Points of law may be pleaded (O. 18, r. 11)

A party may by his pleading raise any point of law.

12. Particulars of pleading (O. 18, r. 12)

- (1) Subject to paragraph (2), every pleading must contain the necessary particulars of any claim, defence or other matter pleaded including, without prejudice to the generality of the foregoing-
 - (a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies;
 - (b) where a party pleading alleges any condition of the mind of any person, whether any disorder or disability of mind or any malice, fraudulent intention or other condition of mind except knowledge, particulars of the facts on which the party relies; and (L.N. 404 of 1991)
 - (c) where a claim for damages is made against a party pleading, particulars of any facts on which the party relies in mitigation of, or otherwise in relation to, the amount of damages. (L.N. 404 of 1991)
- (1A) Subject to paragraph (1B), a plaintiff in an action for personal injuries shall serve with his statement of claim-
 - (a) a medical report; and
 - (b) a statement of the special damages claimed. (L.N. 404 of 1991)
- (1B) Where the documents to which paragraph (1A) applies are not served with the statement of claim, the Court may-
 - (a) specify the period of time within which they are to be provided; or
 - (b) make such other order as it thinks fit (including an order dispensing with the requirement of paragraph (1A) or staying the proceedings.)
(L.N. 404 of 1991)

Remarks

(1C) For the purposes of this rule-
 “medical report” (醫學報告) means a report substantiating all the personal injuries alleged in the statement of claim which the plaintiff proposes to adduce in evidence as part of his case at the trial;

“a statement of the special damages claimed” (關於所申索的專項損害賠償的陳述書) means a statement giving full particulars of the special damages claimed for expenses and losses already incurred and an estimate of any future expenses and losses (including loss of earnings and of pension rights). (L.N. 404 of 1991)

(2) Where it is necessary to give particulars of debt, expenses or damages and those particulars exceed 3 folios, they must be set out in a separate document referred to in the pleading and the pleading must state whether the document has already been served, and, if so, when, or is to be served with the pleading.

~~(3) The Court may order a party to serve on any other party 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 a statement of the nature of the case on which he relies, and the order may be made on such terms as the Court thinks just.~~

Rule 78
Rec 33-34

(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.

(4) Where a party alleges as a fact that a person had knowledge or notice of some fact, matter or thing, then, without prejudice to the generality of paragraph (3), the Court may, on such terms as it thinks just, order that party to serve on any other party-

(a) where he alleges knowledge, particulars of the facts on which he relies, and

(b) where he alleges notice, particulars of the notice.

(4A) The Court may make an order under paragraph (3) or (4) upon the application of a party or of its own motion.

Rule 78
Rec 33-34

(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

(5) An order under this rule shall not be made before service of the defence unless, in the opinion of the Court, the order is necessary or desirable to enable the defendant to plead or for some other special reason.

Remarks

(6) Where the applicant for an order under this rule did not apply by letter for the particulars he requires, the Court may refuse to make the order unless of opinion that there were sufficient reasons for an application by letter not having been made.

(7) Where particulars are given pursuant to a request, or order of the Court, the request or order shall be incorporated with the particulars, each item of the particulars following immediately after the corresponding item of the request or order.

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

Rule 71
Rec 26-32, 35

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.

13. Admissions and denials (O. 18, r. 13)

(1) ~~Any allegation~~ **Subject to paragraph (6), an allegation** of fact made by a party in his pleading is deemed to be admitted by the opposite party unless it is traversed by that party in his pleading or a joinder of issue under rule 14 operates as a denial **non-admission** of it. (L.N. 403 of 1992)

Rule 67
Rec 22-24

(2) ~~A traverse~~ **Subject to paragraph (5), a traverse** may be made either by a denial or by a statement of non-admission and either expressly or by necessary implication.

Rule 67
Rec 22-24

(3) Every allegation of fact made in a statement of claim or counterclaim which the party on whom it is served does not intend to admit must be specifically traversed by him in his defence or defence to counterclaim, as the case may be; and a general denial of such allegations, or a general statement of non-admission of them, is not a sufficient traverse of them. (L.N. 403 of 1992)

(4) (Repealed L.N. 403 of 1992)

(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 –

Rule 67
Rec 22-24

- (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,

Remarks**shall be taken to require that allegation to be proved.****14. Denial by joinder of issue** (O. 18, r. 14)

- (1) If there is no reply to a defence, there is an implied joinder of issue on that defence.
- (2) Subject to paragraph (3)-
- (a) there is at the close of pleadings an implied joinder of issue on the pleading last served, and
 - (b) a party may in his pleading expressly join issue on the next preceding pleading.
- (3) There can be no joinder of issue, implied or expressed, on a statement of claim or counterclaim.
- (4) A joinder of issue operates as a ~~denial~~ **non-admission** of every material allegation of fact made in the pleading on which there is an implied or expressed joinder of issue unless, in the case of an expressed joinder of issue, any such allegation is excepted from the joinder and is stated to be admitted, in which case the expressed joinder of issue operates as a ~~denial~~ **non-admission** of every other such allegation.

Rule 68
Rec 22-24

15. Statement of claim (O. 18, r. 15)

- (1) A statement of claim must state specifically the relief or remedy which the plaintiff claims; but costs need not be specifically claimed.
- (2) A statement of claim must not contain any allegation or claim in respect of a cause of action unless that cause of action is mentioned in the writ or arises from facts which are the same as, or include or form part of, facts giving rise to a cause of action so mentioned; but subject to that, a plaintiff may in his statement of claim alter, modify or extend any claim made by him in the endorsement of the writ without amending the endorsement.
- (3) Every statement of claim must bear on its face a statement of the date on which the writ in the action was issued.

16. Defence of tender (O. 18, r. 16)

Where in any action a defence of tender before action is pleaded, the defendant must pay into court in accordance with Order 22 the amount alleged to have been tendered, and the tender shall not be available as a defence unless and until payment into court has been made.

Remarks**17. Defence of set-off** (O. 18, r. 17)

Where a claim by a defendant to a sum of money (whether of an ascertained amount or not) is relied on as a defence to the whole or part of a claim made by the plaintiff, it may be included in the defence and set-off against the plaintiff's claim, whether or not it is also added as a counterclaim.

18. Counterclaim and defence to counterclaim (O. 18, r. 18)

Without prejudice to the general application of this Order to a counterclaim and a defence to counterclaim, or to any provision thereof which applies to either of those pleadings specifically-

- (a) rules 12(1A), (1B) and (1C) and 15(1) shall apply to a counterclaim as if the counterclaim were a statement of claim and the defendant making it a plaintiff; (L.N. 404 of 1991)
- (b) rules 8(2), 16 and 17 shall, with the necessary modifications, apply to a defence to counterclaim as they apply to a defence.

19. Striking out pleadings and indorsements (O. 18, r. 19)

(1) The Court may, **either of its own motion or on application**, at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This rule shall, so far as applicable, apply to an originating summons and a petition as if the summons or petition, as the case may be, were a pleading.

Rule 72
Rec 26-32, 35

20. Close of pleadings (O. 18, r. 20)

(1) The pleadings in an action are deemed to be closed-

- (a) at the expiration of 14 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim, or
- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 14 days after service of the defence.

Remarks

(2) The pleadings in an action are deemed to be closed at the time provided by paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time.

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

Rule 73
Rec 26-32, 35

(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).

21. Trial without pleadings (O. 18, r. 21)

(1) Where in an action to which this rule applies any defendant has given notice of intention to defend in the action, the plaintiff or that defendant may apply to the Court by summons for an order that the action shall be tried without pleadings or further pleadings, as the case may be.

(2) If, on the hearing of an application under this rule, the Court is satisfied that the issues in dispute between the parties can be defined without pleadings or further pleadings, or that for any other reason the action can properly be tried without pleadings or further pleadings, as the case may be, the Court shall order the action to be so tried, and may direct the parties to prepare a statement of the issues in dispute or, if the parties are unable to agree such a statement, may settle the statement itself.

(3) Where the Court makes an order under paragraph (2), it shall, and where it dismisses an application for such an order, it may, give such directions as to the further conduct of the action as may be appropriate, and Order 25, rules 2 to 7 shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application under this rule were a summons for directions.

(4) This rule applies to every action begun by writ other than one which includes-

(a) a claim by the plaintiff for libel, slander, malicious prosecution or false imprisonment; or (L.N. 363 of 1990)

(b) a claim by the plaintiff based on an allegation of fraud.

Remarks**22. Saving for defence under Merchant Shipping Acts etc. (O. 18, r. 22)**

Nothing in Order 75, rules 37 to 40, shall be taken as limiting the right of any shipowner or other person to rely by way of defence on any provision of the Merchant Shipping Acts 1894 to 1979[#] in their application to Hong Kong or the Merchant Shipping Ordinance (Cap 281), the Merchant Shipping (Seafarers) Ordinance (Cap 478) or the Merchant Shipping (Safety) Ordinance (Cap 369), which limits the amount of his liability in connection with a ship or other property.

(L.N. 356 of 1988; 44 of 1995 s. 143)

23. Transitional provision relating to rule 67 of Amendment Rules 2007 (O. 18, r. 23)

Rule 69
Rec 22-24

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.

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

Rule 74
Rec 26-32, 35

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.

Note:

Please also see following-

(a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;

(b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

Rules of the High Court (Amendment) Rules 2007**The Rules of the High Court (Cap 4A)****Order 20 - AMENDMENT**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks**1. Amendment of writ without leave (O. 20, r. 1)**

(1) Subject to paragraph (3), the plaintiff may, without the leave of the Court, amend the writ once at any time before the pleadings in the action begun by the writ are deemed to be closed.

(2) Where a writ is amended under this rule after service thereof, then, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on each defendant to the action.

(3) This rule shall not apply in relation to an amendment which consists of-

- (a) the addition, omission or substitution of a party to the action or an alteration of the capacity in which a party to the action sues or is sued, or
- (b) the addition or substitution of a new cause of action, or
- (c) (without prejudice to rule 3(1)) an amendment of the statement of claim (if any) indorsed on the writ,

unless the amendment is made before service of the writ on any party to the action.

2. Amendment of acknowledgment of service (O. 20, r. 2)

(1) Subject to paragraph (2), a party may not amend his acknowledgment of service without leave of the Court.

(2) A party whose acknowledgment of service contains a statement to the effect that-

- (a) he does, or
- (b) he does not

intend to contest the proceedings to which the acknowledgement relates may, without the leave of the Court, amend the acknowledgment by substituting for that statement a statement to the opposite effect, provided that in a case falling under sub-paragraph (b) the amendment is made before judgment has been obtained in the proceedings.

(3) Where an acknowledgment of service is authorized to be amended under this rule, a fresh acknowledgment, amended as so authorized, must be handed in at or sent by post to the Registry, and Order 12, rule 4, shall apply.

Remarks**3. Amendment of pleadings without leave (O. 20, r. 3)**

(1) A party may, without the leave of the Court, amend any pleading of his once at any time before the pleadings are deemed to be closed and, where he does so, he must serve the amended pleading on the opposite party.

(2) Where an amended statement of claim is served on a defendant-

(a) the defendant, if he has already served a defence on the plaintiff, may amend his defence, and

(b) the period for service of his defence or amended defence, as the case may be, shall be either the period fixed by or under these rules for service of his defence or a period of 14 days after the amended statement of claim is served on him, whichever expires later.

(3) Where an amended defence is served on the plaintiff by a defendant-

(a) the plaintiff, if he has already served a reply on that defendant, may amend his reply, and

(b) the period for service of his reply or amended reply, as the case may be, shall be 14 days after the amended defence is served on him.

(4) In paragraphs (2) and (3) references to a defence and a reply include references to a counterclaim and a defence to counter-claim respectively.

(5) Where an amended counterclaim is served by a defendant on a party (other than the plaintiff) against whom the counterclaim is made, paragraph (2) shall apply as if the counterclaim were a statement of claim and as if the party by whom the counterclaim is made were the plaintiff and the party against whom it is made a defendant.

(6) Where a party has pleaded to a pleading which is subsequently amended and served on him under paragraph (1), then, if that party does not amend his pleading under the foregoing provisions of this rule, he shall be taken to reply on it in answer to the amended pleading, and Order 18, rule 14(2), shall have effect in such a case as if the amended pleading had been served at the time when that pleading, before its amendment under paragraph (1), was served.

4. Application for disallowance of amendment made without leave

(O. 20, r. 4)

(1) Within 14 days after the service on a party of a writ amended under rule 1 (1) or of a pleading amended under rule 3(1), that party may apply to the Court to disallow the amendment.

(2) Where the Court hearing an application under this rule is satisfied that if an application for leave to make the amendment in question had been made under rule 5 at the date when the amendment was made under rule 1(1) or rule 3(1) leave to make the amendment or part of the amendment would have been refused,

Remarks

it shall order the amendment or that part to be struck out.

(3) Any order made on an application under this rule may be made on such terms as to costs or otherwise as the Court thinks just.

5. Amendment of writ or pleading with leave (O. 20, r. 5)

(1) Subject to Order 15, rules 6, 7 and 8 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his writ, or any party to amend his pleadings, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) Where an application to the Court for leave to make the amendment mentioned in paragraph (3), (4) or (5) is made after any relevant period of limitation current at the date of issue of the writ has expired, the Court may nevertheless grant such leave in the circumstances mentioned in that paragraph if it thinks it just to do so.

(3) An amendment to correct the name of a party may be allowed under paragraph (2) notwithstanding that it is alleged that the effect of the amendment will be to substitute a new party if the Court is satisfied that the mistake sought to be corrected was a genuine mistake and was not misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

(4) An amendment to alter the capacity in which a party sues may be allowed under paragraph (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired.

(5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the action by the party applying for leave to make the amendment.

7. Amendment of other originating process (O. 20, r. 7)

Rule 5 shall have effect in relation to an originating summons, a petition and an originating notice or motion as it has effect in relation to a writ.

8. Amendment of certain other documents (O. 20, r. 8)

(1) For the purpose of determining the real question in controversy between the parties to any proceedings, or of correcting any defect or error in any proceedings, the Court may at any stage of the proceedings and either of its own motion or on the application of any party to the proceedings order any document

Remarks

in the proceedings to be amended on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

(2) This rule shall not have effect in relation to a judgment or order.

9. Failure to amend after order (O. 20, r. 9)

Where the Court makes an order under this Order giving any party leave to amend a writ, pleading or other document, then, if that party does not amend the document in accordance with the order before the expiration of the period specified for that purpose in the order or, if no period is so specified, of a period of 14 days after the order was made, the order shall cease to have effect, without prejudice, however, to the power of the Court to extend the period.

10. Mode of amendment of writ, etc. (O. 20, r. 10)

(1) Where the amendments authorized under any rule of this Order to be made in a writ, pleading or other document are so numerous or of such nature or length that to make written alterations of the document so as to give effect to them would make it difficult or inconvenient to read, a fresh document, amended as so authorized, must be prepared and, in the case of a writ or originating summons, re-issued, but, except as aforesaid and subject to any direction given under rule 5, or 8, the amendments so authorized may be effected by making in writing the necessary alterations of the document and in the case of a writ or originating summons, causing it to be resealed and filing a copy.

(2) A writ, pleading or other document which has been amended under this Order must be indorsed with a statement that it has been amended, specifying the date on which it was amended, the name of the Judge, master or Registrar by whom the order (if any) authorizing the amendment was made and the date thereof, or, if no such order was made, the number of the rule of this Order in pursuance of which the amendment was made.

11. Amendment of judgment and orders (O. 20, r. 11)

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court on motion or summons without an appeal.

12. Amendment of pleadings by agreement (O. 20, r. 12)

(1) Notwithstanding the foregoing provisions of this Order any pleading in any cause or matter may, by written agreement between the parties, be amended at any stage of the proceedings.

Remarks

(2) This rule shall not have effect in relation to an amendment which consists of the addition, omission or substitution of a party.

(Enacted 1988)

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

Rule 75
Rec 26-32, 35

(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).

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 22 - PAYMENT INTO AND OUT OF COURT

Remarks:

~~Adaptation amendments retroactively made—see 25 of 1998 s. 2~~

Remarks

Rule 79,
Rec 38 to 73
and 132

1. — Payment into court (O. 22, r. 1)

~~(1) — In any action for a debt or damages any defendant may at any time pay into court a sum or sums of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.~~

~~(2) — On making any payment into court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 23 in Appendix A to the plaintiff and every other defendant (if any); and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.~~

~~(3) — A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.~~

~~(4) — Where two or more causes of action are joined in the action and money is paid into court under this rule in respect of all, or some only of, those causes of action, the notice of payment—~~

~~(a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which payment is made, and~~

~~(b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.~~

~~(5) — Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.~~

~~(6) — Where a cause of action under the Fatal Accidents Ordinance (Cap 22) and a cause of action under sections 20 to 25 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) are joined in an action, with or without any~~

Remarks

~~other cause of action, the causes of action under the said Ordinances shall, for the purpose of paragraph (5), be treated as one cause of action.~~

~~(8) For the purposes of this rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under section 48 of the Ordinance or otherwise, if judgment were given at the date of the payment into court.~~

2. Payment in by defendant who has counterclaimed (O. 22, r. 2)

~~Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state if it be the case, that in making the payment the defendant has taken into account and intends to satisfy—~~

- ~~(a) the cause of action in respect of which he claims, or~~
- ~~(b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them. (See App. A, Form 23)~~

3. Acceptance of money paid into court (O. 22, r. 3)

~~(1) Where money is paid into court under rule 1, then, subject to paragraph (2), within 14 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may—~~

- ~~(a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or~~
- ~~(b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,~~

~~by giving notice in Form No. 24 in Appendix A to every defendant to the action.~~

~~(2) Where after the trial or hearing of an action has begun—~~

- ~~(a) money is paid into court under rule 1, or~~
- ~~(b) money in court is increased by a further payment into court under that rule,~~

~~the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the judge begins to deliver judgment or, if the trial is with a jury, before the judge begins his summing up.~~

~~(3) Rule 1(5) shall not apply in relation to money paid into court in an action~~

Remarks

after the trial or hearing of the action has begun.

~~(4) — On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him, shall be stayed.~~

~~(5) — Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or specified causes of action, in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.~~

~~(6) — A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 80, rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.~~

4. Order for payment out of money accepted required in certain cases

~~(O. 22, r. 4)~~

~~(1) — Where a plaintiff accepts any sum paid into court and that sum was paid into court~~

~~(a) by some but not all of the defendants sued jointly or in the alternative by him, or~~

~~(b) with a defence of tender before action, or~~

~~(c) in an action to which Order 80, rule 12, applies, or~~

~~(d) in satisfaction either of causes of action arising under the Fatal Accidents Ordinance (Cap 22) and sections 20 to 25 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23) or of a cause of action arising under the first mentioned Ordinance where more than one person is entitled to the money,~~

~~the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.~~

~~(2) — Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(a) then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.~~

~~(3) — Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance~~

Remarks

~~relates are stayed by virtue of rule 3(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.~~

5. — Money remaining in court (O. 22, r. 5)

~~— If any money paid into court in an action is not accepted in accordance with rule 3, 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; and where such an order 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.~~

6. — Counterclaim (O. 22, r. 6)

~~— A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.~~

7. — Non-disclosure of payment into court (O. 22, r. 7)

~~(1) — Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun and subject to paragraph (2), the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.~~

~~(2) — Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the Court the fact that a payment into court has or has not been made and the date (but not the amount) of such payment or of the first payment if more than one.~~

8. — Money paid into court under order (O. 22, r. 8)

~~(1) — On making any payment into Court under an order of the Court or a certificate of a master, a party must give notice thereof to every other party to the proceedings. (L.N. 363 of 1990)~~

~~(2) — Subject to paragraph (3), money paid into court under an order of the Court~~

Remarks

or a certificate of a master shall not be paid out except in pursuance of an order of the Court. (L.N. 404 of 1991)

~~(3) — Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14—~~

~~(a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or~~

~~(b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;~~

~~and money appropriate in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.~~

~~(L.N. 363 of 1990)~~

10. — Person to whom payment to be made ~~(O. 22, r. 10)~~

~~(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 rule 1 or under an order of the Court or a certificate of the Registrar.~~

11. — Payment out: small intestate estates ~~(O. 22, r. 11)~~

~~— Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate, including the fund or share, do not exceed \$20000 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.~~

12. — Payment of hospital expenses ~~(O. 22, r. 12)~~

~~(1) — This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.~~

Remarks

~~(2) — Where the party against whom the claim is made, or an authorized insurer within the meaning of section 2 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap 272) pays the amount for which that party or insurer, as the case may be, is or may be liable under section 8 of that Ordinance in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the payment is made, give notice of the payment to all the other parties to the action.~~

13. — Investment of money in court (O. 22, r. 13)

~~— Cash 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.) and the Trustee Ordinance (Cap 29).
(25 of 1998 s. 2)~~

14. — Written offers “without prejudice save as to costs” (O. 22, r. 14)

~~(1) — A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be “without prejudice save as to costs” and which relates to any issue in the proceedings.~~

~~(2) — Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided: (L.N. 404 of 1991)
Provided that the Court shall not take such 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 payment into court under O. 22.~~

~~(Enacted 1988)~~

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;

Remarks

Rule 79,
Rec 38 to 43
and 132

Remarks

“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)

Remarks

(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

Remarks

(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

Remarks

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 –

Remarks

- (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

(b) an 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;

Remarks

- (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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

**ORDER 22A - MISCELLANEOUS PROVISIONS ABOUT
PAYMENTS INTO COURT**

Remarks

1. Money remaining in court (O. 22A, r. 1)

Rule 89,
Rec 38 to 43
and 132

(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**

Remarks

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).

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 24 - DISCOVERY AND INSPECTION OF DOCUMENTS

Remarks

1. Mutual discovery of documents (O. 24, r. 1)

(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

2. Discovery by parties without order (O. 24, r. 2)

(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action. (L.N. 157 of 2003 and L.N. 199 of 2003)

Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any written law to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.

(5) On the application of any party required by this rule to make discovery of documents, the Court may-

(a) order that the parties to the action or any of them shall make discovery

under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

- (b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the summons for directions in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

3. Order for discovery (O. 24, r. 3)

(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

4. Order for determination of issue, etc., before discovery (O. 24, r. 4)

(1) Where on an application for an order under rule 2 or 3 it appears to the Court

that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a summons for directions.

5. Form of list and affidavit (O. 24, r. 5)

(1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

6. Defendant entitled to copy of co-defendant's list (O. 24, r. 6)

(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

(4) In this rule “list of documents” (文件清單) includes an affidavit verifying a list of documents.

7. Order for discovery of particular documents (O. 24, r. 7)

(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

7A. Application under section ~~41~~ 41, 41A or 42(1) of the Ordinance (O. 24, r. 7A)

Rule 102.
Rec 76 and 79

(1) An application for an order under section 41 or 41A of the Ordinance for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 10 in Appendix A) and the person against whom the order is sought shall be made defendant to the summons. (L.N. 404 of 1991)

(2) An application after the commencement of proceedings for an order under section 42(1) of the Ordinance for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must-

- (a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the Court of First Instance in which ~~a claim for personal injuries~~ a relevant claim is likely to be made; (25 of 1998 s. 2)
- (b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise out of a claim for personal injuries made or likely to be made in the proceedings and that

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the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(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)

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under section 41, **41A** or 42(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce-

- (a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or
- (b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

(7) — In this rule “a claim for personal injuries” (就人身傷害而提出的申索) means a claim in respect of personal injuries to a person or in respect of a person's death.

(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.**

(8) For the purposes of rules 10 and 11 an application for an order under section 41, **41A** or 42(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

8(1). Discovery to be ordered only if necessary (O. 24, r. 8)

Rule 103,
Rec 76 and 79

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On the hearing of an application for ~~an order under rule 3, 7 or 7A~~ **an order specified in paragraph (2)** the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

(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.

9. Inspection of documents referred to in list (O. 24, r. 9)

A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

10. Inspection of documents referred to in pleadings and affidavits (O. 24, r. 10)

(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements served under Order 38, rule 2A, or experts' reports, reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof. (L.N. 223 of 1995; L.N. 383 of 1996)

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

11. Order for production for inspection (O. 24, r. 11)

- (1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)-
- (a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2), or
 - (b) objects to produce any document for inspection, or
 - (b) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,
- then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.
- (2) Without prejudice to paragraph (1), but subject to rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.
- (3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

11A. Provision of copies of documents (O. 24, r. 11A)

- (1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.
- (2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the reasonable charges.
- (3) Where a party fails to supply to another party a copy of any document under paragraph (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

11B. (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

12. Order for production to Court (O. 24, r. 12)

- (1) At any stage of the proceedings in any cause or matter the Court may, subject

to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

13. Production to be ordered only if necessary, etc. (O. 24, r. 13)

(1) No order for the production of any documents for inspection or to the Court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

14. Production of business books (O. 24, r. 14)

(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy or any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

14A. Use of documents (O. 24, r. 14A)

Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

15. Document disclosure of which would be injurious to public interest: saving (O. 24, r. 15)

The foregoing provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

15A. Order for limiting discovery (O. 24 r. 15A)

Rule 105,
Rec 80

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.**

16. Failure to comply with requirement for discovery, etc. (O. 24, r. 16)

(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

17. Revocation and variation of orders (O. 24, r. 17)

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Remarks

Order 25 – ~~SUMMONS FOR DIRECTION~~ CASE MANAGEMENT AND SUMMONS FOR DIRECTIONS

Rule 94,
Rec 52 to 60
and 62

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

1. ~~Summons for directions~~ Case Management and Summons for directions (O. 25, r. 1)

Rule 95,
Rec 52 to 60
and 62

~~(1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparation for the trial of the action, so that~~

~~(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with, and~~

~~(b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,~~

~~the plaintiff must, 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.~~

(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

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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.

- (2) This rule applies to all actions begun by writ except-
- (a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;
 - (b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;
 - (c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;
 - (d) actions in which directions have been given under Order 29, rule 7;
 - (e) actions in which an order for the taking of an account has been made under Order 43, rule 1;
 - (f) actions in which an application for transfer to the commercial list is pending;
 - (h) actions for the infringement of a patent;
 - (j) actions for personal injuries for which automatic directions are provided by rule 8; and
 - (k) actions in which the parties agree under rule 9 that the only matters to be determined are the mode of trial and time for setting down.

(3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, ~~paragraph (1) of this rule~~ **paragraph (1B) of this rule** shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.

Rule 95,
Rec 52 to 60
and 62

(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a summons for directions.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule **and rule 1A(1)(d)** to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in paragraph (1), any party to an action to which

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this rule applies may take out a summons for directions at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

1A. Case management timetable (O. 25, r. 1A)

Rule 96,
Rec 52 to 60
and 62

(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."

2. Duty to consider all matters (O. 25, r. 2)

(1) When the summons for directions first comes to be heard, the Court shall consider whether-

- (a) it is possible to deal then with all the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons for directions, or
- (b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the summons for directions first comes to be heard the Court considers that it is possible to deal then with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the summons for directions first comes to be heard, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the subsequent rules of this Order, are required to be considered on the hearing of the summons, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at a resumed hearing of the summons for directions.

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the subsequent rules of this Order, are required to be considered on the

hearing of the summons for directions have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, on the summons for directions, an action is ordered to be transferred to the District Court or some other court, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order on the summons.

(7) If the hearing of the summons for directions is adjourned without a day being fixed for the resumed hearing thereof, any party may restore it to the list on 2 days' notice to the other parties.

3. Particular matters for consideration (O. 25, r. 3)

On the hearing of the summons for directions the Court shall in particular consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say-

- (a) any provision of Part IV and Part V of the Evidence Ordinance (Cap 8) (hearsay evidence of fact or opinion in civil proceedings) or of Part III and Part IV of Order 38;
- (b) Order 20, rule 5 and Order 38, rules 2 to 7;
- (c) section 40 of the District Court Ordinance (Cap 336).

4. Admissions and agreements to be made (O. 25, r. 4)

At the hearing of the summons for directions, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

5. Limitation of right of appeal (O. 25, r. 5)

Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the summons for directions may record any such agreement.

6. Duty to give all information at hearing (O. 25, r. 6)

(1) Subject to paragraph (2), no affidavit shall be used on the hearing of the summons for directions except by the leave or directions of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents on any hearing of the

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summons as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

The Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party on the hearing of the summons for directions in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(3) If the Court on any hearing of the summons for directions requires a party to the action or his solicitor or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may-

- (a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or
- (b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

(4) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.

7. Duty to make all interlocutory applications on summons for directions

(O. 25, r. 7)

(1) Any party to whom the summons for directions is addressed must so far as practicable apply at the hearing of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days before the hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the hearing of the summons for directions is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the resumed hearing of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

Remarks

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

8. Automatic directions in personal injury actions (O. 25, r. 8)

(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically-

- (a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;
- (b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 6 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;
- (c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;
- (d) photographs, a sketch plan and the contents of any police accident report shall be receivable in evidence at the trial and shall be agreed if possible;
- (HK)(dd) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;
- (f)-(g) (Repealed L.N. 99 of 1993)

(2) Where paragraph (1)(b) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate or prevent the making of an order for the transfer of the proceedings to a district court.

(4) For the purpose of this rule-
“a road accident” (道路意外) means an accident on land due to a collision or apprehended collision involving a vehicle; and

“documents relating to special damages” (關於專項損害賠償的文件) include-

Remarks

- (a) documents relating to any industrial injury, industrial disablement or sickness benefit rights, and
 - (b) where the claim is made under the Fatal Accidents Ordinance (Cap 22), documents relating to any claim for dependency on the deceased.
- (5) This rule applies to any action for personal injuries except-
- (a) any Admiralty action; and
 - (b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

9. Standard direction by consent (O. 25, r. 9)

- (1) (Repealed L.N. 99 of 1993)
- (3) The Court may give such further directions or orders, whether on application by a party or its own motion, as may, in the circumstances, be appropriate.

(Enacted 1988)

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.

Rule 97,
Rec 52 to 60
and 62

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.

Rules of the High Court (Amendment) Rules 2007**The Rules of the High Court (Cap 4A)****Order 28 - ORIGINATING SUMMONS PROCEDURE**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks**1. Application (O. 28, r. 1)**

The provisions of this Order apply to all originating summonses subject, in the case of originating summonses of any particular class, to any special provisions relating to originating summonses of that class made by these rules or by or under any written law; and subject as aforesaid, Order 32, rule 5, shall apply in relation to originating summonses as they apply in relation to other summonses.

1A. Affidavit evidence (O. 28, r. 1A)

(1) In any cause or matter begun by originating summons (not being an ex parte summons) the plaintiff must, before the expiration of 14 days after the defendant has acknowledged service, or, if there are two or more defendants, at least one of them has acknowledged service, file with the Court the affidavit evidence on which he intends to rely.

(2) In the case of an ex parte summons the applicant must file his affidavit evidence not less than 4 clear days before the day fixed for the hearing.

(3) Copies of the affidavit evidence filed in the Court under paragraph (1) must be served by the plaintiff on the defendant, or, if there are two or more defendants, on each defendant, before the expiration of 14 days after service has been acknowledged by that defendant.

(4) Where a defendant who has acknowledged service wishes to adduce affidavit evidence he must within 28 days after service on him of copies of the plaintiff's affidavit evidence under paragraph (3) file his own affidavit evidence in the Court and serve copies thereof on the plaintiff and on any other defendant who is affected thereby.

(5) A plaintiff on whom a copy of a defendant's affidavit evidence has been served under paragraph (4) may within 14 days of such service file in the Court further affidavit evidence in reply and shall in that event serve copies thereof on that defendant.

(6) No other affidavit shall be received in evidence without the leave of the Court.

(7) Where an affidavit is required to be served by one party on another party it shall be served without prior charge.

(8) The provisions of this rule apply subject to any direction by the Court to the contrary.

(9) In this rule references to affidavits and copies of affidavits include references to exhibits to affidavits and copies of such exhibits.

2. Fixing time for attendance of parties before Court (O. 28, r. 2)

(1) In the case of an originating summons which is in Form No. 8 in Appendix A the plaintiff must, within one month of the expiry of the time within which copies of affidavit evidence may be served under rule 1A, obtain an appointment for the attendance of the parties before the Court for the hearing of the summons, and a day and time for their attendance shall be fixed by a notice (in Form No. 12 in Appendix A) sealed with the seal of the Court.

(2) A day and time for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 10 in Appendix A, or for the hearing of an ex parte originating summons, may be fixed on the application of the plaintiff or applicant, as the case may be and in the case of a summons which is required to be served, the time limited for acknowledging service shall, where appropriate, be abridged so as to expire on the next day but one before the day so fixed, and the time limits for lodging affidavits under rule 1A(2) and (3) shall, where appropriate, be abridged so as to expire, respectively, on the fifth day before, and the next day but one before, the day so fixed.

(3) Where a plaintiff fails to apply for an appointment under paragraph (1), any defendant may, with the leave of the Court, obtain an appointment in accordance with that paragraph provided that he has acknowledged service of the originating summons.

3. Notice of hearing (O. 28, r. 3)

(1) Not less than 14 days before the day fixed under rule 2 for the attendance of the parties before the Court for the hearing of an originating summons which is in Form No. 8 in Appendix A, the party on whose application the day was fixed must serve a copy of the notice fixing it on every other party. (L.N. 404 of 1991)

(2) Not less than 4 clear days before the day fixed under rule 2 for the hearing of an originating summons which is in Form No. 10 in Appendix A, the plaintiff must serve the summons on every defendant or, if any defendant has already been served with the summons, must serve on that defendant notice of the day fixed for the hearing.

Remarks

(3) Where notice in Form No. 12 in Appendix A is served in accordance with paragraph (1), such notice shall specify what orders or directions the party serving the notice intends to seek at the hearing; and any party served with such notice who wishes to seek different orders or directions must, not less than 7 days before the hearing, serve on every other party a notice specifying the other orders and directions he intends to seek. (L.N. 404 of 1991)

(4) If the hearing of an originating summons which is in Form No. 8 or 10 in Appendix A is adjourned and any party to the proceedings desires to apply at the resumed hearing for any order or direction not previously asked for, he must, not less than 7 days before the resumed hearing of the summons, serve on every other party a notice specifying those orders and directions. (L.N. 404 of 1991)

(5) Where a party is required by any provision of this rule or rule 5(2) to serve a notice or a copy of a notice on "every other party" he must-

- (a) where he is the plaintiff, serve it on every defendant who has acknowledged service of the originating summons; and
- (b) where he is a defendant, serve it on the plaintiff and on every other defendant affected thereby. (L.N. 404 of 1991)

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

Rule 23,
Rec 10 to 16

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

4. Directions, etc., by Court (O. 28, r. 4)

(1) The Court by whom an originating summons is heard may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the order may be varied or revoked by a subsequent order of the Court on such terms as it thinks just.

(2) In any case where the Court does not dispose of any originating summons altogether at a hearing or order the cause or matter begun by it to be transferred to a District Court or some other court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.

(3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the summons on oral evidence or mainly on oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the summons shall be heard on oral evidence or partly on oral evidence and partly on

affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.

(4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross-examination and any directions which it could give under Order 25 if the cause or matter had been begun by writ and the summons were a summons for directions under that Order.

(5) The Court may at any stage of the proceedings order that any affidavit, or any particulars of any claim, defence or other matters stated in any affidavit, shall stand as pleadings or that points of claim, defence or reply be delivered and stand as pleadings. (L.N. 404 of 1991)

5. Adjournment of summons (O. 28, r. 5)

(1) The hearing of the summons by the Court may (if necessary) be adjourned from time to time, either generally or to a particular date, as may be appropriate, and the powers of the Court under rule 4 may be exercised at any resumed hearing.

(2) If the hearing of the summons is adjourned generally, any party may restore it to the list on 14 days' notice to every other party and rule 3(4) shall apply in relation to any such adjourned hearing. (L.N. 404 of 1991)

6. Applications affecting party who has failed to acknowledge service (O. 28, r. 6)

Where in a cause or matter begun by originating summons an application is made to the Court for an order affecting a party who has failed to acknowledge service of the summons, the Court hearing the application may require to be satisfied in such manner as it thinks fit that the party has so failed.

7. Counterclaim by defendant (O. 28, r. 7)

(1) A defendant to an action begun by originating summons who has acknowledged service of the summons and who alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of any matter (whenever and however arising) may make a counterclaim in the action in respect of that matter instead of bringing a separate action.

(2) A defendant who wishes to make a counterclaim under this rule must at the first or any resumed hearing of the originating summons by the Court but, in any case, at as early a stage in the proceedings as is practicable, inform the Court of the nature of his claim and, without prejudice to the powers of the Court under paragraph (3), the claim shall be made in such manner as the Court may direct under rule 4 or rule 8.

(3) If it appears on the application of a plaintiff against whom a counterclaim is made under this rule that the subject-matter of the counterclaim ought for any reason to be disposed of by a separate action, the Court may order the counterclaim to be struck out or may order it to be tried separately or make such other order as may be expedient.

7. Continuation of proceedings as if cause or matter begun by writ

(O. 28, r. 8)

(1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.

(2) Where the Court decides to make such an order, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if there had been a summons for directions in the proceedings and that order were one of the orders to be made thereon.

(3) This rule applies notwithstanding that the cause or matter in question could not have been begun by writ.

(4) Any reference in these rules to an action begun by writ shall, unless the context otherwise requires, be construed as including a reference to a cause or matter proceedings in which are ordered under this rule to continue as if the cause or matter had been so begun.

9. Order for hearing or trial (O. 28, r. 9)

(1) Except where the Court disposes of a cause or matter begun by originating summons in chambers or orders it to be transferred to a District Court or some other court or makes an order in relation to it under rule 8 or some other provision of these rules, the Court shall, on being satisfied that the cause or matter is ready for determination, make such order as to the hearing of the cause or matter as may be appropriate.

(3) The Court shall by order determine the place and mode of the trial, but any such order may be varied by a subsequent order of the Court made at or before the trial.

(4) Order 33, rule 4(2) and Order 34, rules 1 to 8, shall apply in relation to a cause or matter begun by originating summons and to an order made therein under this rule as they apply in relation to an action begun by writ and to an order made

therein under the said rule 4 and shall have effect accordingly with any necessary modifications and with the further modification that for references therein to the summons for directions there shall be substituted references to the first or any resumed hearing of the originating summons by the Court.

10. Failure to prosecute proceedings with despatch (O. 28, r. 10)

(1) If the plaintiff in a cause or matter begun by originating summons makes default in complying with any order or direction of the Court as to the conduct of the proceedings, or if the Court is satisfied that the plaintiff in a cause or matter so begun is not prosecuting the proceedings with due despatch, the Court may order the cause or matter to be dismissed or may make such other order as may be just.

(2) Paragraph (1) shall, with any necessary modifications, apply in relation to a defendant by whom a counterclaim is made under rule 7 as it applies in relation to a plaintiff.

(3) Where, by virtue of an order made under rule 8, proceedings in a cause or matter begun by originating summons are to continue as if the cause or matter had been begun by writ, the foregoing provisions of this rule shall not apply in relation to the cause or matter after the making of the order.

11. Abatement, etc., of action (O. 28, r. 11)

Order 34, rule 9, shall apply in relation to an action begun by originating summons as it applies in relation to an action begun by writ.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 29 - INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, INTERIM PAYMENTS, ETC.

Remarks

I. INTERLOCUTORY INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, ETC.

1. Application for injunction (O. 29, r. 1)

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

(2) Where the applicant is the plaintiff and the case is one of urgency such application may be made ex parte on affidavit but, except as aforesaid, such application must be made by motion or summons.

(3) The plaintiff may not make such an application before the issue of the writ or originating summons by which the cause or matter is to be begun except where the case is one of urgency, and in that case the injunction applied for may be granted on terms providing for the issue of the writ or summons and such other terms, if any, as the Court thinks fit.

2. Detention, preservation etc., of subject-matter of cause or matter (O. 29, r. 2)

(1) On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject-matter of the cause or matter, or as to which any question may arise therein, or for the inspection of any such property in the possession of a party to the cause or matter.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Where the right of any party to a specific fund is in dispute in a cause or matter, the Court may, on the application of a party to the cause or matter, order the fund to be paid into court or otherwise secured.

(4) An order under this rule may be made on such terms, if any, as the Court thinks just.

(5) An application for an order under this rule must be made by summons or by notice under Order 25, rule 7.

(6) Unless the Court otherwise directs, an application by a defendant for such an order may not be made before he acknowledges service of the writ or originating summons by which the cause or matter was begun.

3. Power to order samples to be taken, etc. (O. 29, r. 3)

(1) Where it considers it necessary or expedient for the purpose of obtaining full information or evidence in any cause or matter, the Court may, on the application of a party to the cause or matter, and on such terms, if any, as it thinks just, by order authorize or require any sample to be taken of any property which is the subject-matter of the cause or matter or as to which any question may arise therein, any observation to be made on such property or any experiment to be tried on or with such property.

(2) For the purpose of enabling any order under paragraph (1) to be carried out the Court may by the order authorize any person to enter upon any land or building in the possession of any party to the cause or matter.

(3) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

4. Sale of perishable property, etc. (O. 29, r. 4)

(1) The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any other good reason it is desirable to sell forthwith.

In this paragraph “land” (土地) includes any interest in, or right over, land.

(2) Rule 2(5) and (6) shall apply in relation to an application for an order under this rule as they apply in relation to an application for an order under that rule.

5. Order for early trial (O. 29, r. 5)

Where on the hearing of an application, made before the trial of a cause or matter, for an injunction or the appointment of a receiver or an order under rule 2, 3 or 4 it appears to the Court that the matter in dispute can be better dealt with by an

early trial than by considering the whole merits thereof for the purposes of the application, the Court may make an order accordingly and may also make such order as respects the period before trial as the justice of the case requires. Where the Court makes an order for early trial it shall by the order determine the mode of the trial.

6. Recovery of personal property subject to lien, etc. (O. 29, r. 6)

Where the plaintiff, or the defendant by way of counterclaim, claims the recovery of specific property (other than land) and the party from whom recovery is sought does not dispute the title of the party making the claim but claims to be entitled to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court, at any time after the claim to be so entitled appears from the pleadings (if any) or by affidavit or otherwise to its satisfaction, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the security is claimed and such further sum (if any) for interest and costs as the Court may direct and that, upon such payment being made, the property claimed be given up to the party claiming it.

7. Directions (O. 29, r. 7)

(1) Where an application is made under any of the foregoing provisions of this Order, the Court may give directions as to the further proceedings in the cause or matter.

(2) If, in an action begun by writ, not being any such action as is mentioned in sub-paragraphs (a) to (c) and (e) to (h) of Order 25, rule 1 (2), the Court thinks fit to give directions under this rule before the summons for directions, rules 2 to 7 of that Order shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application were a summons for directions.

7A. Inspection, etc. of property under sections 42 and 44(1) of the Ordinance (O. 29, r. 7A)

(1) An application for an order under section 44(1) of the Ordinance in respect of property which may become the subject-matter of subsequent proceedings in the Court or as to which any question may arise in any such proceedings shall be made by originating summons and the person against whom the order is sought shall be made defendant to the summons.

(2) An application after the commencement of proceedings for an order under section 42(2) of the Ordinance in respect of property which is not the property of or

Remarks

in the possession of any party to the proceedings shall be made by summons, which must be served on the person against whom the order is sought personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by affidavit which must specify or describe the property in respect of which the order is sought and show, if practicable by reference to any pleading served or intended to be served in the proceedings or subsequent proceedings, that it is property which is or may become the subject-matter of the proceedings or as to which any question arises or may arise in the proceedings.

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order made under section 42(2) or 44(1) may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just.

(6) No such order shall be made if it appears to the Court-
that compliance with the order, if made, would result in the disclosure of information relating to a secret process, discovery or invention not in issue in the proceedings; and

- (b) that the application would have been refused on that ground if-
 - (i) in the case of a summons under paragraph (1), the subsequent proceedings had already been begun; or
 - (ii) in the case of a summons under paragraph (2), the person against whom the order is sought were a party to the proceedings.

8. Allowance of income of property pendente lite (O. 29, r. 8)

Where any real or personal property forms the subject-matter of any proceedings, and the Court is satisfied that it will be more than sufficient to answer all the claims thereon for which provision ought to be made in the proceedings, the Court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any or all of the parties who have an interest therein or may direct that any part of the personal property be transferred or delivered to any or all of such parties.

8A. Application for interim relief under section 21M of the Ordinance (O. 29, r. 8A)

Rule 91,
Rec 49 to 51

(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.

II. INTERIM PAYMENTS

9. Interpretation of Part II (O. 29, r. 9)

In this Part of this Order-

“interim payment” (中期付款), in relation to a defendant, means a payment on account of any damages, debt or other sum (excluding costs) which he may be held liable to pay to or for the benefit of the plaintiff; and any reference to the plaintiff or defendant includes a reference to any person who, for the purpose of the proceedings, acts as next friend of the plaintiff or guardian of the defendant. (L.N. 99 of 1993)

10. Application for interim payment (O. 29, r. 10)

(1) The plaintiff may, at any time after the writ has been served on a defendant and the time limited for him to acknowledge service has expired, apply to the Court for an order requiring that defendant to make an interim payment.

(2) An application under this rule shall be made by summons but may be included in a summons for summary judgment under Order 14 or Order 86.

(3) An application under this rule shall be supported by an affidavit which shall-

- (a) verify the amount of the damages, debt or other sum to which the application relates and the grounds of the application;
- (b) exhibit any documentary evidence relied on by the plaintiff in support of the application; and
- (c) if the plaintiff's claim is made under the Fatal Accidents Ordinance (Cap 22), contain the particulars mentioned in section 5(4) that Ordinance.

(4) The summons and a copy of the affidavit in support and any documents exhibited thereto shall be served on the defendant against whom the order is sought not less than 10 clear days before the return day.

(5) Notwithstanding the making or refusal of an order for an interim payment, a second or subsequent application may be made upon cause shown.

11. Order for interim payment in respect of damages (O. 29, r. 11)

(1) If, on the hearing of an application under rule 10 in an action for damages,

the Court is satisfied-

- (a) that the defendant against whom the order is sought (in this paragraph referred to as "the respondent") has admitted liability for the plaintiff's damages; or
- (b) that the plaintiff has obtained judgment against the respondent for damages to be assessed; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment for substantial damages against the respondent or, where there are two or more defendants, against any of them,

the Court may, if it thinks fit and subject to paragraph (2), order the respondent to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the Court are likely to be recovered by the plaintiff after taking into account any relevant contributory negligence and any set-off, cross-claim or counterclaim on which the respondent may be entitled to rely.

(2) No order shall be made under paragraph (1) in an action for personal injuries if it appears to the Court that the defendant is not a person falling within one of the following categories, namely-

- (a) a person who is insured in respect of the plaintiff's claim or whose liability in respect of the plaintiff's claim will be met by the following person-
 - (i) an insurer under section 10 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap 272); or
 - (ii) an insurer who is a party to an agreement with the Motor Insurers' Bureau of Hong Kong; or
 - (iii) the Motor Insurers' Bureau of Hong Kong; (L.N. 108 of 2002)
- (b) a public authority; or
- (d) a person whose means and resources are such as to enable him to make the interim payment.

(3) In paragraph (2)(a)(ii), "agreement" (協議) means the domestic agreement between the Motor Insurers' Bureau of Hong Kong and the insurance companies and Lloyd's underwriters authorized to carry on motor vehicle insurance business in Hong Kong, made on 1 February 1981, as amended from time to time. (L.N. 108 of 2002)

12. Order for interim payment in respect of sums other than damages (O. 29, r. 12)

If, on the hearing of an application under rule 10, the Court is satisfied-

- (a) that the plaintiff has obtained an order for an account to be taken as between himself and the defendant and for any amount certified due on taking the account to be paid; or
- (b) that the plaintiff's action includes a claim for possession of land and, if the action proceeded to trial, the defendant would be held liable to pay

- to the plaintiff a sum of money in respect of the defendant's use and occupation of the land during the pendency of the action, even if a final judgment or order were given or made in favour of the defendant; or
- (c) that, if the action proceeded to trial, the plaintiff would obtain judgment against the defendant for a substantial sum of money apart from any damages or costs,

the Court may, if it thinks fit, and without prejudice to any contentions of the parties as to the nature or character of the sum to be paid by the defendant, order the defendant to make an interim payment of such amount as it thinks just, after taking into account any set-off, cross-claim or counterclaim on which the defendant may be entitled to rely.

13. Manner of payment (O. 29, r. 13)

(1) Subject to Order 80, rule 12, the amount of any interim payment ordered to be made shall be paid to the plaintiff unless the order provides for it to be paid into court, and where the amount is paid into court, the Court may, on the application of the plaintiff, order the whole or any part of it to be paid out to him at such time or times as the Court thinks fit.

(2) An application under paragraph (1) for money in court to be paid out may be made ex parte, but the Court hearing the application may direct a summons to be issued.

(3) An interim payment may be ordered to be made in one sum or by such instalments as the Court thinks fit.

(4) Where a payment is ordered in respect of the defendant's use and occupation of land the order may provide for periodical payments to be made during the pendency of the action.

14. Directions on application under rule 10 (O. 29, r. 14)

Where an application is made under rule 10, the Court may give directions as to the further conduct of the action, and, so far as may be applicable, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires the parties to serve a notice specifying the orders and directions which they require and with any other necessary modifications, apply as if the application were a summons for directions, and, in particular, the Court may order an early trial of the action.

15. Non-disclosure of interim payment (O. 29, r. 15)

The fact that an order has been made under rule 11 or 12 shall not be pleaded and, unless the defendant consents or the Court so directs, no communication of that fact or of the fact that an interim payment has been made, whether voluntarily or pursuant to an order, shall be made to the Court at the trial, or hearing, of any

Remarks

question or issue as to liability or damages until all questions of liability and amount have been determined.

16. Payment into court in satisfaction (O. 29, r. 16)

Where, after making an interim payment, whether voluntarily or pursuant to an order, a defendant pays a sum of money into court under ~~Order 22, rule 4~~ **Order 22**, the notice of payment must state that the defendant has taken into account the interim payment.

Rule 80,
Consequential
Amendments

17. Adjustment on final judgment or order or on discontinuance
(O. 29, r. 17)

Where a defendant has been ordered to make an interim payment or has in fact made an interim payment, whether voluntarily or pursuant to an order, the Court may, in giving or making a final judgment or order, or granting the plaintiff leave to discontinue his action or to withdraw the claim in respect of which the interim payment has been made, or at any other stage of the proceedings on the application of any party, make such order with respect to the interim payment as may be just, and in particular-

- (a) an order for the repayment by the plaintiff of all or part of the interim payment; or
- (b) an order for the payment to be varied or discharged; or
- (c) an order for the payment by any other defendant of any part of the interim payment which the defendant who made it is entitled to recover from him by way of contribution or indemnity or in respect of any remedy or relief relating to or connected with the plaintiff's claim.

18. Counterclaims and other proceedings (O. 29, r. 18)

The preceding rules in this Part of this Order shall apply, with the necessary modifications, to any counterclaim or proceeding commenced otherwise than by writ, where one party seeks an order for an interim payment to be made by another.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 30 - RECEIVERS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Application for receiver and injunction (O. 30, r. 1)

(1) An application for the appointment of a receiver may be made by summons ~~or motion~~.

Rule 24,
Rec 10 to 16

(2) An application for an injunction ancillary or incidental to an order appointing a receiver may be joined with the application for such order.

(3) Where the applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte on affidavit.

(4) The Court hearing an application under paragraph (3) may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of a summons for the appointment of the receiver and may require such a summons, returnable on such date as the Court may direct, to be issued.

2. Giving of security by receiver (O. 30, r. 2)

(1) A judgment or order directing the appointment of a receiver may include such directions as the Court thinks fit for the giving of security by the person appointed.

(2) Where by virtue of any judgment or order appointing a person named therein to be a receiver, a person is required to give security in accordance with this rule he must give security approved by the Court duly to account for what he receives as receiver and to deal with it as the Court directs.

(3) Unless the Court otherwise directs, the security shall be by guarantee.

(4) The guarantee must be filed in the Registry, and it shall be kept as of record until duly vacated.

3. Remuneration of receiver (O. 30, r. 3)

Remarks

A person appointed receiver shall be allowed such proper remuneration, if any, as may be authorized by the Court and the Court may direct that such remuneration shall be fixed by reference to such scales or rates of professional charges as it thinks fit.

4. Service of order and notice (O. 30, r. 4)

A copy of the judgment or order appointing a receiver shall be served by the party having conduct of the proceedings on the receiver and all other parties to the cause or matter in which the receiver has been appointed.

5. Receiver's accounts (O. 30, r. 5)

- (1) A receiver shall submit such accounts to such parties at such intervals or on such dates as the Court may direct.
- (2) Any party to whom a receiver is required to submit accounts may, on giving reasonable notice to the receiver, inspect, either personally or by an agent, the books and other papers relating to the accounts.
- (3) Any party who is dissatisfied with the accounts of the receiver may give notice specifying the item or items to which objection is taken and requiring the receiver within not less than 14 days to lodge his accounts with the Court and a copy of such notice shall be lodged in the Registry.
- (4) Following an examination by or on behalf of the Court of an item or items in an account to which objection is taken the result of such examination must be certified by the Registrar and an order may thereupon be made as to the incidence of any costs or expenses incurred.

6. Payment into court by receiver (O. 30, r. 6)

The Court may fix the amounts and frequency of payments into court to be made by a receiver.

7. Default by receiver (O. 30, r. 7)

- (1) Where a receiver fails to attend for the examination of any account of his, or fails to submit any account, provide access to any books or papers or do any other thing which he is required to submit, provide or do, he and any or all of the parties to the cause or matter in which he was appointed may be required to attend in chambers to show cause for the failure, and the Court may, either in chambers or after adjournment into court, give such directions as it thinks proper including, if necessary, directions for the discharge of the receiver and the appointment of another and the payment of costs.

Remarks

(2) Without prejudice to paragraph (1), where a receiver fails to attend for the examination of any account of his or fails to submit any account or fails to pay into court on the date fixed by the Court any sum required to be so paid, the Court may disallow any remuneration claimed by the receiver and may, where he has failed to pay any such sum into court, charge him with interest at the rate currently payable in respect of judgment debts in the Court of First Instance on that sum while in his possession as receiver. (25 of 1998 s. 2)

8. Directions to receivers (O. 30, r. 8)

A receiver may at any time request the Court to give him directions and such a request shall state in writing the matters with regard to which directions are required.

(Enacted 1988)

9. Application for appointment of receiver under section 21M of the Ordinance (O. 30, r. 9)

Rule 92,
Rec 49 to 51

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.**

10. Transitional provision relating to rule 24 of Amendment Rules 2007 (O. 30, r. 9)

Rule 25,
Rec 10 to 16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 32 - APPLICATIONS AND PROCEEDINGS IN CHAMBERS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

I. GENERAL

1. Mode of making application (O. 32, r. 1)

Except as provided by Order 25, rule 7, every application in chambers not made ex parte must be made by summons, and where, under the provisions of these rules, such summons must be supported by affidavit, such affidavit shall be filed at the same time as the summons.

(L.N. 127 of 1995)

2. Issue of summons (O. 32, r. 2)

(1) Issue of a summons by which an application in chambers is to be made takes place on its being sealed with the Seal of the Court.

(2) A summons may not be amended after issue without the leave of the Court.

3. Services of summons (O. 32, r. 3)

A summons asking only for the extension or abridgement of any period of time may be served on the day before the day specified in the summons for the hearing thereof but, except as aforesaid and unless the Court otherwise orders or any of these rules otherwise provides, a summons must be served on every other party ~~not less than 2 clear days before the day so specified~~ **within 7 clear days after its issue.**

Rule 106.
Rec 83, 85 and 86

4. Adjournment of hearing (O. 32, r. 4)

(1) The hearing of a summons may be adjourned from time to time, either generally or to a particular date, as may be appropriate.

(2) If the hearing is adjourned generally, the party by whom the summons was taken out may restore it to the list on 2 clear days' notice to all the other parties on whom the summons was served.

5. Proceeding in absence of party failing to attend (O. 32, r. 5)

- (1) Where any party to a summons fails to attend on the first or any resumed hearing thereof, the Court may proceed in his absence if, having regard to the nature of the application, it thinks it expedient so to do.
- (2) Before proceeding in the absence of any party the Court may require to be satisfied that the summons or, as the case may be, notice of the time appointed for the resumed hearing was duly served on that party.
- (3) Where the Court hearing a summons proceeded in the absence of a party, then, provided that any order made on the hearing has not been perfected, the Court, if satisfied that it is just to do so, may re-hear the summons.
- (4) Where an application made by summons has been dismissed without a hearing by reason of the failure of the party who took out the summons to attend the hearing, the Court, if satisfied that it is just to do so, may allow the summons to be restored to the list.

6. Order made ex parte may be set aside (O. 32, r. 6)

The Court may set aside an order made ex parte.

7. Subpoena for attendance of witness (O. 32, r. 7)

- (1) A writ of subpoena ad testificandum or a writ of subpoena duces tecum to compel the attendance of a witness for the purpose of proceedings in chambers may be issued out of the Registry, if the party who desires the attendance of the witness produces a note from a judge or from the Registrar or a master, as the case may be, authorizing the issue of the writ.
- (2) The Registrar or any master may give such a note or may direct the application for it be made to the judge before whom the proceedings are to be heard.

8. Registrar, etc., may administer oaths, etc. (O. 32, r. 8)

- (1) The Registrar or any master shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Court.

9. Applications under the Mental Health Ordinance (O. 32, r. 9)

- (1) The jurisdiction of the Court to grant leave under section 69 of the Mental

Health Ordinance (Cap 136) to bring proceedings against a person may be exercised in chambers by a judge.

- (2) An originating summons by which an application for leave under the said section 69 is made shall be in Form No. 10 in Appendix A.
- (3) The application must be supported by an affidavit setting out the grounds on which such leave is sought and any facts necessary to substantiate those grounds.

9A. Application for a direction under the Limitation Ordinance
(O. 32, r. 9A)

The jurisdiction to direct, under section 30 of the Limitation Ordinance (Cap 347), that section 27 or 28 of that Ordinance should not apply to an action or to any specified cause of action to which the action relates shall be exercisable by the Court.

10. Application to make order of Court of Final Appeal order of Court of First Instance (O. 32, r. 10)

(HK) An application to make an order of the Court of Final Appeal an order of the Court of First Instance may be made ex parte by affidavit to a master.
(79 of 1995 s. 50; 25 of 1998 s. 2)

II. POWERS OF THE REGISTRAR, JUDGES AND THE COURT

11. Jurisdiction of the Registrar and masters (O. 32, r. 11)

(1) The Registrar and any master shall have power to transact all such business and exercise all such authority and jurisdiction as under any Ordinance or by these rules may be transacted and exercised by a judge in chambers except in respect of the following matters and proceedings, that is to say-

- (a) matters relating to criminal proceedings, other than an application under Order 70 relating to criminal proceedings; (L.N. 403 of 1992)
- (b) matters relating to the liberty of the subject other than orders for arrest and imprisonment to enforce, secure or pursue civil claims for the payment of money and orders prohibiting persons from leaving Hong Kong;
- (d) subject to paragraph (2), proceedings for the grant of an injunction or other order under Part I of Order 29;

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

Rule 98.
Rec 69

- (f) any other matter or proceeding which by any of these rules is required

to be heard only by a judge.

(2) The Registrar and any master shall have power to grant an injunction, or to make an order for the detention, custody or preservation of any property, in the terms agreed by the parties to the proceedings in which the injunction or order is sought.

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

Rule 107,
Rec 83, 85 and 86

(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

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- (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.

12. Reference of matter to judge (O. 32, r. 12)

The Registrar and any master may refer to a judge any matter which he thinks should properly be decided by a judge, and the judge may either dispose of the matter or refer it back to the Registrar or to any master, with such directions as he thinks fit.

13. Power to direct hearing in court (O. 32, r. 13)

(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.

(2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

16. Obtaining assistance of experts (O. 32, r. 16)

If the Court thinks it expedient in order to enable it better to determine any matter arising in proceedings in chambers, it may obtain the assistance of any person specially qualified to advise on that matter and may act upon his opinion.

17. Notice of filing, etc. of affidavit (O. 32, r. 17)

Any party-

(a) filing an affidavit intended to be used by him in any proceedings in chambers, or

(b) intending to use in any such proceedings any affidavit filed by him in previous proceedings, must give notice to every other party of the filing or, as the case may be, of his intention to do so.

18. Adjournment into or from court (O. 32, r. 18)

The hearing of any summons or other application in chambers may be adjourned from chambers into court and subsequently from court into chambers.

19. Disposal of matters in chambers (O. 32, r. 19)

The judge may by any judgment or order made in court in any proceedings direct that such matters (if any) in the proceedings as he may specify shall be disposed of in chambers.

21. Papers for use of Court, etc. (O. 32, r. 21)

The original of any document which is to be used in evidence in proceedings in chambers must, if it is available, be brought in, and copies of any such document or of any part thereof shall not be made unless the Court directs that copies of that document or part be supplied for the use of the Court or be given to the other parties to the proceedings.

22. Notes of proceedings in chambers (O. 32, r. 22)

(HK) A note shall be kept of all proceedings in the judge's, registrar's or master's chamber with the dates thereof so that all such proceedings in any cause or matter are noted in chronological order with a short statement of the matters decided at each hearing.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 32A - VEXATIOUS LITIGANTS

Remarks

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

Rule 99,
Rec 69

(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

Remarks

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.

Remarks

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 34 – SETTING DOWN FOR TRIAL ACTION BEGUN BY WRIT

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Application and interpretation (O. 34, r. 1)

(1) This Order applies to actions begun by writ and, accordingly, references in this Order to an action shall be construed as references to an action so begun.

2. Time for setting down action (O. 34, r. 2)

(1) Every order made in an action which provides for trial before a judge shall, whether the trial is to be with or without a jury, fix a period within which the plaintiff is to set down the action for trial.

(2) Where the plaintiff does not, within the period fixed under paragraph (1), set the action down for trial, the defendant may set the action down for trial or may apply to the Court to dismiss the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

(3) Every order made in an action which provides for trial before a judge (otherwise than in the commercial list or in any list which may be specified for the purposes of this paragraph by directions under rule 4) shall contain an estimate of the length of the trial and, shall, subject to any such directions, specify the list in which the action is to be put.

3. Lodging documents when setting down (O. 34, r. 3)

(1) In order to set down for trial an action which is to be tried before a Judge, the party setting it down must deliver to the Registrar, by post or otherwise, a request that the action may be set down for trial, together with a bundle (for the use of the judge) consisting of one copy each of the following documents that is to say-

- (a) the writ,
- (b) the pleadings (including any affidavits ordered to stand as pleadings) any request or order for particulars and the particulars given,
- (c) all orders made on the summons for directions, (L.N. 223 of 1995)
- (d) the requisite legal aid documents, if any, and (L.N. 223 of 1995)
- (e) all witness statements served under the provisions of Order 38, rule 2A.

(L.N. 223 of 1995)

(2) The said bundle must be bound up in the proper chronological order, save that voluntary particulars of any pleading and particulars to which Order 18, rule 12(7) applies shall be placed immediately after the pleading to which they relate.

(3) In this rule “the requisite legal aid documents” (必需的法律援助文件) means any documents which are required to be filed in the Registry under the Legal Aid Ordinance (Cap 91) or the regulations made thereunder. (L.N. 165 of 1992)

4. Directions relating to lists (O. 34, r. 4)

Nothing in this Order shall prejudice any powers of the Chief Justice to give directions-

- (a) specifying the lists in which actions, or actions of any class or description, are to be set down for trial and providing for the keeping and publication of the lists;
- (b) providing for the determination of a date for the trial of any action which has been set down or a date before which the trial thereof is not to take place; and
- (c) as to the making of applications (whether to the Court or an officer of the Court) to fix, vacate or alter any such date, and, in particular, requiring any such application to be supported by an estimate of the length of the trial and any other relevant information.

8. Notification of setting down (O. 34, r. 8)

(1) A party to an action who sets it down for trial must, within 24 hours after doing so, notify the other parties to the action that he has done so.

(2) It shall be the duty of all parties to an action entered in any list to furnish without delay to the officer who keeps the list all available information as to the action being or being likely to be settled, or affecting the estimated length of the trial, and, if the action is settled or withdrawn, to notify that officer of the fact without delay and take such steps as may be necessary to withdraw the record.

(3) In performance of the duty imposed by paragraph (2), a plaintiff who gives notice of acceptance of a payment into court in accordance with ~~Order 22, rule 3(1)~~ **Order 22, rule 13**, shall at the same time lodge a copy of the notice with the officer mentioned in that paragraph.

Rule 81,
Consequential
Amendments

9. Abatement, etc., of action (O. 34, r. 9)

(1) Where after an action has been set down for trial the action becomes abated, or the interest or liability of any party to the action is assigned or transmitted to or

devolves on some other person, the solicitor for the plaintiff or other party having the conduct of the action must, as soon as practicable after becoming aware of it, certify the abatement or change of interest or liability and send the certificate to the officer who keeps the list, and that officer shall cause the appropriate entry to be made in the list of actions set down for trial.

(2) Where in any such list an action stands for one year marked as abated or ordered to stand over generally, the action shall on the expiration of that year be struck out of the list unless, in the case of an action ordered to stand over generally, the order otherwise provides.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 35 - PROCEDURE AT TRIAL

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Failure to appear by both parties or one of them (O. 35, r. 1)

(1) If, when the trial of an action is called on, neither party appears, the action may be struck out of the list, without prejudice, however, to the restoration thereof, on the direction of a judge.

(2) If, when the trial of an action is called on, one party does not appear, the judge may proceed with the trial of the action or any counterclaim in the absence of that party.

2. Judgment, etc., given in absence of party may be set aside (O. 35, r. 2)

(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the Court, on the application of that party, on such terms as it thinks just.

(2) An application under this rule must be made within 7 days after the trial.

3. Adjournment of trial (O. 35, r. 3)

The judge may, if he thinks it expedient in the interest of justice, adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit.

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

Rule 120,
Rec 108

- (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.**

7. Order of speeches (O. 35, r. 7)

- (1) The judge before whom an action is tried (whether with or without a jury) may give directions as to the party to begin and the order of speeches at the trial, and, subject to any such directions, the party to begin and the order of speeches shall be that provided by this rule.
- (2) Subject to paragraph (6), the plaintiff shall begin by opening his case.
- (3) If the defendant elects not to adduce evidence, then, whether or not the defendant has in the course of cross-examination of a witness for the plaintiff or otherwise put in a document, the plaintiff may, after the evidence on his behalf has been given, make a second speech closing his case and the defendant shall then state his case.
- (4) If the defendant elects to adduce evidence, he may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on his behalf has been given, make a second speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.
- (5) Where there are 2 or more defendants who appear separately or are separately represented, then-
 - (a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;
 - (b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order aforesaid and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;
 - (c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order aforesaid after the speech of the plaintiff in reply to the other defendants.

Remarks

(6) Where the burden of proof of all the issues in the action lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect in relation to, and as between, him and the plaintiff as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be.

8. Inspection by judge or jury (O. 35, r. 8)

(1) The judge by whom any cause or matter is tried may inspect any place or thing with respect to which any question arises in the cause or matter.

(2) Where a cause or matter is tried with a jury and the judge inspects any place or thing under paragraph (1), he may authorize the jury to inspect it also.

9. Death of party before giving of judgment (O. 35, r. 9)

Where a party to any action dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the judge to make an order under Order 15, rule 7(2), before giving judgment.

10. Certificate of judicial clerk (O. 35, r. 10)

At the conclusion of the trial of any action, the judicial clerk or other officer in attendance at the trial shall make a certificate in which he shall certify-

- (a) the time actually occupied by the trial,
- (b) any order made by the judge under Order 38, rule 5 or 6,
- (c) every finding of fact by the jury, where the trial was with a jury,
- (d) the judgment given by the judge, and
- (e) any order made by the judge as to costs.

11. List of exhibits (O. 35, r. 11)

(1) The judicial clerk or other officer in attendance at the trial shall take charge of every document or object put in as an exhibit during the trial of any action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in or the witness by whom it is proved, and with a number,

so that all the exhibits put in by a party, or proved by a witness, are numbered in one consecutive series.

In this paragraph a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

(2) The judicial clerk or other officer in attendance at the trial shall cause a list to be made of all the exhibits in the action, and any party may, on payment of the prescribed fee, have an office copy of that list.

(3) The list of exhibits when completed shall form part of the record of the action. (L.N. 103 of 1994)

(4) For the purpose of this rule a bundle of documents may be treated and counted as one exhibit.

12. Exhibits retained by Registrar pending appeal (O. 35, r. 12)

(HK)(1) Unless the Court otherwise directs, the Registrar shall retain in his custody all exhibits duly marked and labelled until-

- (a) the expiration of the time limited by these rules for appealing to the Court of Appeal, or such extended period therefor as may be allowed; and thereafter
- (b) in the event of an appeal to the Court of Appeal, the final disposal of such appeal; and thereafter
- (c) the expiration of the time limited by Order in Council for applying to the Court of Appeal for leave to appeal to the Court of Final Appeal, or such extended period therefor as may be allowed; and thereafter
- (d) in the event of the Court of Appeal or the Court of Final Appeal giving leave to appeal to the Court of Final Appeal, the non-fulfilment of any condition for such leave to appeal or the final disposal of such appeal.

(2) Unless the Court otherwise directs, upon the expiration of the time limited for retention of exhibits fixed under paragraph (1) it shall be the duty of every party to an action who has put in any exhibits, and where represented, of his solicitor on the record, to apply to the Registrar for the return of the exhibits and to collect the same.

(25 of 1998 s. 2)

13. Impounded documents (O. 35, r. 13)

(1) Documents impounded by order of the Court shall not be delivered out of the custody of the Court except in compliance with an order made by a judge on an application made by motion: Provided that where the Secretary for Justice makes a written request in that behalf, documents so impounded shall be delivered into his custody. (L.N. 362 of 1997)

(2) Documents impounded by order of the Court, while in the custody of the

Court, shall not be inspected except by a person authorized to do so by an order signed by a judge.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007**The Rules of the High Court (Cap 4A)****Order 38 - EVIDENCE****Remarks****I. GENERAL RULES****1. General rule: witnesses to be examined orally (O. 38, r. 1)**

Subject to the provisions of these rules and of the Evidence Ordinance (Cap 8) and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

2. Evidence by affidavit (O. 38, r. 2)

(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

2A. Exchange of witness statements (O. 38, r. 2A)

(1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)-

- (a) the extent to which the facts are in dispute or have been admitted;
- (b) the extent to which the issues of fact are defined by the pleadings;
- (c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

Remarks

(2) At the hearing of a summons for directions in an action commenced by writ the Court shall direct every party to serve on the other parties, within such period of the hearing as the Court may specify and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial.

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall-

- (a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and ~~shall include a statement by him that the contents are true to the best of his knowledge and belief~~ **must be verified by a statement of truth in accordance with Order 41A;**
- (b) sufficiently identify any documents referred to therein; and
- (c) where they are to be served by more than one party, be exchanged simultaneously.

Rule 76,
Rec 26 to 32
and 35

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial-

- (a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;
- (b) ~~the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except-~~
 - (i) ~~the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;~~
 - (ii) ~~in relation to new matters which have arisen since the statement was served on the other party;~~

Rule 114,
Rec 100

(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.**

- (c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(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.

- (8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

- (9) Where any statement served is one to which the Evidence Ordinance (Cap 8) applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Ordinance and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under that Ordinance; and where a statement or any part thereof would be admissible in evidence by virtue only of that Ordinance, the appropriate notice under Part III or IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. Where such a notice is served, a counter-notice shall be deemed to have been served under rule 26(1).

- (10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.

- (11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served-

- (a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or
- (b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

- (12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the Clerk of Court to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).

A request under this paragraph may be made orally or in writing.

- (13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available-

- (a) in the interests of justice or national security;
- (b) because of the nature of any expert medical evidence in the statement;

or

- (c) for any other sufficient reason.

(14) Where the Clerk of Court is directed under paragraph (12) to certify a witness statement as open to inspection he shall-

- (a) prepare a certificate which shall be attached to a copy ("the certified copy") of that witness statement; and
(b) make the certified copy available for inspection.

(15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule-

- (a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
(b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

(17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

(L.N. 223 of 1995)

3. Evidence of particular facts (O. 38, r. 3)

(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial-

- (a) by statement on oath of information or belief, or
(b) by the production of documents or entries in books, or
(c) by copies of documents or entries in books, or
(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

4. Limitation of expert evidence (O. 38, r. 4)

The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as

specified by the order.

4A. Evidence by a single joint expert (O. 38, r. 4A)

Rule 115,
Rec 102, 103
and 107

(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.

5. Limitation of plans, etc., in evidence (O. 38, r. 5)

Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

6. Revocation or variation of orders under rules 2 to 5 (O. 38, r. 6)

Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

7. Evidence of finding on foreign law (O. 38, r. 7)

(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 59 of the Evidence Ordinance (Cap 8) shall-

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- (a) in the case of an action to which Order 25, rule 1, applies within 14 days after the pleadings in the action are deemed to be closed, and
- (b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

8. Application to trials of issues, references, etc. (O. 38, r. 8)

The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

9. Depositions: when receivable in evidence at trial (O. 38, r. 9)

(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless-

- (a) the deposition was taken in pursuance of an order under Order 39, rule 1, and
- (b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

10. High Court documents admissible or receivable in evidence (O. 38, r. 10)

(1) Office copies of writs, records, pleadings and documents filed in the High Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department of the High Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, that office or department shall be deemed to be an office copy of that document without further proof unless the contrary is shown.

(25 of 1998 s. 2)

11. Evidence of consent of new trustee to act (O. 38, r. 11)

A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

12. Evidence at trial may be used in subsequent proceedings (O. 38, r. 12)

Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

13. Order to produce document at proceeding other than trial (O. 38, r. 13)

(1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

II. WRITS OF SUBPOENA

14. Form and issue of writ of subpoena (O. 38, r. 14)

(1) A writ of subpoena must be in Form No. 28 or 29 in Appendix A, whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the Court.

(3) Where a writ of subpoena is to be issued in a cause or matter in the Court, the appropriate office for the issue of the writ is the Registry.

(HK)(5) Before a writ of subpoena is issued a praecipe for the issue of the writ

Remarks

must be filed in the Registry together with a note from a judge or master authorizing the issue of such writ and the sum of \$500 shall be deposited in the Registry, in addition to any fee payable in respect of such issue, as a deposit in respect of the witness' reasonable expenses; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's solicitor and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(HK)(6) In any proceedings, whether in chambers or in court, the Court may order the reimbursement by one or more of the parties to a witness who has been served with a writ of subpoena in respect of any expenses reasonably and properly incurred by that witness.

(HK)(7) Any expenses so ordered by the Court to be paid shall be assessed by the Court making the order or, if no such assessment is made by the Court, shall be taxed (if not agreed) and paid by the party ordered to make such payment.

(HK)(8) A witness whose expenses have been ordered to be paid may, if the party ordered to make such payment is the party who made the deposit on issue of the writ of subpoena, recover such expenses, after assessment, agreement or taxation, from the said deposit and look to the party liable to make such payment for the balance, if any.

(HK)(9) The deposit (or such part of it as shall remain after payment to the witness under rule 14(8)) shall be refunded to the party that paid the deposit if-

- (a) that party was not ordered to pay the costs of the witness; or
- (b) that party was ordered to pay the costs of the witness and has effected payment of such costs after assessment, agreement or taxation.

15. More than one name may be included in one writ of subpoena
(O. 38, r. 15)

The names of two or more persons may be included in one writ of subpoena ad testificandum.

16. Amendment of writ of subpoena (O. 38, r. 16)

Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second praecipe under rule 14(5) endorsed with the words "Amended and re-sealed".

17. Service of writ of subpoena (O. 38, r. 17)

A writ of subpoena must be served personally and, subject to rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of

the writ and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required.

18. Duration of writ of subpoena (O. 38, r. 18)

Subject to rule 19, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

19. Writ of subpoena in aid of inferior court or tribunal (O. 38, r. 19)

(1) The office of the Court out of which a writ of subpoena ad testificandum or a writ of subpoena duces tecum in aid of an inferior court or tribunal may be issued is the Registry, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 4 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal may be heard by a master.

III. HEARSAY EVIDENCE

20. Application and interpretation (O. 38, r. 20)

(1) In this Part of this Order “the Ordinance” (條例) means the Evidence Ordinance (Cap 8) and any expressions used in this Part and in Part IV of the Ordinance have the same meanings in this Part as they have in the said Part IV.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

(3) In this Part-
“hearsay evidence” (傳聞證據) means evidence consisting of hearsay within the

meaning of section 46 of the Ordinance.

(2 of 1999 s. 6)

21. Power to call witness for cross-examination on hearsay evidence and to call additional evidence to attack or support hearsay evidence (O. 38, r. 21)

(1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the Court may, on application-

- (a) allow another party to call and cross-examine the person who made the statement on its contents;
- (b) allow any party to call-
 - (i) additional evidence to attack or support the reliability of the statement;
 - (ii) additional evidence to attack or support that first-mentioned additional evidence.

(2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person and as to the procedure to be followed.

(2 of 1999 s. 6)

22. Powers exercisable in chambers (O. 38, r. 22)

The jurisdiction of the Court under rules 20 and 21 may be exercised in chambers.

(2 of 1999 s. 6)

23-34. (Repealed 2 of 1999 s. 6)

IV. EXPERT EVIDENCE

35. Interpretation (O. 38, r. 35)

(1) In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these rules, Order 25, rules 2 to 7, apply, and expressions used in this Part of this Order which are used in the Evidence Ordinance (Cap 8) have the same meanings in this Part of this Order as in that Ordinance.

Rule 116,
Rec 102, 103
and 107

(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.

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

Rule 117,
Rec 102, 103
and 107

(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.

36. Restrictions on adducing expert evidence (O. 38, r. 36)

(1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence-

- (a) has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) and has complied with any direction given on the application, or
- (b) has complied with automatic directions taking effect under Order 25, rule 8(1)(b), or
- (c) has complied with the automatic directions, or any other directions ordered by the master under Order 37, rule 1(1A). (L.N. 363 of 1990)

(2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these rules (except of Order 45, rule 5) of a direction given under this Part of this Order.
(L.N. 363 of 1990)

37. Direction that expert report be disclosed (O. 38, r. 37)

(1) Subject to paragraph (2), where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify. (L.N. 404 of 1991)

(2) Nothing in paragraph (1) shall require a party to disclose a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages claimed and, in this paragraph, “a statement of the special damages claimed” (關於所申索的專項損害賠償的陳述書) has the same meaning as in Order 18, rule 12(1C). (L.N. 404 of 1991)

37A. Expert report to be verified by statement of truth (O. 38, r. 37A)

Rule 76,
Rec 26 to 32
and 35

Remarks

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

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

Rule 118,
Rec 102, 103
and 107

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.

38. Meeting of experts (O. 38, r. 38)

In any cause or matter the Court may, if it thinks fit, direct that there be a meeting “without prejudice” of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

39. Disclosure of part of expert evidence (O. 38, r. 39)

Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

41. Expert evidence contained in statement (O. 38, r. 41)

Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement cannot or should not be called as a witness, the Court may direct that the provisions of rules 20 to 23 inclusive and 25 to 33 inclusive shall apply with such modifications as the Court thinks fit.

42. Putting in evidence expert report disclosed by another party (O. 38, r. 42)

A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

43. Time for putting expert report in evidence (O. 38, r. 43)

Where a party to any cause or matter calls as a witness the maker of a report which has been disclosed in accordance with a direction given under rule 37, the report may be put in evidence at the commencement of the examination in chief of its maker or at such other time as the Court may direct.

44. Revocation and variation of directions (O. 38, r. 44)

Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 41A - STATEMENTS OF TRUTH

Remarks

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

Rule 77,
Rec 26 to 32
and 35

**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**

Remarks

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.

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(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

Remarks

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 53 - APPLICATIONS FOR JUDICIAL REVIEW

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

Rule 147,
Rec 144 to 148

1. — Cases appropriate for application for judicial review (O. 53, r. 1)

(1) — ~~An application for—~~

~~(a) an order of 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,~~

~~shall be made by way of an application for judicial review in accordance with the provisions of this Order.~~

(2) — ~~An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application a judge may grant the declaration or injunction claimed if he considers that, having regard to—~~

~~(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,~~

~~(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and~~

~~(c) all the circumstances of the case,~~

~~it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.~~

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)

Remarks

- (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.**

2. Joinder of claims for relief (O. 53, r. 2)

On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

2A. Application for leave to apply for judicial review (O. 53, r. 2A)

Rule 148,
Rec 144 to 148

- (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.

3. Grant of leave to apply for judicial review (O. 53, r. 3)

~~(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.~~

Rule 149,
Rec 144 to 148

~~(2) An application for leave must be made ex parte 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 address of the applicant's solicitors (if any), and~~
~~(iv) the applicant's address for service; and~~
~~(b) an affidavit verifying the facts relied on.~~

(3) ~~The judge may determine the application.~~ **The judge may determine the application for leave** without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant.

(HK)(4) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within 10 days after such order.

(6) Without prejudice to its powers conferred by Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as the Court thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then-

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

Remarks**3A. Respondent etc. may not apply to set aside (O. 53, r. 3A)**Rule 150,
Rec 144 to 148**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.****4. Delay in applying for relief (O. 53, r. 4)**

(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made. (L.N. 356 of 1988)

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

4A. Service of order giving leave (O. 53, r. 4A)Rule 151,
Rec 144 to 148**(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.**

5. Mode of applying for judicial review (O. 53, r. 5)

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

Rule 26,
Rec 10 to 16**(1) When leave has been granted to make an application for judicial review,**

Remarks

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.

(3) The ~~notice of motion or summons~~ **originating summons** must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the ~~notice of motion or summons~~ **summons** must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on that judge.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the ~~notice of motion or summons~~ **summons** and the day named therein for the hearing.

(5) ~~A motion~~ **An originating summons** must be entered for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the ~~notice of motion~~ **originating summons** must be filed before ~~the motion~~ **the summons** is entered for hearing and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of ~~the motion~~ **the summons**.

(7) If on the hearing of ~~the motion~~ **originating summons** the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the ~~notice~~ **summons** may be served on that person.

5A. Filing of grounds for contesting or supporting application for judicial review (O. 53, r. 5A)

Rule 152,
Rec 144 to 148

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)

Remarks

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.

6. Statements and affidavits (O. 53, r. 6)

Rule 153,
Rec 144 to 148

~~(1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.~~

~~(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him. (L.N. 223 of 1995)~~

~~(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.~~

~~(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1). (L.N. 404 of 1991)~~

~~(5) Each party to the application must supply to every other party copies of every affidavit which he proposes to use at the hearing, including, in the case of the~~

Remarks

applicant, the affidavit in support of the application for leave under rule 3.

7. Claim for damages (O. 53, r. 7)

(1) On an application for judicial review the judge may, subject to paragraph (2), award damages to the applicant if-

- (a) he has included in the statement in support of his application for leave under ~~rule 3~~ **rule 2A** a claim for damages arising from any matter to which the application relates, and
- (b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, it could have been awarded damages.

Rule 154,
Rec 144 to 148

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

8. Application for discovery, interrogatories, cross-examination, etc. (O. 53, r. 8)

(1) Unless the judge otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge in chambers or a master.

(2) In this paragraph “interlocutory application” (非正審申請) includes an application for an order under Order 24 or 26 or Order 38, rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

9. Hearing of application for judicial review (O. 53, r. 9)

(1) On the hearing of any ~~motion or summons~~ under rule 5, any person who desires to be heard ~~in opposition to~~ **in opposition to or in support of** the ~~motion or summons~~, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with ~~notice of the motion or the summons~~.

Rule 155,
Rec 144 to 148

Rule 27,
Rec 10 to 16

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the motion or summons he has lodged with the Registrar a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the motion or summons.

Remarks

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Court of First Instance. (25 of 1998 s. 2)

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if the application had been made by summons.

10. Saving for person acting in obedience to mandamus (O. 53, r. 10)

No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

12. Consolidation of applications (O. 53, r. 12)

Where there is more than one application pending under section 21K of the Ordinance against several persons in respect of the same office, and on the same grounds, the Court may order the applications to be consolidated.

13. Order made by judge may be set aside, etc. (O. 53, r. 13)

(HK) An appeal shall lie, from an order of a judge granting or refusing an application for judicial review, to the Court of Appeal, which may set aside or confirm any such order or substitute such order as ought to have been made.

14. Meaning of “Court” (O. 53, r. 14)

In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to “the Court” (法庭) shall, unless the context otherwise requires, be construed as a reference to the judge.

(Enacted 1988)

Remarks

15. Transitional provision relating to rule 26 of Amendment Rules 2007 (O. 53, r. 15)

Rule 28.
Rec 10 to 16

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.

16. Transitional provision relating to Part 22 of the Amendment Rules 2007 (O. 53, r. 15)

Rule 156.
Rec 144 to 148

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 58 - APPEALS FROM MASTERS

Remarks

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

(O. 58, r. 1)

(1) Except as provided by rule 2, Order 5, rule 6, and Order 12, rule 1, an appeal shall lie to a judge in chambers from any judgment, order or decision of a master, **irrespective of whether the judgment, order or decision is made on the basis of written submissions only or after hearing.**

Rule 121,
Rec 109

(2) The appeal shall be brought by serving on every other party to the proceedings in which the judgment, order or decision was given or made a notice to attend before the judge on a day specified in the notice or as on such other day as may be directed.

(3) Unless the Court otherwise orders, the notice must be issued within 14 days after the judgment, order or decision appealed against was given or made and must be served within 5 days after issue and an appeal to which this rule applies shall not be heard sooner than 2 clear days after such service. (L.N. 404 of 1991; L.N. 129 of 2000)

(4) Except so far as the Court may otherwise direct, an appeal under this rule shall not operate as a stay of the proceedings in which the appeal is brought.

2. Appeals from certain decisions of masters to Court of Appeal

(O. 58, r. 2)

An appeal shall lie to the Court of Appeal from any judgment, order or decision (other than an interlocutory judgment, order or decision) of a master, given or made-

(HK)(a) on the hearing or determination of any cause, matter, question or issue tried before him under Order 14, rule 6(2) and Order 36, rule 1;

(b) on an assessment of damages under Order 37 or otherwise; or

(HK)(c) on the hearing or determination of an application under Order 84A, rule 3; or (L.N. 127 of 1995)

(HK)(d) on the hearing or determination of an application under Order 49B; or

(HK)(e) on the hearing of a petition for winding-up or bankruptcy. (L.N. 404 of 1991)

7. Appeal from judgment, etc. of judge in interpleader proceedings

(O. 58, r. 7)

(1) Any judgment, order or decision of a judge given or made in summarily determining under Order 17, rule 5(2)(b) or (c), any question at issue between claimants in interpleader proceedings shall be final and conclusive against the claimants and all persons claiming under them unless leave to appeal to the Court of Appeal is given by the judge or the Court of Appeal.

(2) Where an interpleader issue is tried by a judge (with or without a jury), an appeal shall lie to the Court of Appeal, without the leave of the judge or that Court, from any judgment, order or decision given or made by the judge on the trial.

(3) The time within which notice of appeal under this rule must be served shall be the same as in the case of an appeal from an interlocutory order.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 59 - APPEALS TO THE COURT OF APPEAL

Remarks

1. Application of Order to appeals (O. 59, r. 1)

This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies.

(25 of 1998 s. 2)

2. Application of Order to applications for new trial (O. 59, r. 2)

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

GENERAL PROVISIONS AS TO APPEALS

3. Notice of appeal (O. 59, r. 3)

(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal. (L.N. 404 of 1991)

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall

not be necessary to serve the notice on parties not so affected.

(6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

4. Time for appealing (O. 59, r. 4)

(HK)(1) Except as otherwise provided by these rules, every notice of appeal must be served under rule 3(5) not later than the expiration of the following period beginning on the date immediately following the date on which the judgment or order of the court below was sealed or otherwise perfected, that is to say- (L.N. 165 of 1992)

- (a) in the case of an appeal from an interlocutory order (not being such an order as is mentioned in sub-paragraph (b)) and in the case of an appeal from a judgment or order given or made under Order 14 or Order 86, 14 days;
- (b) in the case of an appeal from an order or decision made or given in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days; (L.N. 129 of 2000)
- (c) in any other case, 28 days. (L.N. 129 of 2000)

(2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)-

- (a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or
- (b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined. (11 of 2002 s. 7)

(3) Where leave to appeal is granted by the Court of Appeal upon an application made within the time limited for serving notice of appeal under paragraph (1), a notice of appeal may, instead of being served within that time, be served within 7 days after the date when leave is granted.

5. Setting down appeal (O. 59, r. 5)

(1) Within 7 days after the later of (i) the date on which service of the notice of appeal was effected, or (ii) the date on which the judgment or order of the Court below was sealed or otherwise perfected, the appellant must lodge with the Registrar-

- (a) a copy of the said judgment or order, and
- (b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice.

(2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

(4) Within 4 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served.

6. Respondent's notice (O. 59, r. 6)

- (1) A respondent who, having been served with a notice of appeal, desires-
- (a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or
 - (b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or
 - (c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which sub-paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal or a single judge, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below. (L.N. 404 of 1991)

(HK)(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served-

- (a) where the notice of appeal related to an interlocutory order, within 14 days, and
- (b) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish 2 copies of the notice to the Registrar.

7. Amendment of notice of appeal and respondent's notice (O. 59, r. 7)

- (1) A notice of appeal or respondent's notice may be amended-
- (a) by or with the leave of the Court of Appeal or a single judge at any time; (L.N. 404 of 1991)
 - (b) without such leave, by supplementary notice served not less than three weeks before the date fixed for the hearing of the appeal.

(2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the Registrar.

8. Directions of the Court as to service (O. 59, r. 8)

(1) The Court of Appeal or a single judge may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings. (L.N. 404 of 1991)

(2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

9. Documents to be lodged by appellant (O. 59, r. 9)

(1) ~~Not less than 7 days~~ **Not less than 14 days** before the appeal is likely to be listed for hearing the appellant must cause to be lodged with the Registrar the number of copies for which paragraph (2) provides of each of the following documents, namely-

- (a) the notice of appeal;
- (b) the respondent's notice;
- (c) any supplementary notice served under rule 7;
- (d) the judgment or order of the court below;
- (e) the originating process by which the proceedings in the court below were begun, any interlocutory or other related process which is the subject of the appeal, the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;
- (f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;
- (g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;
- (h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be;
- (HK)(i) such documents, affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) Unless otherwise directed the number of copies to be lodged in accordance

Rule 122,
Rec 110 and 112

with paragraph (1) is three copies except-

- (a) where the appeal is to be heard by two judges in which case it is two copies; or
- (b) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.

(2A) When the transcripts, if any, referred to in items (f) and (g) of paragraph (1) have been bespoken by the appellant and paid for, the number of such transcripts required in accordance with paragraph (2) shall be sent by the official shorthand writer or transcriber direct to the Registrar.

(3) At any time after an appeal has been set down in accordance with rule 5 the Registrar may give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

(4) The directions referred to in paragraph (3) may be given without a hearing provided always that the Registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the Registrar.

10. General powers of the Court (O. 59, r. 10)

(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance. (25 of 1998 s. 2)

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

- (5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just..
- (6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.
- (7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court: Provided that where a Law Officer or the Crown Prosecutor makes a written request in that behalf, documents so impounded shall be delivered into his custody.
- (8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorized to do so by an order of that Court.
- (9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge: (L.N. 404 of 1991)
Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to-
- (a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and
 - (b) the grant or lifting of a stay of execution or proceedings.

11. Powers of the Court as to new trials (O. 59, r. 11)

- (1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.
- (2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.
- (3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.
- (4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial-
- (a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;

Remarks

- (b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

- (5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

12. Evidence on appeal (O. 59, r. 12)

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal or a single judge, be brought before that Court as follows-

- (a) in the case of evidence taken by affidavit, by the production of a true copy of such affidavit;
- (b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal or a single judge, may direct.

(L.N. 404 of 1991)

12A. Non-disclosure of payment into court (O. 59, r. 12A)

- (1) Where-

- (a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and
- (b) money was paid into court under ~~Order 22, rule 4~~ **Order 22**, in the proceedings in the court below before judgment,

neither the fact of the payment nor the amount thereof shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided. This rule shall not apply in the case of an appeal as to costs only or an appeal in an action to which a defence of tender before action was pleaded.

Rule 82,
Rec 38 to 43
and 132

- (2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rule 9(d) and (f) every part thereof which states that money was paid into court in the proceedings in that court before judgment.

13. Stay of execution, etc. (O. 59, r. 13)

(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-

- (a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;
- (b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the Court of First Instance, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court otherwise orders.

(25 of 1998 s. 2)

14. Applications to the Court of Appeal (O. 59, r. 14)

(1) Unless otherwise directed, every application to the Court of Appeal or a single judge which is not made ex parte must be made by summons and such summons must be served on the party or parties affected at least 2 clear days before the day on which it is heard or, in the case of an application which is made after the expiration of the time for appealing, at least 7 days before the day on which the summons is heard. (L.N. 404 of 1991)

(1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the Registrar such documents as the Court of Appeal or a single judge may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals. (L.N. 404 of 1991)

(2) An application to the Court of Appeal for leave to appeal shall-

- (a) include, where necessary, any application to extend time for appealing; and
- (b) be made ex parte in writing setting out the reasons why leave should be granted and, if the time for appealing has expired, the reasons why the application was not made within that time,

and the Court may grant or refuse the application or direct that the application be renewed in open court either ex parte or inter partes. (L.N. 363 of 1990)

(2A) If an application under paragraph (2) is refused otherwise than after a hearing in open court, the applicant shall be entitled, within 7 days after he has been given notice of the refusal, to renew his application; such renewal application shall be made ex parte in open court. (L.N. 363 of 1990)

(2B) If an application under paragraph (2) is granted otherwise than after a hearing inter partes, notice of the order shall be served on the party or parties affected by the appeal and any such party shall be entitled, within 7 days after service of the notice, to apply to have the grant of leave reconsidered inter partes in open court. (L.N. 363 of 1990)

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

(5) Where an application is made to the Court of Appeal with regard to arbitration proceedings before a judge-arbitrator or judge-umpire which would, in the case of an ordinary arbitrator or umpire, be made to the Court of First Instance, the provisions of Order 73, rule 5, shall apply as if, for the words "the Court", wherever they appear in that rule, there were substituted the words "the Court of Appeal" and as if, for the words "arbitrator" and "umpire", there were substituted the words "judge-arbitrator" and "Judge-umpire" respectively. (25 of 1998 s. 2)

(6) Where an application is made to the Court of Appeal under section 23(5) of the Arbitration Ordinance (Cap 341) (including any application for leave), notice thereof must be served on the judge-arbitrator or judge-umpire and on any other party to the reference.

(HK)(6A) In this rule "judge-arbitrator" (法官仲裁員) and "Judge-umpire" (法官公斷人) mean a judge appointed as sole arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.

(7) An application, not being an application for leave to appeal, which may be heard by a single judge, shall, unless otherwise directed, be heard in chambers.

(8)-(9) (Repealed L.N. 404 of 1991)

(10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the Registrar, with such directions as that Court thinks fit.

(11) (Repealed L.N. 404 of 1991)

(12) An appeal shall lie to the Court of Appeal from any determination by a single judge, not being the determination of an application for leave to appeal, and shall be brought by way of fresh application made within 10 days of the determination appealed against:

Provided that an appeal shall not lie to the Court of Appeal without the leave of that Court in respect of a determination of the Registrar which has been reviewed by a single judge.

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

Rule 124,
Rec 120

(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.

15. Extension of time (O. 59, r. 15)

Without prejudice to the power of the Court of Appeal or a single judge under Order 3, rule 5, to extend or abridge the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or making application ex parte under rule 14(3) may be extended or abridged by the court below on application made before the expiration of that period.
(L.N. 404 of 1991)

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

16. Appeal against decree nisi (O. 59, r. 16)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of marriage.

(2) The period of 6 weeks specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period.

(3) The appellant must, within the period mentioned in paragraph (2) produce to the Registrar a sealed copy of the decree appealed against and leave with him a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with. (L.N. 404 of 1991)

(4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

(5) A party who intends to apply ex parte to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate Registrar before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the Registrar forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.

(6) In this rule “the appropriate Registrar” (適當的司法常務官) means- (28 of 2000 s. 47)

- (a) in relation to a cause pending in a district court, the registrar of that court.

19. Appeal from District Court (O. 59, r. 19)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a District Court other than an appeal against a decree nisi of divorce or nullity of marriage.

(2) The notice of appeal must be served on the registrar of the District Court as well as on the party or parties required to be served under rule 3.

(3) In the relation to the appeal-

- (a) rule 4(1) shall have effect as if for the words "the date on which the judgment or order of the court below was sealed or otherwise perfected" there were substituted the words "the date on which leave to appeal has been granted under section 63 of the District Court Ordinance (Cap 336)". (L.N. 39 of 1999)

(4) It shall be the duty of the appellant to apply to the judge of the District Court for a signed copy of any note made by him of the proceedings and of his decision, and to furnish that copy for the use of the Court of Appeal; and in default of production of such a note, or, if such note is incomplete, in addition to such note, the Court of Appeal may hear and determine the appeal on any other evidence or statement of what occurred before the judge of the District Court which appears to the Court of Appeal to be sufficient.

Except where the Court of Appeal or a single judge otherwise directs, an affidavit or note by a person present in the District Court shall not be used in evidence under this paragraph unless it was previously submitted to the judge for his comments. (L.N. 404 of 1991)

(4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in district court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.

(5) Rule 13(1)(a) shall apply subject to the provisions of section 66 of the District Court Ordinance (Cap 336).

20. Appeals in cases of contempt of court (O. 59, r. 20)

(1) In the case of an appeal to the Court of Appeal against an order of committal or other punishment for contempt of Court made by a judge of the Court of First Instance, the notice of appeal must be served on the Registrar as well as on the

party or parties required to be served under rule 3. (See App. A, Form 99)
This paragraph shall not apply in relation to an appeal to which rule 19 applies. (25 of 1998 s. 2)

(2) Where, in the case of such an appeal as is mentioned in paragraph (1), the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal must be made by motion, and the notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the Registrar and on all parties to the proceedings who are directly affected by the appeal.

(Enacted 1988)

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

Rule 123,
Rec 110 and 112

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**

Remarks

- (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 (i) 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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 62 – COSTS

Remarks

COSTS

PRELIMINARY

1. Interpretation (O. 62, r. 1)

(1) In this Order-
“certificate” (證明書) includes allocatur;

(HK) “contentious business” (爭議事務) means business done, whether as a barrister, solicitor or advocate, in or for the purpose of proceedings begun before the Court or before an arbitrator appointed under the Arbitration Ordinance (Cap 341) not being common form probate business; (10 of 2005 s. 166)

“costs” (訟費) include fees, charges, disbursements, expenses and remuneration;

“the Court” (法院、法庭) means the High Court or any one or more judges thereof, whether sitting in Court or in chambers, the Registrar or assistant registrar or master; (25 of 1998 s. 2)

(HK) “District Court” (地方法院) means the District Court established under the provisions of the District Court Ordinance (Cap 336), and any judge of that court;

“legal representative” (), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

Rule 111
Rec 94-97

(HK) “mentally disordered person” (精神紊亂的人) means a person who is so far disabled in mind or who is so mentally ill or subnormal due to arrested or incomplete development of mind as to render it either necessary or expedient that he, either for his own sake or in the public interest, should be placed and kept under control;

(HK) “non-contentious business” (非爭議事務) means any business done by and as a solicitor which is not contentious business;

“party entitled to be heard on taxation” () means –

Rule 130
Rec 134

(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.

“taxed costs” (經評定的訟費) means costs taxed in accordance with this Order;

(HK) “taxing master” (訟費評定官) means the Registrar as taxing master;

“wasted costs order” () means an order made under section 52A(4) of the Ordinance.

Rule 111
Rec 94-97

(2) In this Order, references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property whether immovable or personal held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

2. Application (O. 62, r. 2)

(HK)(1) This Order shall apply to all proceedings in the Court, except non-contentious or common form probate proceedings and proceedings in matters of prize.

(2) Where by virtue of any Ordinance the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Ordinance, not being proceedings in the High Court, are taxable in the Court of First Instance, the following provisions of this Order, that is to say, rule 7(4) and (5), rule 8(6), rules 14 to 16, rule 17(1), rule 18, ~~rule 21 (except paragraph (3))~~ **rules 21 (except paragraph (3)), 21A, 21B, 21C and 21D,** rules 22 to 26 and rules 33 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court.

Rule 131
Rec 134

(3) This Order shall have effect subject to the provisions of the District Court Ordinance (Cap 336) and to any rules made thereunder and to any other enactment.

(4) The powers and discretion of the Court as to costs under section 52A of the Ordinance (which provides that the costs of and incidental to proceedings in the High Court shall be in the discretion of the Court and that the Court shall have full power to determine by whom and to what extent the costs are to be paid) and under the enactments relating to the costs of criminal proceedings to which this Order applies shall be exercised subject to and in accordance with this Order.

(25 of 1998 s. 2)

ENTITLEMENT TO COSTS

3. ~~When costs to follow the event~~ Order as to entitlement to costs (O. 62, r. 3)

Rule 125
Rec 122

(1) Subject to the provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any ~~proceedings~~ proceedings (other than interlocutory proceedings), the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(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.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these rules, or any direction or order thereunder, for serving or filing any document or the doing of any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party-

- (a) on whom a list of documents is served in pursuance of any provision of Order 24, or
- (b) on whom a notice to admit documents is served under Order 27, rule 5,

gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2) as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

Remarks

~~(8) — Where a plaintiff accepts money paid into Court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into court.~~

Rule 125
Rec 122

(9) Where any person claiming to be a creditor-

- (a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or
- (b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 13,

he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation, and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he acknowledges service of the notice be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(12) Where an application is made in accordance with Order 24, rule 7A or Order 29, rule 7A, for an order under section 41 ~~41,41A~~, 42 or 44 of the Ordinance, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and, if they are not paid within 4 days after taxation, sign judgment for them.

Rule 104
Rec 76 and 79

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

Rule 126
Rec 122

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.

4. Stage of proceedings at which costs to be dealt with (O. 62, r. 4)

(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of

Remarks

any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the Court of First Instance from any other court, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed. (25 of 1998 s. 2)

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court, rules 28, 31 and 32 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from the District Court, the order-

- (a) shall specify the amount of the costs to be allowed, or
- (b) shall direct that the costs shall be assessed by the court before which the proceedings took place or taxed by an officer of that court, or
- (c) if the order is made on appeal from the District Court in relation to proceedings in that court, may direct that the costs shall be taxed by the taxing master.

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

(O. 62, r. 5)

(1) The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account-

- (a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;
- (b) any payment of money into court and the amount of such payment;
- (c) any written offer made under Order 33, rule 4A(2); ~~and~~
- ~~(d) any written offer made under Order 22, rule 14, provided that the Court shall not take such an 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 payment into court under Order 22.~~

Rule 6
Rec 7-9, 84

Rule 127
Consequential
Amendments

(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;

(e) the conduct of all 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.

Rule 6
Rec 7-9, 84

- (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.

6. Restriction of discretion to order costs (O. 62, r. 6)

- (1) Notwithstanding anything in this Order or in section 52A of the Ordinance-
- (c) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

7. Costs arising from misconduct or neglect (O. 62, r. 7)

(1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1), the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say-

Remarks**(aa) the underlying objectives set out in Order 1A, rule 1;**Rule 128
Rec 122

- (a) the omission to do any thing the doing of which would have been calculated to save costs;
- (b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;
- (c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) in relation to any thing done or omission made, direct the taxing master to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The taxing master shall, in relation to any thing done or omission made in the course of taxation and in relation to any failure to procure taxation, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the taxing master in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.

8. — ~~Personal liability of solicitor for costs (O. 62, r. 8)~~Rule 112
Rec 94-97

~~(1) — Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible whether personally or through a servant or agent an order—~~

- ~~(a) — disallowing the costs as between the solicitor and his client; and~~
- ~~(b) — directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or~~
- ~~(c) — directing the solicitor personally to indemnify such other parties against costs payable by them.~~

~~(2) — No order under this rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made except where any proceeding in Court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made,—~~

- ~~(a) because of the failure of the solicitor to attend in person or by a proper representative; or~~
- ~~(b) because of the failure of the solicitor to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.~~

~~(3) — Before making an order under this rule the Court may, if it thinks fit refer the matter (except in the case of undue delay in the drawing up of, or in any proceedings under, an order or judgment as to which the Registrar has reported to the Court) to a taxing master for inquiry and report and direct the solicitor in the first place to show cause before the taxing master.~~

~~(4) — 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. (L.N. 375 of 1991)~~

~~(5) — The Court may direct that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the direction.~~

~~(6) — Where in any proceedings before a taxing master the solicitor 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 solicitor to pay costs personally to any of the parties to those proceedings, and where any solicitor 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 solicitor shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.~~

~~(7) — 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 solicitor 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.~~

~~(8) — 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 solicitor, if the fees or any part of the fees payable under the said enactment are not paid as therein prescribed, the Court may, on the application of the Official Solicitor by summons, order the solicitor personally to pay that amount in the manner so prescribed and to pay the costs of the Official Solicitor of the application. (L.N. 375 of 1991)~~

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

Rule 112
Rec 94-97

(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)

Rule 112
Rec 94-97

(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)

Rule 112
Rec 94-97

(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)

Rule 112
Rec 94-97

(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)Rule 112
Rec 94-97

(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.

9. Fractional or gross sums in place of taxed costs Taxed costs, fractional taxed costs or costs summarily assessed (O. 62, r. 9)Rule 108
Rec 88-89, 92

(1) Subject to this order, where by or under these rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court-

- (a) are to be paid to a receiver appointed by the Court of First Instance under section 21L of the Ordinance in respect of his remuneration, disbursements or expenses; or (25 of 1998 s. 2)
- (b) are to be assessed or settled by a taxing master,

but rules 28, 28A, 31 and 32 shall apply in relation to the assessment or settlement by a taxing master of costs which are to be assessed or settled as aforesaid as they

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apply in relation to the taxation of costs by a taxing master.

(3) Where a writ in an action is endorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs, but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled-

- (a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or
- ~~(b) to a gross sum so specified in lieu of taxed costs, but where the person entitled to such a gross sum is a litigant in person, rule 28A shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.~~

Rule 108
Rec 88-89, 92

- (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.**

(5) This rule does not apply to costs of an interlocutory application.

9A. Interim payment of costs

Rule 109
Rec 88-89, 92

~~(1) If a party makes or resists an application at any stage of proceedings before the Court, the Court may-~~

- ~~(a) if the Court considers the application or resistance to the application, as the case may be, to be frivolous or vexatious; or~~
- ~~(b) for any other reason that the Court in the circumstances of the case considers just,~~

~~when ordering costs against that party in respect of the application, order that party to pay forthwith to any other party to the application an amount which in the opinion of the Court approximates the costs that would be allowed on taxation.~~

~~(2) Upon taxation-~~

- ~~(a) if the taxed costs in respect of the application equal the amount paid pursuant to an order made under paragraph (1), 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 application exceed the amount paid pursuant to an order made under paragraph (1), 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;~~

- ~~(c) if the amount paid pursuant to an order made under paragraph (1) exceeds the taxed costs in respect of the 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.~~

(L.N. 129 of 2000)

9A. Summary assessment of costs of interlocutory application (O. 62, rule 9A)

Rule 109
Rec 88-89, 92

(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)

Rule 109
Rec 88-89, 92

(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)

Rule 109
Rec 88-89, 92

(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 ad 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

Rule 109
 Rec 88-89, 92

(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).

10. When a party may sign judgment for costs without an order (O. 62, r. 10)

(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made or question raised by him therein as against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them. (See App. A, Form 50)

Remarks

~~(2) — Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance. (L.N. 403 of 1992)~~

Rule 83
Consequential
Amendments

~~(3) — Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2). (See App. A, Form 51)~~

~~(4) — Where money paid into court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).~~

(5) In each of the circumstances mentioned in this rule an order for costs shall be deemed to have been made to the effect respectively described and, for the purposes of section 49 of the Ordinance, the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred. (L.N. 403 of 1992)

Rule 83

11. When order for taxation of costs not required (O. 62, r. 11)

(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

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

Rule 7
Rec 7-9, 84

(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).

POWERS OF TAXING OFFICERS

12. Powers of taxing masters to tax costs (O. 62, r. 12)

- (1) A taxing master shall have power to tax-
- (a) the costs of or arising out of any cause or matter in the High Court; (25 of 1998 s. 2)

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

Rule 8
Rec 7-9,84

- (b) the costs directed by an award made on a reference to arbitration under any enactment or pursuant to an arbitration agreement to be paid; and
- (c) any other costs the taxation of which is directed by an order of the Court.

13. Powers of certain judicial clerks to tax costs (O. 62, r. 13)

(HK)(1) A Chief Judicial Clerk shall have power to transact all such business and exercise all such authority as under ~~paragraph (4) of rule 21~~ **rule 21B** of this Order may be transacted and exercised by the Registrar **taxing master** and to issue a certificate for any costs taxed by him.

Rule 132

(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200,000.

(2) Paragraph (1) shall not be taken as empowering a Chief Judicial Clerk to tax any costs in respect of which an ~~appointment to tax has been given~~ **appointment to tax under rule 21B(3) or 21C has been given.**

(3) In exercising the powers conferred on him by this Order, a Chief Judicial Clerk shall comply with any directions given to him by a taxing master.

(L.N. 343 of 1989)

13A. Taxing master may give directions (O. 62, r. 13A)

Rule 138
Rec 135-136

(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.**14. Supplementary powers of taxing masters (O. 62, r. 14)**

A taxing master may, in the discharge of his functions with respect to the taxation of costs-

- (a) take an account of any dealing in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

15. Disposal of business by one taxing master for another (O. 62, r. 15)

(1) If, apart from this paragraph, a taxing master has power to tax any costs, the taxation of which has been assigned to some other taxing master, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.

(2) Any taxing master may assist any other taxing master in the taxation of any costs the taxation of which has been assigned to that other officer.

(3) On an application in that behalf made by a party to any cause or matter, a taxing master may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing master by whom the application would otherwise be heard.

16. Extension etc., of time (O. 62, r. 16)

(1) A taxing master may-

- (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that master;
- (b) extend the period provided by rule 33(2) beyond the signing of the taxing officer's certificate by setting the certificate aside;
- (c) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.

(2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing master, then unless the Court otherwise directs, the taxing master may from time to time extend the period so specified on such terms (if any) as he thinks just.

(3) A taxing master may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

17. Interim certificates (O. 62, r. 17)

(1) A taxing master may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.

(2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the taxing master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.

(3) On the filing of a certificate issued under paragraph (2), the Court may order the amount specified therein to be paid forthwith to the client or into court.

17A. Final certificate (O. 62, rule 17A)

Rule 140

(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.

18. Power of taxing master where party liable to be paid and to pay costs (O. 62, r. 18)

Where a party entitled to be paid costs is also liable to pay costs, the taxing master may-

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

19. Taxation of bill of costs comprised in account (O. 62, r. 19)

(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct a taxing master to tax those costs and the taxing master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) A taxing master taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

PROCEDURE ON TAXATION

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

Rule 133
Rec 134

~~(HK)(1) A party entitled to require any costs to be taxed shall file in the Court his bill of costs and shall obtain from the taxing master an appointment to tax.~~

~~(HK)(2) Not less than 7 days' notice of such appointment to tax together with a copy of the bill of costs shall be served by such person on every person entitled to be heard on taxation.~~

~~(HK)(3) 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, it shall not be necessary for a copy of the bill of costs or of the notice of appointment to tax to be sent to any party who has not acknowledged service in the proceedings which gave rise to the taxation.~~

~~(HK)(4) In proceedings for the taxation of costs of, or arising out of, a cause or matter in which the amount of the bill of costs does not exceed the sum of \$100000, the taxing master may by notice inform the party commencing the proceedings for taxation the amount which the taxing master proposes to allow in respect of the costs to be taxed and further the taxing master shall not give any notice under paragraph (2) unless, within 14 days after serving notice of the amount he proposes to allow, any person entitled to be heard on taxation applies to the taxing master for an appointment to tax. (L.N. 343 of 1989; L.N. 275 of 1998)~~

~~(HK)(5) A party must, when he files his bill of costs, deposit with the Court an amount equivalent to the taxing fee which would be payable if the bill were to be allowed in full. When the taxing master signs a certificate, the balance of the sum so deposited, if any, after deducting the prescribed taxing fee, shall be repaid to the party who deposited such amount.~~

~~(HK)(6) If a bill of costs is withdrawn less than 7 days before the appointment for taxation, a fee shall be payable by the party who withdraws the bill. (L.N. 343 of 1989)~~

Remarks

~~(HK)(7) The fee payable under paragraph (6) shall be deducted by the Court from the amount deposited under paragraph (5). (L.N. 343 of 1989)~~

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)

Rule 133
Rec 134

(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)

Rule 133
Rec 134

(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.

Remarks

(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)

Rule 133
Rec 134

(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)

Rule 133
Rec 134

(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.

22. — Delay in filing of bill of costs (O. 62, r. 22)

Rule 134
Rec 134

(HK)(1) If, within one month after an order of the Court requiring the payment of any costs to be taxed, the person entitled to payment thereof has neither agreed the

Remarks

~~amount of such costs with the person liable to pay the same nor served upon such person a notice of appointment to tax in accordance with rule 21, 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 order that the person entitled to payment of the costs shall proceed to taxation in accordance with rule 21 within such period as the taxing master may order.~~

~~(2) — If within the period ordered by the taxing master or any extension thereof granted by a taxing master, notice of appointment to tax has not been served in accordance with rule 21 and the amount due has not been agreed between the parties, the order of the Court requiring payment of the costs shall thereupon be wholly discharged.~~

~~(3) — On any order in accordance with paragraph (1) and on the taxation of a bill of costs, whether or not an order has been made under paragraph (1), the taxing master, if he is satisfied that there has been undue delay in the filing of the bill of costs or in the service of the notice of appointment to tax, may make such order as he shall consider appropriate as to the costs of any application or of any order or as to the costs of the taxation and may disallow any item contained in the bill of costs.~~

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.

23. — Deposit of papers and vouchers (O. 62, r. 23)

Rule 135
Rec 134

(1) — Not less than 2 days before the date appointed for taxation, the person who filed the bill of costs in accordance with rule 21 shall deposit with the taxing master all papers and vouchers relating to the items contained in the bill of costs.

(2) — If by reason of the failure of such person to deposit such papers and vouchers the taxation is adjourned, the taxing master may make such order as to costs thrown away by such adjournment as he may consider appropriate.

24. Notice of taxation Taxation (O. 62, r. 24)

Rule 136
Rec 134

(1) If, at the date and time of an appointment to tax under 21B(3) or 21C, a person entitled to be heard upon such taxation does not appear before the taxing master in person or by his solicitor, the taxing master, on being satisfied that notice of the appointment to tax under 21B(3) or 21C and a copy of the bill of costs were duly served on such person in accordance with ~~rule 21~~ rule 21B(3) or 21C(2) and in accordance with rule 21(2), may proceed to taxation of the bill of costs in the absence of such person or of his representative.

(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.

~~(2) — If notice of the appointment to tax and the copy of the bill of costs were not served upon such person, the taxing master shall adjourn the taxation for such period as he may consider necessary to enable service of the notice of the adjourned appointment to tax and of the bill of costs to be effected on such person and may make such order as he may consider appropriate in relation to costs thrown away by such adjournment.~~

(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.**

25. Provisions as to bills of costs (O. 62, r. 25)

(1) In any solicitor's bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.

(2) Before a solicitor's bill of costs is left for taxation it must be indorsed with the name or firm and business address of the solicitor whose bill it is.

26. Power to adjourn (O. 62, r. 26)

~~(2)(1)~~ The taxing master by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

(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.

Rule 137
Rec 134

27. Powers of taxing master taxing costs payable out of fund (O. 62, r. 27)

(1) Where any costs are to be paid out of a fund the taxing master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing master by whom the bill is being taxed may, if

he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say- (L.N. 126 of 1995)

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing master for taxation;
- (b) the name of the taxing master and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing master at which the taxation will be continued; and
- (d) such other information, if any, as the taxing master may direct.

ASSESSMENT OF COSTS

Rule 141

BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS

28. Costs payable to one party by another or out of a fund (O. 62, r. 28)

(1) This rule applies to costs which by or under these rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis or on the indemnity basis. (L.N. 125 of 1991)

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are interested shall be applied, whether or not the costs are in fact to be so paid.

(4A) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term “the indemnity basis” (彌償基準) in relation to the taxation of costs shall be construed accordingly. (L.N. 125 of 1991)

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if-

(a) the costs are to be paid out of a fund, or

(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 31(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) The foregoing provisions of this rule shall be without prejudice to the powers of the Court under section 43 of the District Court Ordinance (Cap 336) (which empowers the Court in relation to an action begun in the Court which could have been begun in the District Court to make an order in certain circumstances allowing the costs on such one of the District Court scales and under such one of the columns in the scale as the order may direct).

28A. Costs of a litigant in person (O. 62, r. 28A)

(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant's behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than \$200 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 32(4) of this Order or the Second Schedule to this Order shall apply to the costs of a litigant in person.

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor **but includes a company or other corporation which is acting without a legal representative.**

Rule 110
Rec 88-89, 92

29. Costs payable to a solicitor by his own client (O. 62, r. 29)

(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap 91), or a bill with respect to non-contentious business)

all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 28(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

- (4) In paragraphs (2) and (3), the references to the client shall be construed-
- (a) if the client was at the material time a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the Court;
 - (b) if the client was at the material time a minor and represented by a person acting as guardian ad litem or next friend, as references to that person.

30. Costs payable to solicitor where money recovered by or on behalf of infant, etc. (O. 62, r. 30)

- (1) This rule applies to-
- (a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or in which money paid into court is accepted by or on behalf of such a person; and
 - (b) any proceedings under the Fatal Accidents Ordinance (Cap 22), in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Ordinance or in which money paid into court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor; and
 - (c) any proceedings in the Court of Appeal on an application or appeal made in connection with any such proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.
- (2) Unless the Court otherwise directs the costs payable to his solicitor by any

Remarks

plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 29; and no costs shall be payable to the solicitor of any plaintiff in respect of those proceedings, except such amount of costs as may be certified in accordance with this rule on the taxation under rule 29 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 29 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b) who is his own client, the taxing master shall also tax any costs payable to that plaintiff in those proceedings and shall certify-

- (a) the amount allowed on the taxation under rule 29, the amount allowed on that taxation of any costs payable to the plaintiff in those proceedings and the amount (if any), by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 12 provide for the transfer or payment of money to or into a District Court and for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the taxing master by whom those costs are taxed shall send a copy of his certificate to the registrar of the District Court.

(7) The foregoing provisions of this rule shall apply in relation to-

- (a) a counterclaim by or on behalf of a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap 136) and a counterclaim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) by or on behalf of the widow of the man whose death gave rise to the claim; and
- (b) a claim made by or on behalf of a person who is a minor or a mentally disordered person as aforesaid in an action by any other person for relief under section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.)[#], and a claim consisting of or including a claim under the Fatal Accidents Ordinance (Cap 22) made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

31. Costs payable to a trustee out of the trust funds, etc. (O. 62, r. 31)

- (1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.
- (2) On any taxation to which this rule applies, no costs shall be disallowed except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

32. Scales of costs (O. 62, r. 32)

- (1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in the First Schedule of this Order, together with the notes and general provisions contained in that Schedule, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.
- (2) On a taxation in relation to which rule 29 or rule 31(2) has effect and in other special cases costs may at the discretion of the taxing master be allowed-
- (a) in relation to items not mentioned in the said scale; or
 - (b) of an amount higher than that prescribed by the said scale.
- (3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated [in the absence of agreement to the contrary] by any rules for the time being in force under the Legal Practitioners Ordinance (Cap 159), the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the First Schedule.
- (4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which the Second Schedule to this Order applies in accordance with the provisions of that Schedule.

32A. Liability for costs of taxation (O. 62, r. 32A)

Rule 139
Rec 135-136

- (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 –**

Remarks

- (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)

Rule 139
Rec 135-136

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)

Rule 139
Rec 135-136

- (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.

REVIEW

33. Application to taxing master for review (O. 62, r. 33)

(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing master, or with the amount allowed by a taxing master ~~in respect of any item, may apply to the taxing master to review his decision in respect of that item~~ **in respect of any item –**

Rule 142

(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.

(2) An application under this rule for review of a taxing master's decision may be made at any time within 14 days after that decision or such shorter period as may be fixed by the taxing master:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the taxing master's ~~certificate dealing finally~~ **final certificate dealing** with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing master objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the taxing master directs that a copy of the objections shall be delivered.

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the taxing master, deliver to the taxing master answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the taxing master directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the taxing master's decision in respect of any item shall not prejudice the power of the taxing master under rule 17 to issue an interim certificate in respect of items his decision as to which is not objected to.

34. Review by taxing master (O. 62, r. 34)

(HK)(1) A review under rule 33 shall be carried out by the taxing master to whom the taxation was originally assigned.

Remarks

(2) On reviewing any decision in respect of any item, a taxing master may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(4) A taxing master who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing master.

35. Review of taxing master's certificate by a judge (O. 62, r. 35)

(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow any item in whole or in part on review under rule ~~33~~ or 34, or with the amount allowed in respect of any item by a taxing master on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item if, but only if, one of the parties to the proceedings before the taxing master requested that officer in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part on the review.

Rule 143

(2) An application under this rule for review of a taxing master's decision in respect of any item may be made at any time within 14 days after the taxing master's certificate in respect of that item is signed, or such longer time as the taxing master at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing master but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject-matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the Court to appoint assessors under section 53 of the Ordinance, the judge shall appoint not less than 2 assessors, of whom one shall be a taxing master.

Remarks

(6) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the taxing master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing master for taxation.

(7) In this rule “Judge” (法官) means a judge in person.

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

Rule 113
Rec 94-97

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.

37. Transitional provisions relating to Part 21 of the Amendment Rules 2007 (O. 62, r. 37)

Rule 146

(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.

FIRST SCHEDULE [rule 32]

PART I
SCALE OF COSTS

Item	Particulars	Charges
1.	Mechanical preparation of documents-	
	(a) for the top copy, per page-	
	(i) quarto size or above	\$50
	(ii) less than quarto size	\$30
	(b) for additional copies, either by photographic means,	

Remarks

- printing, carbon or any other method, per page of whatever size \$3
2. Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of pages and to make appointments, whether such attendance are made by qualified or unqualified persons, for each attendance \$100
3. Attendance for necessary search and inquires-such fee as the Registrar thinks proper but not less than \$100 for each attendance.
4. Service of any documents-such fee as the Registrar thinks proper but not less than \$50 in each case.
5. The Registrar may allow such fee as he thinks proper in respect of every other matter or thing not hereinbefore specially mentioned.

Note to item 5: This item is intended to cover-

- (a) the doing of any work not otherwise provided for and which was properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including-
- (i) The client: taking instructions to sue, defend, counter-claim, appeal or oppose etc.; attending upon and corresponding with client;
 - (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;
 - (iii) Expert evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court, including issue of subpoena;
 - (iv) Inspections: inspecting any property or place material to the proceedings;
 - (v) Searches and Inquiries: making searches in Government Registries and elsewhere for relevant documents;
 - (vi) Special damages: obtaining details of special damages and making or obtaining any relevant calculations;
 - (vii) Other parties: attending upon and corresponding with other parties or their solicitors;
 - (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 24;
 - (ix) Documents: drafting, perusing, considering and

- collating any relevant documents (including pleadings, affidavits, cases and instructions to and advice from counsel, orders and judgments) and any law involved;
- (x) Negotiations: work done in connection with negotiations with a view to settlement;
- (xi) Attendances: attendances at Court (whether in Court or chambers) for the hearing of any summons or other application, on examination of any witness, on the trial or hearing of a cause or matter, on any appeal and on delivery of any judgment; attendances on counsel in conference, and any other necessary attendances;
- (xii) Interest: where relevant the calculation of interest on damages; and
- (xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court; and
- (b) the general care and conduct of the proceedings.

PART II

GENERAL

Discretionary costs

1. ~~(1) Where in the foregoing provisions of this Schedule there is entered in the third column against any item specified in the second column an upper and a lower sum of money, the amount of costs to be allowed in respect of that item shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing master, within the limits of the sums so entered.~~

Rule 144

(2) In exercising his discretion under this paragraph or under rule 32(2) in relation to any item, the taxing master shall have regard to all relevant circumstances, and in particular to-

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would

otherwise have been necessary in relation to the item in question.

Fees to counsel

2. (1) Except in the case of taxation under the Legal Aid Ordinance (Cap 91) and taxations of fees payable by the Crown, no fee to counsel shall be allowed unless-

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
- (b) before the taxing master issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 28(2) has effect.

(3) No costs shall be allowed in respect of counsel appearing before a master in chambers, or of more counsel than one appearing before a ~~judge in chambers,~~ master in open court or a judge or the Court of Appeal, unless the master or judge as the case may be, has certified the attendance as being proper in the circumstances of the case.

Rule 144

(4) A refresher fee, the amount of which shall be in the discretion of the taxing master, shall be allowed to counsel, either for each period of five hours (or part thereof), after the first, during which a trial or hearing is proceeding or, at the discretion of the taxing master, in respect of any day, after the first day, on which the attendance of counsel at the place of trial is necessary.

~~(HK)(5) Every fee paid to counsel shall be allowed in full on taxation, unless the taxing master is satisfied that the same is excessive and unreasonable, in which event the taxing master shall exercise his discretion having regard to all the relevant circumstances and in particular to the matters set out in paragraph 1(2).~~

Rule 129
Rec 131

(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).

Items to be authorized, certified etc.

4. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless-

- (a) before the trial the Court authorized the preparation of the plan, or
- (b) notwithstanding the absence of an authorization under sub-paragraph (a) the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to

which a court expert is appointed under Order 40 (or a scientific adviser is appointed under Order 103 rule 27) shall not be allowed on a taxation of costs in relation to which rule 28(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or claim for a declaration under section 8(1) of the Registration of Patents Ordinance (Cap 42) proceeds to trial, no costs shall be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

Attendances in Chambers-equity jurisdiction

5. (1) The following provisions of this paragraph apply in relation to every hearing in chambers in the equity jurisdiction of the Court.

(3) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the taxing master in taxing the costs to be allowed for instructions in relation to the summons or application shall take the certificate into account.

Copies of documents

7. (1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the taxing master thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 1 of Part I of this Schedule shall be made in addition to the allowances under the foregoing provisions of this paragraph and shall, subject to sub-paragraph (4), be made for such printed copies as may be necessary or proper-

- (a) of any pleading, for service on the opposite party;
- (b) of any special case, for filing;
- (c) of any pleading or special case, for the use of the Court;
- (d) of any affidavit, for attestation in print;
- (e) of any pleading, special case or evidence for the use of counsel in court; or
- (f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 1 of Part I shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

SECOND SCHEDULE [rule 32]
~~FIXED COSTS~~

Rule 145

~~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.~~

PART I

COSTS ON JUDGMENT WITHOUT TRIAL FOR A LIQUIDATED SUM

1. The scale of costs set out in Part II of this Schedule (which includes the scale prescribed pursuant to section 72 of the District Court Ordinance (Cap 336) shall apply in relation to the following cases if the writ of summons therein was issued after 1 January 1966, and was indorsed with a claim for a debt or liquidated demand only, that is to say-

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment on failure to give notice of intention to defend under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2;
- (c) cases in which the plaintiff obtains judgment under Order 14, rule 3, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.

2. Notwithstanding anything in paragraph 1 of this Schedule or in the said scale, no costs shall be allowed in any case to which the said paragraph 1 applies

unless-

- (a) the Court orders costs to be allowed; or
- (b) in a case to which sub-paragraph (b) of paragraph 1 applies, judgment or an order for judgment, as the case may be, is obtained within 28 days after the service of the writ or within such further time as the Court may allow.

3. In every case to which the said scale applies there shall be added to the basic costs set out in the said scale the fee which would have been payable on the issue of a writ for the amount recovered.

PART II

SCALE OF COSTS

Item	Scale	
Basic Costs	\$	
To be allowed in cases under-		
sub-paragraph (a) of paragraph 1	400.00	
sub-paragraph (b) of paragraph 1	505.00	
sub-paragraph (c) of paragraph 1	650.00	
 Additional Costs		
1. For each additional defendant after the first	65.00	
2. Where substituted service is ordered and effected, for each defendant served	500.00	
3. Where service out of the jurisdiction is ordered and effected	225.00	<u>Rule 145</u>
4. In the case of judgment in default of defence or judgment under Order 14, rule 3 , where notice of intention to defend is given after the time limited therefor and the plaintiff makes an affidavit of service for the purpose of a judgment on failure to give notice of intention to defend (the allowance to include the search fee)	120.00	
5. In the case of judgment under Order 14, rule 3, where an affidavit of service of summons is required	120.00	
6. In the case of judgment under Order 14, rule 3, for each adjournment of the summons	50.00	

Remarks

7. In the case of judgment on failure to give notice of intention to defend on all application by notice under Order 83A, rule 4, (which applies to moneylenders' actions)-	120.00	
	60.00	
	30.00	
(a) where judgment is given for interest at a rate exceeding 48 per cent per annum on production of an affidavit justifying the rate		
(b) in any other case		
(c) for each additional defendant after the first		

PART III
MISCELLANEOUS

Item	Scale	
	\$	
1. Where a plaintiff or defendant signs judgment for costs under rule 11, there shall be allowed- cost of the judgment	120.00	
2. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49 against a garnishee attaching debts owing or accruing from him to the debtor, the following costs shall be allowed-		
(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant-	50.00	
(i) if no affidavit used	100.00	
(ii) if affidavit used		
(b) to the applicant, to be retained unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order-	150.00	<u>Rule 145</u>
basic costs	50.00	
additional costs where the garnishee fails to attend the hearing of the application and an affidavit of service is required		

Remarks

- | | |
|---|--------|
| 3. Where a charging order is made | 575.00 |
| (a) in respect of any stock, funds, annuities or shares,
or any dividends or interest thereon or produce
thereof, under Order 50; or | 50.00 |
| (b) in respect of any partnership property or profits,
under section 25 of the Partnership Ordinance
(Cap 38);
there shall be allowed
basic costs
additional costs where an affidavit of service is
required | |
| 4. Where a writ of execution within the meaning of Order
46, rule 1 is issued against any party, there shall be
allowed- | 170.00 |
| cost of issuing execution | |

(Enacted 1988)

Note:**# Please also see following-**

- (a) **in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;**
- (b) **in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.**

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 62A - COSTS OFFER AND PAYMENTS INTO COURT

Remarks

Rule 90,
Rec 38 to 43
and 132

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.

Remarks

(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 –

Remarks

- (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;

Remarks

- (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 better 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)

(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

Remarks

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 73 – ARBITRATION PROCEEDINGS

Remarks

2. Matters for a judge in court (O. 73, r. 2)

(1) Subject to section 2D of the Arbitration Ordinance (Cap 341), every application or request to the Court-

- (a) to remit an award under section 24 of that Ordinance, or
- (b) to remove an arbitrator or umpire under section 25(1) of that Ordinance, or
- (c) to set aside an award under section 25(2) of that Ordinance, or
- (HK)(d) for leave to appeal under section 23(2) of that Ordinance, or
- (e) to determine, under section 23A(1) of that Ordinance, any question of law arising in the course of a reference, or

~~(HK)(f) to make an order under section 29A(2) of that Ordinance, or~~

(HK)(g) to decide, under article 13(3) of the Fifth Schedule to that Ordinance, on a challenge to an arbitrator, or (L.N. 363 of 1990)

(HK)(h) to decide, under article 14(1) of the Fifth Schedule to that Ordinance, on the termination of an arbitrator's mandate, or (L.N. 363 of 1990)

(HK)(i) to set aside an arbitral award under article 34 of the Fifth Schedule to that Ordinance, (L.N. 363 of 1990)

~~must be made by originating motion~~ **may be made by originating summons in Form No. 10 in Appendix A** to a single judge in court. (L.N. 363 of 1990)

Rule 29,
Rec 10 to 16

(2) Any appeal to the Court of First Instance under section 23(2) of the Arbitration Ordinance (Cap 341) ~~shall be made by originating motion~~ **may be made by originating summons in Form No. 10 in Appendix A** to a single judge in court and notice thereof may be included in the notice of application for leave to appeal, where leave is required. (25 of 1998 s. 2)

(3) An application for a declaration that an award made by an arbitrator or umpire is not binding on a party to the award on the ground that it was made without jurisdiction may be made by ~~originating motion~~ **originating summons in Form No. 10 in Appendix A** to a single judge in court, ~~but the foregoing provision shall not be taken as affecting the judge's power to refuse to make such a declaration in proceedings begun by motion.~~

3. Matters for judge in chambers or master (O. 73, r. 3)

(1) Subject to the foregoing provisions of this Order and the provisions of this rule, the jurisdiction of the Court of First Instance or a judge thereof under the Arbitration Ordinance (Cap 341), may be exercised by a judge in chambers or a

Remarks

master. (25 of 1998 s. 2)

~~(2) Any application—
 (a) for leave to appeal under section 23(2) of the Arbitration Ordinance (Cap 341), or
 (b) under section 23(5) of that Ordinance (including any application for leave), or
 (c) under section 23 of that Ordinance, or
 (HK)(d) under section 29A of that Ordinance,
 shall be made to a judge in chambers.~~

Rule 30,
 Rec 10 to 16

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

(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.

(4) Where an application is made under section 23(5) of the Arbitration Ordinance (Cap 341) (including any application for leave) the summons must be served on the arbitrator or umpire and on any other party to the reference.

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

Rule 93,
 Rec 49 to 51

(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.

5. Time limits and other special provisions as to appeals and applications under the Arbitration Ordinance (O. 73, r. 5)

(1) An application to the Court-

Remarks

- (a) to remit an award under section 24 of the Arbitration Ordinance (Cap 341), or
- (b) to set aside an award under section 25(2) of that Ordinance or otherwise, or
- (c) to direct an arbitrator or umpire to state the reasons for an award under section 23(5) of that Ordinance,

must be made, and the summons ~~or notice~~ must be served, within ~~21 days~~ **30 days** after the award has been made and published to the parties.

Rule 31,
Rec 10 to 16

(2) In the case of an appeal to the Court under section 23(2) of the Arbitration Ordinance (Cap 341), ~~the notice~~ **the summons** must be served, and the appeal entered, within ~~21 days~~ **30 days** after the award has been made and published to the parties:

Provided that, where reasons material to the appeal are given on a date subsequent to the publication of the award, the period of ~~21 days~~ **30 days** shall run from the date on which the reasons are given.

(3) An application, under section 23A(1) of the Arbitration Ordinance (Cap 341), to determine any question of law arising in the course of a reference, must be made, and notice thereof served, within ~~14 days~~ **30 days** after the arbitrator or umpire has consented to the application being made, or the other parties have so consented.

(4) For the purpose of paragraph (3) the consent must be given in writing.

(5) In the case of every appeal or application to which this rule applies, ~~the notice of originating motion, or as the case may be, the originating summons~~ **the summons**, must state the grounds of appeal or application and, where the appeal or application is founded on evidence by affidavit, or is made with the consent of the arbitrator or umpire or of the other parties, a copy of every affidavit intended to be used, or as the case may be, of every consent given in writing, must be served with that notice.

6. Applications and appeals to be heard in a particular list (O. 73, r. 6)

(1) Any matter which is required, by rule 2 or 3, to be heard by a judge, shall be entered in a particular list unless the Judge in charge of such list otherwise directs.

(2) Nothing in the foregoing paragraph shall be construed as preventing the powers of the Judge in charge of a particular list from being exercised by any judge of the Court of First Instance. (25 of 1998 s. 2)

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

Rule 32,
Rec 10 to 16

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.

7. Service out of the jurisdiction of summons, ~~notice, etc.~~ and order (O. 73, r. 7)Rule 33.
Rec 10 to 16

(HK)(1) Subject to paragraph (1A), service out of the jurisdiction of-

(a) any originating summons ~~or notice of originating motion~~ under the Arbitration Ordinance (Cap 341), or(b) any order made on such a summons ~~or motion as aforesaid~~,is permissible with leave of the Court provided that the arbitration to which the ~~summons, motion or order~~ **summons or order** relates is granted by Hong Kong law or has been, is being, or is to be held within the jurisdiction.

(1A) Service out of the jurisdiction of an originating summons for leave to enforce an award is permissible with the leave of the Court whether or not the arbitration is governed by Hong Kong law.

(2) An application for the grant of leave under this rule must be supported by an affidavit stating the grounds on which the application is made and showing in what place or country the person to be served is, or probably may be found; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this rule.

(3) Order 11, rules 5, 6 and 8, shall apply in relation to any such ~~summons, notice or order~~ **summons or order** as is referred to in paragraph (1) as they apply in relation to a writ.**8. Registration in High Court of foreign awards** (O. 73, r. 8)

Where an award is made in proceedings on an arbitration in any territory to which sections 3 to 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) extend, being a part to which the said Ordinance has been applied, then, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place, Order 71 shall apply in relation to the award as it applies in relation to a judgment given by that court, subject, however, to the following modifications-

(a) for references to the country of the original court there shall be substituted references to the place where the award was made; and

(b) the affidavit required by rule 3 of the said Order must state (in addition to the other matters required by that rule) that to the best of the information or belief of the deponent the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

9. Registration of awards under Arbitration (International Investment disputes) Act 1966 (O. 73, r. 9)

(1) In this rule and in any provision of these rules as applied by this rule-

Remarks

“the Act of 1966” (1966 年法令) means the Arbitration (International Investment Disputes) Act 1966 (1966 c. 41 U.K.);

“award” (裁決) means an award rendered pursuant to the Convention;

“judgment creditor” (判定債權人) and “judgment debtor” (判定債務人) mean respectively the person seeking recognition or enforcement of an award and the other party to the award.

(2) Subject to the provisions of this rule, the following provisions of Order 71, namely rules 3(1) (except subparagraphs (c)(iv) and (d) thereof), 7 (except paragraph (3)(c) and (d) thereof) and 10(3) shall apply with the necessary modifications in relation to an award as they apply in relation to a judgment to which the Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319) applies.

(3) An application to have an award registered in the Court of First Instance under section 1 of the Act of 1966 ~~shall be made~~ **may be made** by originating summons which shall be in Form 10 in Appendix A. (25 of 1998 s. 2)

Rule 34,
Rec 10 to 16

(4) The affidavit required by Order 71, rule 3, in support of an application for registration shall-

- (a) in lieu of exhibiting the judgment or a copy thereof, exhibit a copy of the award certified pursuant to the Convention; and
- (b) in addition to stating the matters mentioned in paragraph (1)(c)(i) and (ii) of the said rule 3, state whether at the date of the application the enforcement of the award has been stayed (provisionally or otherwise) pursuant to the Convention and whether any, and if so what, application has been made pursuant to the Convention, which, if granted, might result in a stay of the award.

(5) There shall be kept in the Registry under the direction of the Registrar a register of the awards ordered to be registered under the Act of 1966 and particulars shall be entered in the register of any execution issued on such an award.

(6) Where it appears to the Court on granting leave to register an award or on an application made by the judgment debtor after an award has been registered-

- (a) that the enforcement of the award has been stayed (whether provisionally or otherwise) pursuant to the Convention; or
- (b) that an application has been made pursuant to the Convention, which, if granted, might result in a stay of the enforcement of the award,

the Court shall, or, in the case referred to in subparagraph (b) may, stay execution of the award for such time as it considers appropriate in the circumstances.

(7) An application by the judgment debtor under paragraph (6) shall be made by summons and supported by affidavit.

(L.N. 363 of 1990)

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

(O. 73, r. 10)

- (1) An application for leave-
- (HK)(a) under section 2C of the Arbitration Ordinance (Cap 341) to enforce a settlement agreement, or (L.N. 363 of 1990)
- (b) under section 2GG of that Ordinance to enforce an award on an arbitration agreement, (L.N. 363 of 1990; 2 of 2000 s. 15)

in the same manner as a judgment or order may be made ex parte but the Court hearing the application may direct a summons to be issued.

- (2) If the Court directs a summons to be issued, the summons ~~shall be an originating summons~~ **may be an originating summons** which shall be in Form No. 10 in Appendix A.

Rule 35,
Rec 10 to 16

- (3) An application for leave must be supported by affidavit-
- (a) exhibiting-
- (HK)(i) where the application is under section 2C of the Arbitration Ordinance (Cap 341), the arbitration agreement and the original settlement agreement or, in either case, a copy thereof; (L.N. 363 of 1990)
- (ii) where the application is under section 2GG of the Arbitration Ordinance (Cap 341), the arbitration agreement and the original award or, in either case, a copy thereof; (L.N. 363 of 1990; 2 of 2000 s. 15)
- (iii) where the application is under section 40B(1) or 42(1) of the Arbitration Ordinance (Cap 341), the documents required to be produced by section 40D or 43, as the case may be, of that Ordinance, (2 of 2000 s. 15)
- (c) stating the name and the usual or last known place of abode or business of the applicant (hereinafter referred to as "the creditor") and the person against whom it is sought to enforce the settlement agreement or award (hereinafter referred to as "the debtor") respectively,
- (d) as the case may require, either that the settlement agreement or award has not been complied with or the extent to which it has not been complied with at the date of the application.

- (4) An order giving leave must be drawn up by or on behalf of the creditor and must be served on the debtor by delivering a copy to him personally or by sending a copy to him at his usual or last known place of abode or business or in such other manner as the Court may direct.

- (5) Service of the order out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8, shall apply in relation to such an order as they apply in relation to a writ.

- (6) Within 14 days after service of the order or, if the order is to be served out of

the jurisdiction, within such other period as the Court may fix, the debtor may apply to set aside the order and the settlement agreement or award shall not be enforced until after the expiration of that period or, if the debtor applies within that period to set aside the order, until after the application is finally disposed of.

(HK)(6A) An application under paragraph (6) to set aside the order must be made by summons supported by affidavit, and such affidavit must be filed at the same time as the summons. (L.N. 127 of 1995)

(7) The copy of the order served on the debtor shall state the effect of paragraph (6).

(8) In relation to a body corporate this rule shall have effect as if for any reference to the place of abode or business of the creditor or the debtor there were substituted a reference to the registered or principal address of the body corporate; so, however, that nothing in this rule shall affect any enactment which provides for the manner in which a document may be served on a body corporate.

(HK) 10A. Other provisions as to applications to set aside an order made under rule 10 (O. 73, r. 10A)

(HK) Where a debtor has applied to set aside an order made under rule 10, the Court may, either of its own motion or on an application made by the creditor, and if, having regard to all the circumstances of the case it thinks it just to do so, impose such terms, as to giving security or otherwise, as a condition of the further conduct of the application, as it thinks fit.

(L.N. 167 of 1994)

11. Payments into court (O. 73, r. 11)

(HK)(1) In any arbitration proceedings any party to the reference may at any time pay into court a sum of money in satisfaction of any claim against him under the reference.

(2) On making payment into court under this rule, and on increasing any such payment already made the party making payment must give notice thereof in Form No. 100 in Appendix A to all other parties to the reference; and within 3 days after receiving the notice the recipient parties must send the party making payment a written acknowledgment of its receipt.

(3) A party who has made payment into court under this rule may, without leave, give notice of an increase in such a payment but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without leave of the Court which may be granted on such terms as may be just.

(4) Where there are two or more matters in dispute in the arbitration proceedings and money is paid into court under this rule in respect of all, or some only, of those

matters, the notice of payment-

- (a) must state that the money is paid in respect of all those matters in dispute or, as the case may be, must specify the matters in respect of which payment is made, and
- (b) where the party makes separate payments in respect of each, or any two of those matters in dispute, must specify the sum paid in respect of that matter or, as the case may be, those matters.

(5) Where a single sum of money is paid into court under this rule in respect of two or more matters in dispute, then, if it appears to the Court that any party to the arbitration proceedings is embarrassed by the payment, the Court may order the party making payment to amend the notice of payment so as to specify the sum paid in respect of each matter in dispute.

(6) For the purposes of this rule, a claim under a reference to arbitration shall be construed as a claim in respect, also, of such interest as might be included in the award if the award were made at the date of the payment into court.

12. Payment in by party who has counterclaimed (O. 73, r. 12)

(HK) Where a party, who makes by counterclaim in the arbitration proceedings a claim against any other party to the arbitration proceedings, pays a sum or sums of money into court under rule 11, the notice of payment must state if it be the case, that in making the payment he has taken into account and intends to satisfy the matter in dispute, or matters in dispute, as the case may be, under his counterclaim.

13. Acceptance of money paid into court (O. 73, r. 13)

(HK)(1) Where money is paid into court under rule 11, then, subject to paragraph (2), within 14 days after the receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 days after receipt of the notice of the last payment or the amended notice but, in any case, before the hearing of the arbitration proceedings begins, a party to the arbitration proceedings may-

- (a) where the money was paid in respect of the matter in dispute or all the matters in dispute in respect of which he claims, accept the money in satisfaction of that matter in dispute or those matters in dispute, as the case may be, or
- (b) where the money was paid in respect of some only of the matters in dispute in respect of which he claims, accept in satisfaction of any such matter in dispute the sum specified in respect of that matter in dispute in the notice of payment,

by giving notice in Form No. 101 in Appendix A to all other parties to the arbitration proceedings.

- (2) Where after the hearing of the arbitration proceedings has begun-
 - (a) money is paid into court under rule 11, or

- (b) money in court is increased by a further payment into court under that rule,
any party may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the arbitrator publishes his award.
- (3) Rule 11(5) shall not apply in relation to money paid into court after the hearing of the arbitration proceedings has begun.
- (4) On a party accepting any money paid into court all further proceedings in the arbitration proceedings or in respect of the specified matter in dispute or matters in dispute, as the case may be, to which the acceptance relates shall be stayed.
- (5) Where money is paid into court by a party who made a counterclaim in the arbitration proceedings and the notice of payment stated, in relation to any sum so paid, that in making the payment the party had taken into account and satisfied the matter in dispute, or matters in dispute, as the case may be, in respect of which he claimed, then, on the claimant party accepting that sum, all further proceedings on the counterclaim or in respect of the specified matter or matters in dispute, as the case may be, shall be stayed.
- (6) A party to arbitration proceedings who has accepted any sum paid into court shall, subject to rule 14, be entitled to receive payment of that sum in satisfaction of the matter or matters in dispute to which the arbitration proceedings relate.

14. Order for payment out of money accepted required (O. 73, r. 14)

- (HK)(1) Where a party to arbitration proceedings accepts any sum paid into court and that sum was paid into court by some but not all of the other parties to the arbitration proceedings the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or the matter in dispute to which the payment relates, as the case may be.
- (2) Where an order of the Court is required under paragraph (1), then if, either before or after accepting the money paid into court by some only of the other parties the party discontinues the arbitration proceedings against all the other parties and those parties consent in writing to the payment out of that sum, it may be paid out without an order of the Court.
- (3) Where after the hearing of the arbitration proceedings has begun a claimant party accepts any money paid into court and all further proceedings in the arbitration proceedings or in respect of the matter in dispute or matters in dispute, as the case may be, to which the acceptance relates are stayed by virtue of rule 13(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the arbitration proceedings or with the costs relating to the matter in dispute or matters in dispute as the case may be, to which the arbitration

proceedings relate.

15. Money remaining in court (O. 73, r. 15)

(HK) If any money paid into court in connection with arbitration proceedings is not accepted in accordance with rule 13, 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 during or after the hearing of the arbitration proceedings; and where such an order is made before the hearing the money shall not be paid out except in satisfaction of the matter or matters in dispute in respect of which it was paid in.

16. Counterclaim (O. 73, r. 16)

(HK) A party to arbitration proceedings against whom a counterclaim is made may pay money into court in accordance with rule 11, and that rule and rules 13 (except paragraph (5)), 14 and 15 shall apply accordingly with the necessary modifications.

17. Non-disclosure of payment into court; amendment of arbitrator's award (O. 73, r. 17)

(HK) Except in arbitration proceedings in which all further proceedings are stayed after the hearing has begun by virtue of rule 13(4), the fact that money has been paid into court under the foregoing provisions of this Order shall not be communicated to the arbitrator until he has published his award, whereupon the arbitrator may amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference.

18. Investment of money in court (O. 73, r. 18)

(HK) Cash 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.) and the Trustee Ordinance (Cap 29).

(25 of 1998 s. 2)

(Enacted 1988)

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

Rule 36,
Rec 10 to 16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 75 - (HK) ADMIRALTY PROCEEDINGS

Remarks

1. Application and interpretation (O. 75, r. 1)

(1) This Order applies to Admiralty causes and matters, and the other provisions of these rules apply to those causes and matters subject to the provisions of this Order. (See App. B, Form 14)

(2) In this Order-
“action in rem” (對物訴訟) means an Admiralty action in rem;

“caveat against arrest” (針對扣押的知會備忘) means a caveat entered in the caveat book under rule 6;

“caveat against release and payment” (針對發還及付款的知會備忘) means a caveat entered in the caveat book under rule 14;

“caveat book” (知會備忘登記冊) means the book kept in the Registry in which caveats issued under this Order are entered;

“collision regulations” (碰撞規例) means the regulations made or deemed to be made under section 93 of the Merchant Shipping (Safety) Ordinance (Cap 369);

“limitation action” (局限法律責任的訴訟) means an action by shipowners or other persons under the Merchant Shipping Acts 1894 to 1984[#] or the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) for the limitation of the amount of their liability in connection with a ship or other property; (L.N. 363 of 1990)

“ship” (船舶) includes any description of vessel used in navigation.

2A. Proceedings against, or concerning, the International Oil Pollution Compensation Fund (O. 75, r. 2A)

(2) For the purposes of section 27(1) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) any party to proceedings brought against an owner or guarantor in respect of liability under section 6 of that Ordinance may give notice to the Fund of such proceedings by serving notice in writing on the Fund together with a copy of the writ and copies of the pleadings (if any) served in the action. (L.N. 363 of 1990)

Remarks

(3) The Court shall, on the application made ex parte by the Fund grant leave to the Fund to intervene in any proceedings to which the preceding paragraph applies, whether notice of such proceedings has been served on the Fund or not, and paragraphs (3) and (4) of rule 17 shall apply to such an application.

(4) Where judgment is given against the Fund in any proceedings under section 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414), the Registrar shall cause a stamped copy of the judgment to be sent by post to the Fund. (L.N. 363 of 1990)

(5) The Fund shall notify the Registrar of the matters set out in section 25(11)(b) of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) by a notice in writing sent by post to, or delivered at, the Registry. (L.N. 363 of 1990)

3. Issue of writ and acknowledgment of service (O. 75, r. 3)

(1) An action in rem must ~~be begun by writ~~ **may be begun by writ**; and the writ must be in Form No. 1 in Appendix B.

Rule 37,
Rec 10 to 16

(2) The writ by which an Admiralty action in personam is begun must be in Form No. 1 in Appendix A.

(3) The writ by which a limitation action is begun must be in Form No. 2 in Appendix B.

(4) Subject to the following paragraphs Order 6, rule 7, shall apply in relation to a writ by which an Admiralty action is begun.

(5) An acknowledgment of service in an action in rem or a limitation action shall be in Form No. 2B in Appendix B.

(6) A defendant to an action in rem in which the writ has not been served, or a defendant to a limitation action who has not been served with the writ, may, if he desires to take part in the proceedings, acknowledge the issue of the writ by handing in at, or sending to, the Registry an acknowledgment of issue in the same form as an acknowledgment of service but with the substitution for the references therein to service of references to issue of the writ.

(7) These rules shall apply, with the necessary modifications, in relation to an acknowledgment of issue or service in Form 2B in Appendix B as they apply in relation to an acknowledgment of service in Form No. 14 in Appendix A which contains a statement to the effect that the defendant intends to contest the proceedings to which the acknowledgment relates.

4. Service of writ out of jurisdiction (O. 75, r. 4)

(1) Subject to the following provisions of this rule, service out of the jurisdiction of a writ containing any claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations, every limitation action and every action to enforce a claim under section 6 or 25 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414) is permissible with the leave of the Court if, but only if- (L.N. 363 of 1990)

- (a) the defendant has his habitual residence or a place of business in Hong Kong; or
- (b) the cause of action arose within the territorial waters of Hong Kong; or
- (c) an action arising out of the same incident or series of incidents is proceeding in the Court or has been heard and determined in the Court; or
- (d) the defendant has submitted or agreed to submit to the jurisdiction of the Court.

(2) Order 11, rule 3 and rule 4(1), (2) and (4), shall apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1 or 2 of that Order.

(3) Paragraph (1) shall not apply to an action in rem.

(4) The proviso to rule 7(1) of Order 6 and Order 11, rule 1(2), shall not apply to a writ by which any Admiralty action is begun.

5. Warrant of arrest (O. 75, r. 5)

(1) After a writ has been issued in an action in rem a warrant in Form No. 3 in Appendix B for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or of the defendant, as the case may be.

(3) A party applying for the issue out of the Registry of a warrant to arrest any property shall procure a search to be made in the caveat book for the purpose of ascertaining whether there is a caveat against arrest in force with respect to that property.

(4) A warrant of arrest shall not be issued until the party applying for it has filed an affidavit requesting issue of the warrant together with an affidavit made by him or his agent containing the particulars required by paragraph (8) so, however, that the Court may, if it thinks fit, allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(5) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem against a foreign ship belonging to a port of a State having a consulate in Hong Kong, being an action for possession of the ship or for wages,

Remarks

until notice that the action has been begun has been sent to the consul.

(6) Except with the leave of the Court, a warrant of arrest shall not be issued in an action in rem in which there is a claim arising out of bottomry until the bottomry bond and, if the bond is in a foreign language, a notarial translation thereof is produced to the Registrar.

(7) Where, by, or under, any convention or treaty, Hong Kong has undertaken to minimise the possibility of arrest of ships of another state, no application shall be made for the issue of a warrant of arrest in an action in rem against a ship owned by that state until a notice in Form No. 15 in Appendix B has been served on a consular officer at the consular office of, or acting on behalf of, that state in Hong Kong.

(8) An affidavit required by paragraph (4) must state-

(a) in every case-

(i) the nature of the claim or counterclaim and that it has not been satisfied and, if it arises in connection with a ship, the name of that ship; and

(ii) the nature of the property to be arrested and, if the property is a ship, the name of the ship and her port of registry; and

(b) in the case of a claim against a ship in rem by virtue of paragraph (10)-

(i) the name of the person who would be liable on the claim in an action in personam ("the relevant person"); and

(ii) that the relevant person was when the cause of action arose the owner or charterer of, or in possession or in control of, the ship in connection with which the claim arose; and

(iii) that at the time of the issue of the writ the relevant person was either the beneficial owner of all the shares in the ship in respect of which the warrant is required or (where appropriate) the charterer of it under a charter by demise; and

(c) in the case of a claim for possession of a ship or for wages, the nationality of the ship in respect of which the warrant is required and that the notice (if any) required by paragraph (5) has been sent; and

(e) in the case of a claim in respect of a liability incurred under section 6 of the Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap 414), the facts relied on as establishing that the Court is not prevented from entertaining the action by reason of section 18(1) of that Ordinance. (L.N. 363 of 1990)

(9) The following documents shall, where appropriate, be exhibited to an affidavit required by paragraph (4)-

(a) a copy of any notice sent to a consul under paragraph (5);

(b) a certified copy of any bottomry bond, or of the translation thereof, produced under paragraph (6);

(c) a copy of any notice served on a consular officer under paragraph (7).

(10) The claims against a ship in rem coming within the provisions of subparagraph (b) (whether or not the claim gives rise to a maritime lien on that ship)

are-

- (a) for damage done by a ship;
- (b) for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment or in consequence of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or the master or crew of a ship or any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of a ship in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;
- (c) for loss of or damage to goods carried in a ship;
- (d) those arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;
- (e) those in the nature of salvage (including any claim arising by virtue of the application by or under section 51 of the Civil Aviation Act 1949 as it applies to Hong Kong, of the law relating to salvage to aircraft and their apparel and cargo);
- (f) those in the nature of towage or pilotage in respect of a ship or an aircraft when an action in rem may be brought against that aircraft if, at the time when the action is brought, it is beneficially owned by the person who would be liable on the claim in an action in personam;
- (g) those in respect of goods or materials supplied to a ship for her operation or maintenance;
- (h) those in respect of the construction, repair or equipment of a ship or dock charges or dues;
- (i) those by a master or member of a crew of a ship for wages (including any sum allotted out of wages or adjudged by a superintendent to be due by way of wages);
- (j) those by a master, shipper, charterer or agent in respect of disbursements made on account of a ship;
- (k) those arising out of an act which is or is claimed to be a general average act;
- (l) those arising out of bottomry.

And where the person who would be liable on the claim in an action in personam ("the relevant person") was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship and at the time when the action is brought is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise or, in the case of any other ship, where the relevant person is the beneficial owner as respects all the shares in it at the time when the action is brought.

6. Caveat against arrest (O. 75, r. 6)

(1) A person who desires to prevent the arrest of any property must file in the Registry a praecipe, in Form No. 5 in Appendix B, signed by him or his solicitor undertaking-

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(a) to acknowledge issue or service (as may be appropriate) of the writ in any action that may be begun against the property described in the praecipe, and

(b) within 3 days after receiving notice that such an action has been begun, to give bail in the action in a sum not exceeding an amount specified in the praecipe or to pay the amount so specified into court,

and on the filing of the praecipe a caveat against the issue of a warrant to arrest the property described in the praecipe shall be entered in the caveat book.

(2) The fact that there is a caveat against arrest in force shall not prevent the issue of a warrant to arrest the property to which the caveat relates.

7. Remedy where property protected by caveat is arrested (O. 75, r.7)

Where any property with respect to which a caveat against arrest is in force is arrested in pursuance of a warrant of arrest, the party at whose instance the caveat was entered may apply to the Court by motion for an order under this rule and, on the hearing of the application, the Court, unless it is satisfied that the party procuring the arrest of the property had a good and sufficient reason for so doing, may by order discharge the warrant and may also order the last-mentioned party to pay to the applicant damages in respect of the loss suffered by the applicant as a result of the arrest.

8. Service of writ in action in rem (O. 75, r. 8)

(1) Subject to paragraph (2), a writ by which an action in rem is begun must be served on the property against which the action is brought save that-

- (a) where that property is freight it must be served on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried, or
- (b) where the property has been sold by the bailiff, the writ may not be served on that property, but a sealed copy of it must be filed in the Registry and the writ shall be deemed to have been duly served on the day on which it was filed.

(2) A writ need not be served or filed as mentioned in paragraph (1) if the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4) or (5).

(3) Where by virtue of this rule a writ is required to be served on any property, then, if the plaintiff wishes service of the writ to be effected by the bailiff, he must file in the Registry a praecipe in Form No. 6 in Appendix B and lodge-

- (a) the writ and a copy thereof, and
- (b) an undertaking to pay on demand all expenses incurred by the bailiff or his substitute in respect of the service of the writ,

and thereupon the bailiff or his substitute shall serve the writ on the property described in the praecipe.

(3A) Where a writ is served on any property by the bailiff or his substitute the person effecting service must indorse on the writ the following particulars, that is to say, where it was served, the property on which it was served, the day of the week and the date on which it was served, the manner in which it was served and the name and the address of the person effecting service, and the indorsement shall be evidence of the facts stated therein.

(4) Where the plaintiff in an action in rem, or his solicitor, becomes aware that there is in force a caveat against arrest with respect to the property against which the action is brought, he must serve the writ forthwith on the person at whose instance the caveat was entered.

(5) Where a writ by which an action in rem is begun is amended under Order 20, rule 1, after service thereof, Order 20, rule 1(2), shall not apply and, unless the Court otherwise directs on an application made ex parte, the amended writ must be served on any intervener and any defendant who has acknowledged issue or service of the writ in the action or, if no defendant has acknowledged issue or service of the writ, it must be served in accordance with paragraph (1) of this rule.

9. Committal of solicitor failing to comply with undertaking (O. 75, r. 9)

Where the solicitor of a party to an action in rem fails to comply with a written undertaking given by him to any other party or his solicitor to acknowledge issue or service of the writ in the action, give bail or pay money into court in lieu of bail, he shall be liable to committal.

10. Execution, etc., of warrant of arrest (O. 75, r. 10)

(1) A warrant of arrest is valid for 12 months beginning with the date of its issue.

(2) A warrant of arrest may be executed only by the bailiff or his substitute.

(3) A warrant of arrest shall not be executed until an undertaking to pay on demand the fees of the bailiff and all expenses incurred by him or on his behalf in respect of the arrest of the property and the care and custody of it while under arrest has been lodged in the bailiff's office.

(4) A warrant of arrest shall not be executed if the party at whose instance it was issued lodges a written request to that effect with the bailiff.

(5) A warrant of arrest issued against freight may be executed by serving the warrant on the cargo in respect of which the freight is payable or on the ship in which that cargo was carried or on both of them.

(6) Subject to paragraph (5), a warrant of arrest must be served on the property against which it is issued.

(7) Within 7 days after the service of a warrant of arrest, the warrant must be filed, in the Registry by the bailiff.

11. Service on ships, etc.: how effected (O. 75, r. 11)

(1) Subject to paragraph (2), service of a warrant of arrest or writ in an action in rem against a ship, freight or cargo shall be effected by-

- (a) affixing the warrant or writ for a short time on any mast of the ship or on the outside of any suitable part of the ship's superstructure, and
- (b) on removing the warrant or writ, leaving a copy of it affixed (in the case of the warrant) in its place or (in the case of the writ) on a sheltered, conspicuous part of the ship.

(2) Service of a warrant of arrest or writ in an action in rem against freight or cargo or both shall, if the cargo has been landed or transhipped, be effected-

- (a) by placing the warrant or writ for a short time on the cargo and, on removing the warrant or writ, leaving a copy of it on the cargo, or
- (b) if the cargo is in the custody of a person who will not permit access to it, by leaving a copy of the warrant or writ with that person.

(3) Order 65, rule 10, shall not apply to a warrant of arrest or a writ in rem.

12. Applications with respect to property under arrest (O. 75, r. 12)

(1) The bailiff may at any time apply to the Court for directions with respect to property under arrest in an action and may, or, if the Court so directs, shall, give notice of the application to any or all of the persons referred to in paragraph 2.

(2) The bailiff shall send by hand or by post a copy of any order made on an application under paragraph (1) to all those persons who, in relation to that property, have-

- (a) entered a caveat which is still in force; or
- (b) caused a warrant for the arrest of the property to be executed by the bailiff; or
- (c) acknowledged issue or service of the writ in any action in which the property is under arrest; or
- (d) intervened in any action in which the property is under arrest.

(3) A person other than the bailiff may make an application under this rule by summons or motion in the action in which the property is under arrest and the summons or notice of motion together with copies of any affidavits in support must be served upon the bailiff and all persons referred to in paragraph (2) unless the court otherwise orders on an application made ex parte.

(4) Unless otherwise directed by the Registrar, the bailiff shall serve a copy of any notice of motion or summons on the property under arrest.

13. Release of property under arrest (O. 75, r. 13)

(1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, property which has been so arrested shall only be released under the authority of an instrument of release (in this rule referred to as a "release"), in Form No. 7 in Appendix B, issued out of the Registry.

(3) A release shall not be issued with respect to property as to which a caveat against release is in force, unless, either

- (a) at the time of the issue of the release the property is under arrest in one or more other actions, or
- (b) the Court so orders.

(4) A release may be issued at the instance of any party to the action in which the warrant of arrest was issued if the Court so orders, or, subject to paragraph (3), if all the other parties, except any defendant who has not acknowledged issue or service of the writ, consent.

(6) Before a release is issued, the party applying for its issue must, unless paragraph (3)(a) applies, give notice to any person at whose instance a subsisting caveat against release has been entered, or to his solicitor, requiring the caveat to be withdrawn.

(7) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the bailiff, either-

- (a) pay the fees of the bailiff already incurred and lodge in the bailiff's office an undertaking to pay on demand the other fees and expenses in connection with the arrest of the property and the care and custody of it while under arrest and of its release, or
- (b) lodge in the bailiff's office an undertaking to pay on demand all such fees and expenses, whether incurred or to be incurred.

(8) The Court, on the application of any party who objects to directions given to him by the bailiff under paragraph (7), may vary or revoke the directions.

14. Caveat against release etc. (O. 75, r. 14)

(1) Where a person claiming to have a right of action in rem against any property which is under arrest or the proceeds of sale thereof wishes to be served with notice of any application to the Court in respect of that property or those proceeds, he must file in the Registry a praecipe in Form No. 9 in Appendix B and, on the filing of the praecipe, a caveat shall be entered in the caveat book.

(2) Where the release of any property under arrest is delayed by the entry of a caveat under this rule, any person having an interest in that property may apply to the Court by motion for an order requiring the person who procured the entry of the

caveat to pay to the applicant damages in respect of the loss suffered by the applicant by reason of the delay, and the Court, unless it is satisfied that the person procuring the entry of the caveat had a good and sufficient reason for so doing, may make an order accordingly.

15. Duration of caveats (O. 75, r. 15)

- (1) Every caveat entered in the caveat book is valid for 12 months beginning with the date of its entry but the person at whose instance a caveat was entered may withdraw it by filing a praecipe in Form No. 10 in Appendix B.
- (2) The period of validity of a caveat may not be extended, but this provision shall not be taken as preventing the entry of successive caveats.

16. Bail (O. 75, r. 16)

- (1) Bail on behalf of a party to an action in rem must be given by bond in Form No. 11 in Appendix B; and the sureties to the bond must enter into the bond before a commissioner for oaths or a solicitor exercising the powers of a commissioner for oaths under section 7A of the Legal Practitioners Ordinance (Cap 159) not being a solicitor who, or whose partner, is acting as solicitor or agent for the party on whose behalf the bail is to be given.
- (2) Subject to paragraph (3), a surety to a bail bond must make an affidavit stating that he is able to pay the sum for which the bond is given.
- (3) Where a corporation is a surety to a bail bond given on behalf of a party, no affidavit shall be made under paragraph (2) on behalf of the corporation unless the opposite party requires it, but where such an affidavit is required it must be made by a director, manager, secretary or other similar officer of the corporation.
- (4) The party on whose behalf bail is given must serve on the opposite party a notice of bail containing the names and addresses of the persons who have given bail on his behalf and of the commissioner before whom the bail bond was entered into; and after the expiration of 24 hours from the service of the notice (or sooner with the consent of the opposite party) he may file the bond and must at the same time file the affidavits (if any) made under paragraph (2) and an affidavit proving due service of the notice of bail to which a copy of that notice must be exhibited.

17. Interveners (O. 75, r. 17)

- (1) Where property against which an action in rem is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may, with the leave of the Court, intervene in the action.

- (2) An application for the grant of leave under this rule must be made ex parte by affidavit showing the interest of the applicant in the property against which the action is brought or in the money in court.
- (3) A person to whom leave is granted under this rule shall thereupon become a party to the action.
- (4) The Court may order that a person to whom it grants leave to intervene in an action shall, within such period or periods as may be specified in the order, serve on any other party to the action such notice of his intervention and such pleadings as may be so specified.

18. Preliminary acts (O. 75, r. 18)

- (1) In an action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships, the following provisions of this rule shall apply unless the Court otherwise orders.
- (2) The plaintiff must within 2 months after service of the writ on any defendant and the defendant must within 2 months of acknowledging issue or service of the writ file in the Registry a document in two parts (in these rules referred to as a preliminary act) containing a statement of the following-
- Part One
- (i) the names of the ships which came into collision and their ports of registry;
 - (ii) the length, breadth, gross tonnage, horsepower and draught at the material time of the ship and the nature and tonnage of any cargo carried by the ship;
 - (iii) the date and time (including the time zone) of the collision;
 - (iv) the place of the collision;
 - (v) the direction and force of the wind;
 - (vi) the state of the weather;
 - (vii) the state, direction and force of the tidal or other current;
 - (viii) the position, the course steered and speed through the water of the ship when the other ship was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier;
 - (ix) the lights or shapes (if any) carried by the ship;
 - (x) (a) the distance and bearing of the other ship if and when her echo was first observed by radar;
(b) the distance, bearing and approximate heading of the other ship when first seen;
 - (xi) what light or shape or combination of lights or shapes (if any) of the other ship was first seen;
 - (xii) what other lights or shapes or combinations of lights or shapes (if any) of the other ship were subsequently seen before the collision, and when;
 - (xiii) what alterations (if any) were made to the course and speed of the ship after the earlier of the two times referred to in article (viii) up to the

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time of the collision, and when, and what measures (if any) other than alterations of course or speed, were taken to avoid the collision, and when;

- (xiv) the heading of the ship, the parts of each ship which first came into contact and the approximate angle between the two ships at the moment of contact;
- (xv) what sound signals (if any) were given, and when;
- (xvi) what sound signals (if any) were heard from the other ship, and when.

Part Two

- (i) a statement that the particulars in Part One are incorporated in Part Two;
- (ii) any other facts and matters upon which the party filing the preliminary act relies;
- (iii) all allegations of negligence or other fault which the party filing the preliminary act makes;
- (iv) the remedy or relief which the party filing the preliminary act claims.

(3) Part Two of the preliminary act shall be deemed to be the pleading of the person filing the preliminary act (in the case of the plaintiff his statement of claim and in the case of the defendant his defence and, where appropriate, his counterclaim) and the provisions of these rules relating to pleadings shall apply to it save insofar as this rule and rule 20 provide otherwise.

(4) The Court may order that Part Two of the preliminary act need not be filed by the plaintiff or defendant and give directions for the further conduct of the action.

(5) Every preliminary act shall before filing be sealed by the proper officer and be filed in a sealed envelope which shall not be opened except as provided in paragraph (7) or by order of the Court.

(6) A plaintiff must serve notice of filing his preliminary act on every defendant who acknowledges issue or service of the writ within 3 days of receiving notice of that acknowledgment or upon filing his preliminary act, whichever is the later. A defendant must, upon filing his preliminary act, serve notice that he has done so on the plaintiff and on every other defendant who has acknowledged issue or service of the writ.

(7) Any party may inspect and bespeak a copy of the preliminary act of any other party upon filing in the Registry a consent signed by that other party or his solicitor.

(8) Order 18, rule 20 (close of pleadings) shall not apply; and for the purposes of Order 18, rule 14 (denial by joinder of issue), Order 20, rule 3 (amendment of pleadings without leave) and Order 24, rules 1 and 2 (discovery of documents) the pleadings shall be deemed to be closed-

- (a) at the expiration of 7 days after service of the reply or, if there is no reply but only a defence to counterclaim, after service of the defence to counterclaim pursuant to leave given under rule 20; or

- (b) if neither a reply nor a defence to counterclaim is served, at the expiration of 7 days after the last preliminary act in the action was served pursuant to paragraph (9).

(9) Within 14 days after the last preliminary act in the action is filed each party must serve on every other party a copy of his preliminary act.

(10) At any time after all preliminary acts have been filed any party may apply to the Court for an order that-

- (a) one or more parties file in the Registry particulars of the damages claimed by them and serve a copy thereof on every other party; and
(b) that the damages be assessed prior to or at the trial on liability.

The application must be made by summons to the Registrar even if it is made after the issue of a summons for directions.

(11) When an order is made under paragraph (10) the claim or claims concerned shall be treated as referred to the Registrar for assessment and rules 41 and 42 shall apply unless the Registrar otherwise directs.

(L.N. 404 of 1991)

19. Failure to lodge preliminary act: proceedings against party in default
(O. 75, r. 19)

(1) Where in such an action as is referred to in rule 18(1) the plaintiff fails to lodge a preliminary act within the prescribed period, any defendant who has lodged such an act may apply to the Court by summons for an order to dismiss the action, and the Court may by order dismiss the action or make such other order on such terms as it thinks just.

(2) Where in such an action, being an action in personam, a defendant fails to lodge a preliminary act within the prescribed period, Order 19, rules 2 and 3, shall apply as if the defendant's failure to lodge the preliminary act within that period were a failure by him to serve a defence on the plaintiff within the period fixed by or under these rules for service thereof, and the plaintiff, if he has lodged a preliminary act may, subject to Order 77, rule 9, accordingly enter judgment against that defendant in accordance with the said rule 2 or the said rule 3, as the circumstances of the case require.

(3) Where in such an action, being an action in rem, a defendant fails to lodge a preliminary act within the prescribed period, the plaintiff, if he has lodged such an act, may apply to the Court by motion for judgment against that defendant, and it shall not be necessary for the plaintiff to file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of a motion under paragraph (3) the Court may make such order as it thinks just, and where the defendant does not appear on the hearing and the Court is of opinion that judgment should be given for the plaintiff provided he proves his case, it shall order the plaintiff's preliminary act to be opened and require

the plaintiff to satisfy the Court that his claim is well founded.

The plaintiff's evidence may, unless the Court otherwise orders, be given by affidavit without any order or direction in that behalf.

(5) Where the plaintiff in accordance with a requirement under paragraph (4) satisfies the Court that his claim is well founded, the Court may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action is brought to be appraised and sold and the proceeds to be paid into court or make such order as it thinks just.

(6) The Court may, on such terms as it thinks just, set aside any judgment entered in pursuance of this rule.

(7) In this rule references to the prescribed period shall be construed as references to the period within which by virtue of rule 18(2) or of any order of the Court the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act. (L.N. 404 of 1991)

20. Special provisions as to pleadings in collision, etc. actions (O. 75, r. 20)

(1) Notwithstanding anything in Order 18, rule 3, the plaintiff in any such action as is referred to in rule 4(1) may not serve a reply or a defence to counterclaim on the defendant except with the leave of the Court. (L.N. 356 of 1988)

(2) Subject to paragraph (3), in any such action Order 18, rule 13(3) shall not apply to any allegation of fact in-

- (a) a statement of claim contained in Part Two of a preliminary act; or
- (b) a counterclaim (whether contained in Part Two of a preliminary act or not),

and notwithstanding Order 18, rule 14(3) but without prejudice to the other provisions of that rule, there is an implied joinder of issue on the statement of claim or counterclaim. (L.N. 404 of 1991)

(3) Paragraph (2) does not apply to a counterclaim if the plaintiff has served a defence to counterclaim pursuant to leave given under paragraph (1). (L.N. 404 of 1991)

21. Judgment by default (O. 75, r. 21)

(1) Where a writ is served under rule 8(4) on a party at whose instance a caveat against arrest was issued, then if-

- (a) the sum claimed in the action begun by the writ does not exceed the amount specified in the undertaking given by that party or his solicitor to procure the entry of that caveat, and
- (b) that party or his solicitor does not within 14 days after service of the writ fulfil the undertaking given by him as aforesaid,

the plaintiff may, after filing an affidavit verifying the facts on which the action is based, apply to the Court for judgment by default.

(2) Judgment given under paragraph (1) may be enforced by the arrest of the property against which the action was brought and by committal of the party at whose instance the caveat with respect to that property was entered.

(3) Where a defendant to an action in rem fails to acknowledge service of the writ within the time limited for doing so, then, on the expiration of 14 days after service of the writ and upon filing an affidavit proving due service of the writ, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

Where the writ is deemed to have been duly served on the defendant by virtue of Order 10, rule 1(4), or was served by the bailiff or his substitute under rule 8 of this Order, an affidavit proving due service of the writ need not be filed under this paragraph, but the writ indorsed as mentioned in the said rule 1(4) or indorsed as mentioned in rule 8(3A) must be lodged with the affidavit verifying the facts on which the action is based.

(4) Where a defendant to an action in rem fails to serve a defence on the plaintiff, then, after the expiration of the period fixed by or under these rules for service of the defence and upon filing an affidavit stating that no defence was served on him by that defendant during that period, an affidavit verifying the facts on which the action is based and, if a statement of claim was not indorsed on the writ, a copy of the statement of claim, the plaintiff may apply to the Court for judgment by default.

(5) Where a defendant to a counterclaim in an action in rem fails to serve a defence to counterclaim on the defendant making the counterclaim, then, subject to paragraph (6), after the expiration of the period fixed by or under these rules for service of the defence to counterclaim and upon filing an affidavit stating that no defence to counterclaim was served on him by the first-mentioned defendant during that period, an affidavit verifying the facts on which the counterclaim is based and a copy of the counterclaim, the defendant making the counterclaim may apply to the Court for judgment by default.

(6) No application may be made under paragraph (5) against the plaintiff in any action to enforce a claim for damage, loss of life or personal injury arising out of a collision between ships or the carrying out of or omission to carry out a manoeuvre in the case of one or more of two or more ships or non-compliance on the part of one or more of two or more ships with the collision regulations.

(7) An application to the Court under this rule must be made by motion and if, on the hearing of the motion, the Court is satisfied that the applicant's claim is well founded it may give judgment for the claim with or without a reference to the Registrar and may at the same time order the property against which the action or, as the case may be, counterclaim is brought to be appraised and sold and the proceeds to be paid into court or may make such other order as it thinks just.

(8) In default actions in rem evidence may, unless the Court otherwise orders, be

given by affidavit without any order or direction in that behalf.

(9) The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance of this rule.

(10) Order 13 and Order 19 (except rule 1) shall not apply to actions in rem.

22. Order for sale of ship: determination of priority of claims (O. 75, r. 22)

(1) Where in an action in rem against a ship the Court has ordered the ship to be sold, any party who has obtained or obtains judgment against the ship or proceeds of sale of the ship may-

(a) in a case where the order for sale contains the further order referred to in paragraph (2), after the expiration of the period specified in the order under paragraph (2)(a), or

(b) in any other case, after obtaining judgment,

apply to the Court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(2) Where in an action in rem against a ship the Court orders the ship to be sold, it may further order-

(a) that the order of priority of the claims against the proceeds of sale of the ship shall not be determined until after the expiration of 90 days, or of such other period as the Court may specify, beginning with the day on which the proceeds of sale are paid into court;

(b) that any party to the action or to any other action in rem against the ship or the proceeds of sale thereof may apply to the Court in the action to which he is a party to extend the period specified in the Order;

(c) that within 7 days after the date of payment into court of the proceeds of sale the bailiff shall send for publication in the Gazette and such other newspaper, if any, as the Court may direct, a notice complying with paragraph (3).

(3) The notice referred to in paragraph (2)(c) must state-

(a) that the ship (naming her) has been sold by order of the Court in an action in rem, identifying the action;

(b) that the gross proceeds of the sale, specifying the amount thereof, have been paid into court;

(c) that the order of priority of the claims against the said proceeds will not be determined until after the expiration of the period (specifying it) specified in the order for sale; and

(d) that any person with a claim against the ship or the proceeds of sale thereof, on which he intends to proceed to judgment should do so before the expiration of that period.

(4) The bailiff must lodge in the Registry a copy of each newspaper in which the notice referred to in paragraph (2)(c) appeared.

(5) The expenses incurred by the bailiff in complying with an order of the Court under this rule shall be included in his expenses relating to the sale of the ship.

(6) An application to the Court to extend the period referred to in paragraph (2)(a) must be made by motion, and a copy of the notice of motion must, at least 3 days before the day fixed for the hearing thereof, be served on each party who has begun an action in rem against the ship or the proceeds of sale thereof.

(7) In this rule “the Court” (法庭) means the judge in person.

23. Appraisal and sale of property (O. 75, r. 23)

(1) A commission for the appraisal and sale of any property under an order of the Court shall not be issued until the party applying for it has filed a praecipe in Form No. 12 in Appendix B.

(2) Such a commission must, unless the Court otherwise orders, be executed by the bailiff and must be in Form No. 13 in Appendix B.

(3) A commission for appraisal and sale shall not be executed until an undertaking in writing satisfactory to the bailiff to pay the fees and expenses of the bailiff on demand has been lodged in the bailiff's office.

(4) The bailiff shall pay into court the gross proceeds of the sale of any property sold by him under a commission for sale and shall bring into court the account relating to the sale (with vouchers in support) for taxation.

(5) On the taxation of the bailiff's account relating to a sale any person interested in the proceeds of the sale shall be entitled to be heard, and any decision of the Registrar made on the taxation to which objection is taken may be reviewed in the same manner and by the same persons as any decision of the Registrar made in taxation proceedings under Order 62, and rules 33 to 35 of that Order shall apply accordingly with the necessary modifications.

23A. Undertaking as to expenses, etc. (O. 75, r. 23A)

(1) Every undertaking under rule 8(3), 10(3), 13(7) or 23(3) shall be given in writing to the satisfaction of the bailiff.

(2) Where a party is required by rule 8(3), 10(3), 13(7) or 23(3) to give to the bailiff an undertaking to pay any fees or expenses, the bailiff may require from time to time the deposit with him of such sum as he considers reasonable to meet those fees and expenses.

(3) The Court may, on the application of any party who is dissatisfied with a direction or determination of the bailiff under rule 13(7) or this rule, vary or revoke the direction or determination.

24. Payment into and out of court (O. 75, r. 24)

(1) ~~Order 22 (except rules 3, 4 and 12)~~ **Subject to this rule, Order 22** shall apply in relation to an Admiralty action (other than a limitation action) as it applies to an action for a debt or damages.

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(2) Subject to paragraphs (3) and (4), money paid into court shall not be paid out except in pursuance of an order of the judge in person.

(3) The Registrar may, with the consent of the parties interested in money paid into court, order the money to be paid out to the person entitled thereto in the following cases, that is to say-

- (a) where a claim has been referred to the Registrar for decision and all the parties to the reference have agreed to accept the Registrar's decision and to the payment out of any money in court in accordance with that decision;
- (b) where property has been sold and the proceeds of sale thereof paid into court and the parties are agreed as to the persons to whom the proceeds shall be paid and the amount to be paid to each of those persons;
- (c) where in any other case there is no dispute between the parties.

(4) Where in an Admiralty action money has been paid into court pursuant to an order made under Order 29, rule 12, the Registrar may make an order under rule 13(1) of that Order for the money to be paid out to the person entitled thereto.

25. Summons for directions (O. 75, r. 25)

(1) Order 25 shall apply to Admiralty actions (other than limitation actions) as it applies to other actions, except that-

- (a) the summons for directions shall be returnable in not less than 7 weeks;
- (b) any notice under Order 25, rule 7(1), must be served within 21 days after service of the summons for directions on the party giving the notice; and
- (c) unless a judge in person otherwise directs, the summons for directions shall be heard by a judge in person.

On or before the day on which any party serves on any other party a notice under Order 75, rule 7, he must lodge 2 copies of the notice in the Registry.

(2) An order made on the summons for directions shall determine whether the trial is to be without assessors or with one or more assessors.

(3) The trial shall be before a judge without a jury unless, on the ground that there are special reasons to the contrary, an order made on the summons for directions otherwise provides.

(5) Any such order or direction as is referred to in paragraph (2) or (3) (including

an order made on appeal) may be varied or revoked by a subsequent order or direction made or given at or before the trial by the judge in person or, with the judge's consent by the Registrar.

26. Fixing date for trial, etc. (O. 75, r. 26)

- (1) Subject to paragraph (2), the date for trial of an Admiralty action shall be fixed by the judge at the hearing of the summons for directions, unless a judge in person otherwise directs.
- (2) Where an action is ordered to be tried without pleadings or a summons for directions is directed to be heard by the Registrar the date for trial shall be fixed by the Registrar.
- (3) Order 34 shall apply to Admiralty actions subject to the following and any other necessary modifications-
 - (a) the bundles referred to in rule 3(1) shall include any preliminary acts and any particulars filed pursuant to an order under rule 18(10)(a) of this Order, and where trial with one or more assessors has been ordered an additional bundle shall be lodged for the use of each assessor; (L.N. 404 of 1991)
 - (b) “the proper officer” (恰當人員) shall mean the chief judicial clerk of the Registry; and
 - (c) in an action which has been ordered to be tried with an assessor or assessors the solicitor to the party setting it down must file in the Registry an undertaking to pay the proper fee and expenses of such assessor or assessors.
- (4) If all the parties to an action consent, the action may be withdrawn without the leave of the Court at any time before trial by filing in the Registry a written consent to the action being withdrawn signed by all the parties.

27. Stay of proceedings in collision, etc. actions until security given (O. 75, r. 27)

Where an action in rem, being an action to enforce any such claim as is referred to in rule 2(1)(a), is begun and a cross action in rem arising out of the same collision or other occurrence as the first mentioned action is subsequently begun, or a counterclaim arising out of that occurrence is made in the first mentioned action, then-

- (a) if the ship in respect of or against which the first mentioned action is brought has been arrested or security given to prevent her arrest, but
- (b) the ship in respect of or against which the cross action is brought or the counterclaim made cannot be arrested and security has not been given to satisfy any judgment given in favour of the party bringing the cross action or making the counterclaim,

the Court may stay proceedings in the first mentioned action until security is given to satisfy any judgment given in favour of that party.

28. Inspection of ship, etc. (O. 75, r. 28)

Without prejudice to its powers under Order 29, rules 2 and 3, and Order 35, rule 8, the Court may, on the application of any party, make an order for the inspection by the assessors (if the action is tried with assessors), or by any party or witness, of any ship or other property, whether real or personal, the inspection of which may be necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

30. Examination of witnesses and other persons (O. 75, r. 30)

(1) The power conferred by Order 39, rule 1, shall extend to the making of an order authorizing the examination of a witness or person on oath before a judge sitting in court as if for the trial of the cause or matter, without that cause or matter having been set down for trial or called on for trial.

(2) The power conferred by the said rule 1 shall also extend to the making of an order, with the consent of the parties, providing for the evidence of a witness being taken as if before an examiner, but without an examiner actually being appointed or being present.

(3) Where an order is made under paragraph (2), it may make provision for any consequential matters and, subject to any provision so made, the following provisions shall have effect-

- (a) the party whose witness is to be examined shall provide a shorthand writer to take down the evidence of the witness;
- (b) any representative, being counsel or solicitor, of either of the parties shall have authority to administer the oath to the witness;
- (c) the shorthand writer need not himself be sworn but shall certify in writing as correct a transcript of his notes of the evidence and deliver it to the solicitor for the party whose witness was examined, and that solicitor must file it in the Registry;
- (d) unless the parties otherwise agree or the Court otherwise orders, the transcript or a copy thereof shall, before the transcript is filed, be made available to the counsel or other persons who acted as advocates at the examination, and if any of those persons is of opinion that the transcript does not accurately represent the evidence he shall make a certificate specifying the corrections which in his opinion should be made therein, and that certificate must be filed with the transcript.

(4) In actions in which preliminary acts fall to be filed under rule 18, an order shall not be made under Order 39, rule 1, authorizing any examination of a witness before the preliminary acts have been filed, unless for special reasons the Court thinks fit so to direct.

31. Trial without pleadings (O. 75, r. 31)

Order 18, rule 21 shall apply to Admiralty as it applies to other actions except that the summons must be served on every other party not less than 7 days before the day specified in the summons for the hearing thereof.

32. Further provisions with respect to evidence (O. 75, r. 32)

(3) (Repealed 2 of 1999 s. 6)

(7) Unless the Court otherwise directs, an affidavit for the purposes of rule 19(4), 21 or 38(2) may, except in so far as it relates to the service of a writ, contain statements of information or belief with the sources and grounds thereof.

33. Proceedings for apportionment of salvage (O. 75, r. 33)

(1) Proceedings for the apportionment of salvage the aggregate amount of which has already been ascertained shall be begun by originating motion.

(3) On the hearing of the motion the judge may exercise any of the jurisdiction conferred by section 556 of the Merchant Shipping Act 1894 (1984 c. 60 U.K.)[#].

34. Notice of motion in actions in rem (O. 75, r. 34)

(1) The affidavits, if any, in support of a motion in an action in rem must be filed in the Registry before the notice of motion is issued, unless the Court gives leave to the contrary.

(2) A notice of motion, except a motion for judgment in default, must be served on all caveators together with copies of the affidavits, if any, in support of the motion 2 clear days at least before the hearing, unless the Court gives leave to the contrary.

35. Agreement between solicitors may be made order of court (O. 75, r. 35)

(1) Any agreement in writing between the solicitors of the parties to a cause or matter, dated and signed by those solicitors, may, if the Registrar thinks it reasonable and such as the judge would under the circumstances allow, be filed in the Registry, and the agreement shall thereupon become an order of court and have the same effect as if such order had been made by the judge in person.

37. Limitation action: parties (O. 75, r. 37)

(1) In a limitation action the person seeking relief shall be the plaintiff and shall

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be named in the writ by his name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(2) The plaintiff must make one of the persons with claims against him in respect of the casualty to which the action relates defendant to the action and may make any or all of the others defendants also.

(3) At least one of the defendants to the action must be named in the writ by his name but the other defendants may be described generally and not named by their names.

(4) The writ must be served on one or more of the defendants who are named by their names therein and need not be served on any other defendant.

(5) In this rule and rules 38, 39 and 40 “name” (姓名或名稱) includes a firm name or the name under which a person carries on his business, and where any person with a claim against the plaintiff in respect of the casualty to which the action relates has described himself for the purposes of his claim merely as the owner of, or as bearing some other relation to, a ship or other property, he may be so described as defendant in the writ and, if so described, shall be deemed for the purposes of the rules aforesaid to have been named in the writ by his name.

38. Limitation action: summons for decree or directions (O. 75, r. 38)

(1) Within 7 days after the acknowledgment of issue or service of the writ by one of the defendants named therein by their names or, if none of them acknowledges issue or service, within 7 days after the time limited for acknowledging service, the plaintiff, without serving a statement of claim, must take out a summons returnable in chambers before the Registrar asking for a decree limiting his liability or, in default of such a decree, for directions as to the further proceedings in the action.

(2) The summons must be supported by an affidavit or affidavits proving-

- (a) the plaintiff's case in the action, and
- (b) if none of the defendants named in the writ by their names has acknowledged service, service of the writ on at least one of the defendants so named.

(3) The affidavit in support of the summons must state-

- (a) the names of all the persons who, to the knowledge of the plaintiff, have claims against him in respect of the casualty to which the action relates, not being defendants to the action who are named in the writ by their names, and
- (b) the address of each of those persons, if known to the plaintiff.

(4) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on any defendant who has acknowledged issue or service of the writ.

(5) On the hearing of the summons the Registrar, if it appears to him that it is not disputed that the plaintiff has a right to limit his liability, shall make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(6) On the hearing of the summons the Registrar, if it appears to him that any defendant has not sufficient information to enable him to decide whether or not to dispute that the plaintiff has a right to limit his liability, shall give such directions as appear to him to be appropriate for enabling the defendant to obtain such information and shall adjourn the hearing.

(7) If on the hearing or resumed hearing of the summons the Registrar does not make a decree limiting the plaintiff's liability, he shall give such directions as to the further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25 and, if he gives no such direction, a direction fixing the period within which any notice under Order 38, rule 21, must be served.

(8) Any defendant who, after the Registrar has given directions under paragraph (7), ceases to dispute the plaintiff's right to limit his liability must forthwith file a notice to that effect in the Registry, and serve a copy on the plaintiff and on any other defendant who has acknowledged issue or service of the writ.

(9) If every defendant who disputes the plaintiff's right to limit his liability serves a notice on the plaintiff under paragraph (8), the plaintiff may take out a summons returnable in chambers before the Registrar, asking for a decree limiting his liability; and paragraphs (4) and (5) shall apply to a summons under this paragraph as they apply to a summons under paragraph (1).

39. Limitation action: proceedings under decree (O. 75, r. 39)

(1) Where the only defendants in a limitation action are those named in the writ by their names and all the persons so named have either been served with the writ or acknowledged the issue thereof, any decree in the action limiting the plaintiff's liability (whether made by the Registrar or on the trial of the action)-

- (a) need not be advertised, but
- (b) shall only operate to protect the plaintiff in respect of claims by the persons so named or persons claiming through or under them.

(2) In any case not falling within paragraph (1), any decree in the action limiting the plaintiff's liability-

- (a) shall be advertised by the plaintiff in such manner and within such time as may be provided by the decree;
- (b) shall fix a time within which persons with claims against the plaintiff in respect of the casualty to which the action relates may file their claims, and, in cases to which rule 40 applies, take out a summons, if they think fit, to set the order aside.

(3) The advertisement to be required under paragraph (2)(a) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be a single advertisement in each of 3 newspapers specified in the decree, identifying the action, the casualty and the relation of the plaintiff thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be), stating that the decree has been made and specifying the amounts fixed thereby as the limits of the plaintiff's liability and the time allowed thereby for the filing of claims and the taking out of summonses to set the decree aside.

The plaintiff must within the time fixed under paragraph (2)(b) file in the Registry a copy of each newspaper in which the advertisement required under paragraph (2)(a) appears.

(4) The time to be allowed under paragraph (2)(b) shall, unless for special reasons the Registrar thinks fit otherwise to provide, be not less than 2 months from the latest date allowed for the appearance of the advertisements; and after the expiration of the time so allowed no claim may be filed or summons taken out to set aside the decree except with the leave of the Registrar.

(5) Save as aforesaid, any decree limiting the plaintiff's liability (whether made by the Registrar or on trial of the action) may make any such provisions as is authorized by section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.) #.

40. Limitation action: proceedings to set aside decree (O. 75, r. 40)

(1) Where a decree limiting the plaintiff's liability (whether made by Registrar or on trial of the action) fixes a time in accordance with rule 39(2), any person with a claim against the plaintiff in respect of the casualty to which the action relates, who-

- (a) was not named by his name in the writ as a defendant to the action, or
- (b) if so named, neither was served with the writ nor has acknowledged the issue thereof,

may, within that time, after acknowledging issue of the writ, take out a summons returnable in chambers before the Registrar, asking that the decree be set aside.

(2) The summons must be supported by an affidavit or affidavits showing that the defendant in question has a bona fide claim against the plaintiff in respect of the casualty in question and that he has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree.

(3) The summons and every affidavit in support thereof must, at least 7 clear days before the hearing of the summons, be served on the plaintiff and any defendant who has acknowledged issue or service of the writ.

(4) On the hearing of the summons the Registrar, if he is satisfied that the defendant in question has a bona fide claim against the plaintiff and sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given him by the decree, shall set the decree aside and give such directions as to the

further proceedings in the action as appear to him to be appropriate including, in particular, a direction requiring the taking out of a summons for directions under Order 25.

41. References to Registrar (O. 75, r. 41)

(1) Any party (hereafter in this rule referred to as the "claimant") making a claim which is referred to the Registrar for decision must within 2 months after the order is made, or, in a limitation action, within such other period as the Court may direct, file his claim and, unless the reference is in such an action, serve a copy of the claim on every other party.

(2) At any time after the claimant's claim has been filed or, where the reference is in a limitation action, after the expiration of the time limited by the Court for the filing of claims but, in any case, not less than 28 days before the day appointed for the hearing of the reference, any party to the cause or matter may apply to the Registrar by summons for directions as to the proceedings on the reference, and the Registrar shall give such directions, if any, as he thinks fit including, without prejudice to the generality of the foregoing words, a direction requiring any party to serve on any claimant, within such period as the Registrar may specify, a defence to that claimant's claim.

(3) The reference shall be heard on a day appointed by the Registrar and, unless the reference is in a limitation action or the parties to the reference consent to the appointment of a particular day, the appointment must be made by order on an application by summons made by any party to the cause or matter.

(4) An appointment for the hearing of a reference shall not be made until after the claimant has filed his claim or, where the reference is in a limitation action, until after the expiration of the time limited by the Court for the filing of claims.

(5) Not later than 7 days after an appointment for the hearing of a reference has been made the claimant or, where the reference is in a limitation action, the plaintiff must enter the reference for hearing by lodging in the Registry a praecipe requesting the entry of the reference in the list for hearing on the day appointed.

(6) Not less than 14 days before the day appointed for the hearing of the reference the claimant must file-

- (a) a list, signed by him and every other party, of the items (if any) of his claim which are not disputed, stating the amount (if any) which he and the other parties agree should be allowed in respect of each such item, and
- (b) such affidavits or other documentary evidence as is required to support the items of his claim which are disputed;

and, unless the reference is in a limitation action, he must at the same time serve on every other party a copy of every document filed under this paragraph.

(7) If the claimant fails to comply with paragraph (1) or (6)(b), the Court may,

on the application of any other party to the cause or matter, dismiss the claim.

42. Hearing of reference (O. 75, r. 42)

- (1) Unless a judge in person otherwise orders, a reference shall be heard in public.
- (2) The Registrar may adjourn the hearing of a reference from time to time as he thinks fit.
- (3) Subject to paragraph (2), evidence may be given orally or by affidavit or in such other manner as may be agreed upon.
- (4) When the hearing of the reference has been concluded, the Registrar shall-
 - (a) reduce to writing his decision on the question arising in the reference (including any order as to costs) and cause it to be filed;
 - (b) cause to be filed either with his decision or subsequently such statement (if any) of the grounds of the decision as he thinks fit; and
 - (c) send to the parties to the reference notice that he has done so.
- (5) Where no statement of the grounds of the Registrar's decision is filed with his decision and no intimation has been given by the Registrar that he intends to file such a statement later, any party to the reference may, within 14 days after the filing of the decision, make a written request to the Registrar to file such a statement.

43. Objection to decision on reference (O. 75, r. 43)

- (1) Any party to a reference to the Registrar may, by motion in objection, apply to set aside or vary the decision of the Registrar on the reference, but notice of the motion, specifying the points of objection to the decision, must be filed within 28 days after the date on which notice of the filing of the decision was sent to that party under rule 42(4) or, if a notice of the filing of a statement of the grounds of the decision was subsequently sent to him thereunder, within 28 days after the date on which the notice was sent.
- (2) The decision of the Registrar shall be deemed to be given on the date on which it is filed, but, unless he or the judge otherwise directs, the decision shall not be acted upon until the time has elapsed for filing notice of a motion in objection thereto.
- (3) A direction shall not be given under paragraph (2) without the parties being given an opportunity of being heard but may, if the Registrar announces his intended decision at the conclusion of the hearing of the reference, be incorporated in his decision as reduced to writing under rule 42(4).

45. Drawing up and entry of judgments and orders (O. 75, r. 45)

Every judgment given or order made in an Admiralty cause or matter, except an order which by virtue of Order 42, rule 4, is not required to be drawn up, shall be drawn up in the Registry and shall be entered by an officer of the Registry in the book kept for the purpose.

46. Inspection of documents filed in Registry (O. 75, r. 46)

(1) Order 63, rule 4, shall apply in relation to documents filed in the Registry.

(2) For the purpose of Order 63, rule 4, a decree made by the Registrar in a limitation action and a decision and any statement of the grounds of that decision filed under rule 42 shall be deemed to have been made or given in court.

(Enacted 1988)

Note:

Please also see following-

(a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap 415 and s. 1 of Schedule 2 to Cap 508;

(b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap 281, s. 103 of Cap 415 and s. 142 of Cap 478.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 76 - CONTENTIOUS PROBATE PROCEEDINGS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Application and interpretation (O. 76, r. 1)

(1) This Order applies to probate causes and matters, and the other provisions of these rules apply to those causes and matters including applications for the rectification of a will subject to the provisions of this Order.

(2) In these rules “probate action” (遺囑認證訴訟) means an action for the grant of probate of the will, or letters of administration of the estate, of a deceased person or for the revocation of such a grant or for a decree pronouncing for or against the validity of an alleged will, not being an action which is non-contentious or common form probate business.

(3) In this Order, “will” (遺囑) includes a codicil.

2. Requirements in connection with issue of writ (O. 76, r. 2)

(1) A probate action ~~must be~~ may be begun by writ.

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Rec 10 to 16

(2) Before a writ beginning a probate action is issued it must be indorsed with a statement of the nature of the interest of the plaintiff and of the defendant in the estate of the deceased to which the action relates.

3. Parties to action for revocation of grant (O. 76, r. 3)

Every person who is entitled or claims to be entitled to administer the estate of a deceased person under or by virtue of an unrevoked grant of probate of his will or letters of administration of his estate shall be made a party to any action for revocation of the grant.

4. Lodgment of grant in action for revocation (O. 76, r. 4)

(1) Where, at the commencement of an action for the revocation of a grant of probate of the will or letters of administration of the estate of a deceased person, the

Remarks

probate or letters of administration, as the case may be, have not been lodged in court, then-

- (a) if the action is commenced by a person to whom the grant was made, he shall lodge the probate or letters of administration in the Registry within 7 days after the issue of the writ;
- (b) if any defendant to the action has the probate or letters of administration in his possession or under his control, he shall lodge it or them in the Registry within 14 days after the service of the writ upon him.

(2) Any person who fails to comply with paragraph (1) may, on the application of any party to the action, be ordered by the Court to lodge the probate or letters of administration in the Registry within a specified time; and any person against whom such an order is made shall not be entitled to take any step in the action without the leave of the Court until he has complied with the order.

5. Affidavit of testamentary scripts (O. 76, r. 5)

(1) Unless the Court otherwise directs, the plaintiff and every defendant who has acknowledged service of the writ in a probate action must swear an affidavit-

- (a) describing any testamentary script of the deceased person, whose estate is the subject of the action, of which he has any knowledge or, if such be the case, stating that he knows of no such script; and
- (b) if any such script of which he has knowledge is not in his possession or under his control, giving the name and address of the person in whose possession or under whose control it is or, if such be the case, stating that he does not know the name or address of that person.

(2) Any affidavit required by this rule must be filed, and an office copy thereof and any testamentary script referred to therein which is in the possession or under the control of the deponent, must be lodged in the Registry within 14 days after the acknowledgment of service by a defendant to the action or, if no defendant acknowledges service and the Court does not otherwise direct, before an order is made for the trial of the action.

(3) Where any testamentary script required by this rule to be lodged in the Registry or any part thereof is written in pencil, then, unless the Court otherwise directs, a facsimile copy of that script, or of the page or pages thereof containing the part written in pencil, must also be lodged in the Registry and the words which appear in pencil in the original must be underlined in red ink in the copy.

(4) Except with the leave of the Court, a party to a probate action shall not be allowed to inspect an affidavit filed, or any testamentary script lodged, by any other party to the action under this rule, unless and until an affidavit sworn by him containing the information referred to in paragraph (1) has been filed.

(5) In this rule “testamentary script” (遺囑性質的文稿) means a will or draft

Remarks

thereof, written instructions for a will made by or at the request or under the instructions of the testator and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed.

6. Failure to acknowledge service (O. 76, r. 6)

- (1) Order 13 shall not apply in relation to a probate action.
- (2) Where any of several defendants to a probate action fails to acknowledge service of the writ, the plaintiff may, after the time for acknowledging service has expired and upon filing an affidavit proving due service of the writ, or notice of the writ, on that defendant proceed with the action as if that defendant had acknowledged service.
- (3) Where the defendant, or all the defendants, to a probate action, fails or fail to acknowledge service of the writ, then, unless on the application of the plaintiff the Court orders the action to be discontinued, the plaintiff may after the time limited for acknowledging service by the defendant apply to the Court for an order for trial of the action.
- (4) Before applying for an order under paragraph (3) the plaintiff must file an affidavit proving due service of the writ, or notice of the writ, on the defendant and, if no statement of claim is indorsed on the writ, he must lodge a statement of claim in the judge's chambers.
- (5) Where the Court grants an order under paragraph (3), it may direct the action to be tried on affidavit evidence.

7. Service of statement of claim (O. 76, r. 7)

The plaintiff in a probate action must, unless the Court gives leave to the contrary or unless a statement of claim is indorsed on the writ, serve a statement of claim on every defendant who acknowledges service of the writ in the action and must do so before the expiration of 6 weeks after acknowledgment of service by that defendant or of 8 days after the filing by that defendant of an affidavit under rule 5, whichever is the later.

8. Counterclaim (O. 76, r. 8)

- (1) Notwithstanding anything in Order 15, rule 2(1), a defendant to a probate action who alleges that he has any claim or is entitled to any relief or remedy in respect of any matter relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person which is the subject of the action must add to his defence a counterclaim in respect of that matter.
- (2) If the plaintiff fails to serve a statement of claim, any such defendant may,

with the leave of the Court, serve a counterclaim and the action shall then proceed as if the counterclaim were the statement of claim.

9. Contents of pleadings (O. 76, r. 9)

(1) Where the plaintiff in a probate action disputes the interest of a defendant he must allege in his statement of claim that he denies the interest of that defendant.

(2) In a probate action in which the interest by virtue of which a party claims to be entitled to a grant of letters of administration is disputed, the party disputing that interest must show in his pleading that if the allegations made therein are proved he would be entitled to an interest in the estate.

(3) Without prejudice to Order 18, rule 7, any party who pleads that at the time when a will, the subject of the action, was alleged to have been executed the testator did not know and approve of its contents must specify the nature of the case on which he intends to rely, and no allegation in support of that plea which would be relevant in support of any of the following other pleas, that is to say-

- (a) that the will was not duly executed;
- (b) that at the time of the execution of the will the testator was not of sound mind, memory and understanding; and
- (c) that the execution of the will was obtained by undue influence or fraud, shall be made by that party unless that other plea is also pleaded.

10. Default of pleadings (O. 76, r. 10)

(1) Order 19 shall not apply in relation to a probate action.

(2) Where any party to a probate action fails to serve on any other party a pleading which he is required by these rules to serve on that other party, then, unless the Court orders the action to be discontinued or dismissed, that other party may, after the expiration of the period fixed by or under these rules for service of the pleading in question, apply to the Court for an order for trial of the action; and if an order is made the Court may direct the action to be tried on affidavit evidence.

11. Discontinuance and dismissal (O. 76, r. 11)

(1) Order 21 shall not apply in relation to a probate action.

(2) At any stage of the proceedings in a probate action the Court may, on the application of the plaintiff or of any party to the action who has acknowledged service of the writ therein, order the action to be discontinued or dismissed on such terms as to costs or otherwise as it thinks just, and may further order that a grant of probate of the will, or letters of administration of the estate, of the deceased person, as the case may be, which is the subject of the action, be made to the person

entitled thereto.

(3) An application for an order under this rule may be made by motion or summons or by notice under Order 25, rule 7.

12. Compromise of action: trial on affidavit evidence (O. 76, r. 12)

Where, whether before or after the service of the defence in a probate action, the parties to the action agree to a compromise, the Court may order the trial of the action on affidavit evidence.

13. Application for order to bring in will, etc. (O. 76, r. 13)

(1) Any application in a probate action for an order under section 7(1) of the Probate and Administration Ordinance (Cap 10) shall be for an order requiring a person to bring a will or other testamentary paper into the Registry or to attend in court for examination.

(2) An application under paragraph (1) shall be made by summons in the action, which must be served on the person against whom the order is sought.

(3) Any application in a probate action for the issue of a subpoena under section 7(3) of the Probate and Administration Ordinance (Cap 10) shall be for the issue of a subpoena requiring a person to bring into the Registry a will or other testamentary paper.

(4) An application under paragraph (3) may be made ex parte and must be supported by an affidavit setting out the grounds of the application.

(5) An application under paragraph (3) shall be made to a master who may, if the application is granted, authorize the issue of a subpoena accordingly.

(6) Any person against whom a subpoena is issued under section 7(3) of the Probate and Administration Ordinance (Cap 10) and who denies that the will or other testamentary paper referred to in the subpoena is in his possession or under his control may file an affidavit to that effect.

14. Administration pendente lite (O. 76, r. 14)

(1) An application under section 40 of the Probate and Administration Ordinance (Cap 10) for an order for the grant of administration may be made by summons.

(2) Where an order for a grant of administration is made under the said section 40, Order 30, rules 2, 4 and 6 and (subject to section 60 of the Probate and Administration Ordinance (Cap 10)) rule 3 shall apply as if the administrator were a receiver appointed by the Court.

15. Probate counterclaim in other proceedings (O. 76, r. 15)

- (1) In this rule “probate counterclaim” (遺囑認證反申索) means a counterclaim in any action other than a probate action by which the defendant claims any such relief as is mentioned in rule 1(2).
- (2) Subject to the following paragraphs, this Order shall apply with the necessary modifications to a probate counterclaim as it applies to a probate action.
- (3) A probate counterclaim must contain a statement of the nature of the interest of the defendant and of the plaintiff in the estate of the deceased to which the counterclaim relates.
- (4) Before it is served a probate counterclaim must be indorsed with a memorandum signed by a master showing that the counterclaim has been produced to him for examination and that three copies of it have been lodged with him.

16. Rectification of wills (O. 76, r. 16)

- (1) Where an application is made for rectification of a will, and the grant has not been lodged in court, rule 4 shall apply, with the necessary modifications, as if the proceedings were a probate action.
- (2) A copy of every order made for the rectification of a will shall be sent to the principal Registry for filing, and a memorandum of the order shall be endorsed on, or permanently annexed to, the grant under which the estate is administered.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 80 - DISABILITY

Remarks

1. Interpretation (O. 80, r. 1)

In this Order-

“mentally incapacitated person” (精神上無行為能力的人) means a mentally disordered person or a mentally handicapped person (within the meaning of the Mental Health Ordinance (Cap 136)) who, by reason of mental disorder or mental handicap, as the case may be, is incapable of managing and administering his property and affairs; (81 of 1997 s. 59)

“the Ordinance” (條例) means the Mental Health Ordinance (Cap 136);

“person under disability” (無行為能力的人) means a person who is a minor or a mentally incapacitated person. (81 of 1997 s. 59)

(81 of 1997 s. 59)

2. Person under disability must sue, etc. by next friend or guardian ad litem (O. 80, r. 2)

(1) A person under disability may not bring, or make a claim in, any proceedings except by his next friend and may not acknowledge service, defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order notice of which has been served on him, except by his guardian ad litem.

(2) Subject to the provision of these rules, anything which in the ordinary conduct of any proceedings is required or authorized by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his next friend or guardian ad litem.

(3) Except where the Official Solicitor is acting as next friend or guardian ad litem, a next friend or guardian ad litem of a person under disability must act by a solicitor. (L.N. 375 of 1991)

3. Appointment of next friend or guardian ad litem (O. 80, r. 3)

(2) Except as provided by paragraph (4) or (5) or by rule 6, an order appointing a person next friend or guardian ad litem of a person under disability is not necessary.

Remarks

(3) Where a person is authorized under Part II of the Ordinance to conduct legal proceedings in the name of a mentally incapacitated person or on his behalf, that person shall be entitled to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in any proceedings to which his authority extends unless, in a case to which paragraph (4) or (5) or rule 6 applies, some other person is appointed by the Court under that paragraph or rule to be next friend or guardian ad litem, as the case may be, of the mentally incapacitated person in those proceedings. (81 of 1997 s. 59)

(4) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him such friend or guardian in substitution for the person previously acting in that capacity.

(5) Where, after any proceedings have been begun, a party to the proceedings becomes a mentally incapacitated person, an application must be made to the Court for the appointment of a person to be next friend or guardian ad litem, as the case may be, of that party. (81 of 1997 s. 59)

(6) Except where the next friend or guardian ad litem, as the case may be, of a person under disability has been appointed by the Court-

- (a) the name of any person shall not be used in a cause or matter as next friend of a person under disability,
- (b) service shall not be acknowledged in a cause or matter for a person under disability, and
- (c) a person under disability shall not be entitled to appear by his guardian ad litem on the hearing of a petition, summons or motion which, or notice of which, has been served on him,

unless and until the documents listed in paragraph (8) have been filed in the Registry.

(8) The documents referred to in paragraph (6) are the following-

- (a) a written consent to be next friend or guardian ad litem, as the case may be, of the person under disability in the cause or matter in question given by the person proposing to be such friend or guardian; and
- (b) where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized under Part II of the Ordinance to conduct the proceedings in the cause or matter in question in the name of the mentally incapacitated person or on his behalf, an office copy, sealed with the seal of the High Court, of the order or other authorization made or given under the said Part II by virtue of which he is so authorized; and (25 of 1998 s. 2)
- (c) except where the person proposing to be such friend or guardian of the person under disability, being a mentally incapacitated person, is authorized as mentioned in sub-paragraph (b) a certificate made by the solicitor for the person under disability certifying-
 - (i) that he knows or believes, as the case may be, that the person to

whom the certificate relates is a minor or a mentally incapacitated person, giving (in the case of a mentally incapacitated person) the grounds of his knowledge or belief; and

- (ii) where the person under disability is a mentally incapacitated person, that there is no person authorized as aforesaid; and
- (iii) except where the person named in the certificate as next friend or guardian ad litem, as the case may be, is the Official Solicitor, that the person so named has no interest in the cause or matter in question adverse to that of the person under disability. (L.N. 375 of 1991; 81 of 1997 s. 59)

6. Appointment of guardian where person under disability does not acknowledge service (O. 80, r. 6)

(1) Where-

- (a) in an action against a person under disability begun by writ, or by originating summons, no acknowledgment of service is given in the action for that person, or
- (b) the defendant to an action serves a defence and counterclaim on a person under disability who is not already a party to the action, and no acknowledgment of service is given for that person,

an application for the appointment by the Court of a guardian ad litem of that person must be made by the plaintiff or defendant, as the case may be, after the time limited (as respects that person) for acknowledging service and before proceeding further with the action or counterclaim.

(2) Where a party to an action has served on a person under disability who is not already a party to the action a third party notice within the meaning of Order 16 and no acknowledgment of service is given for that person to the notice, an application for the appointment by the Court of a guardian ad litem of that person must be made by that party after the time limited (as respects that person) for acknowledging service and before proceeding further with the third party proceedings.

(3) Where in any proceedings against a person under disability begun by petition or motion, that person does not appear by a guardian ad litem at the hearing of the petition or motion, as the case may be, the Court hearing it may appoint a guardian ad litem of that person in the proceedings or direct that an application be made by the petitioner or applicant, as the case may be, for the appointment of such a guardian.

(5) An application under paragraph (1) or (2) must be supported by evidence proving-

- (a) that the person to whom the application relates is a person under disability,
- (b) that the person proposed as guardian ad litem is willing and a proper person to act as such and has no interest in the proceedings adverse to that of the person under disability,

- (c) that the writ, originating summons, defence and counterclaim or third party notice, as the case may be, was duly served on the person under disability, and
- (d) subject to paragraph (6), that notice of the application was, after the expiration of the time limited for acknowledging service and at least 7 days before the day named in the notice for hearing of the application, so served on him.

(6) If the Court so directs, notice of an application under paragraph (1) or (2) need not be served on a person under disability.

(7) An application for the appointment of a guardian ad litem made in compliance with a direction of the Court given under paragraph (3) must be supported by evidence proving the matters referred to in paragraph (5)(b).

7. Application to discharge or vary certain orders (O. 80, r. 7)

An application to the Court on behalf of a person under disability served with an order made ex parte under Order 15, rule 7, for the discharge or variation of the order must be made-

- (a) if a next friend or guardian ad litem is acting for that person in the cause or matter in which the order is made, within 14 days after the service of the order on that person;
- (b) if there is no next friend or guardian ad litem acting for that person in that cause or matter, within 14 days after the appointment of such a friend or guardian to act for him.

8. Admission not to be implied from pleading of person under disability (O. 80, r. 8)

Notwithstanding anything in Order 18, rule 13(1), a person under disability shall not be taken to admit the truth of any allegation of fact made in the pleading of the opposite party by reason only that he has not traversed it in his pleadings.

9. Discovery and interrogatories (O. 80, r. 9)

Orders 24 and 26 shall apply to a person under disability and to his next friend or guardian ad litem.

10. Compromise, etc., by person under disability (O. 80, r. 10)

Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the Court.

11. Approval of settlement (O. 80, r. 11)

(1) Where, before proceedings in which a claim for money is made by or on behalf of a person under disability (whether alone or in conjunction with any other person) are begun, an agreement is reached for the settlement of the claim, and it is desired to obtain the Court's approval to the settlement, then, ~~notwithstanding anything in Order 5, rule 2,~~ the claim may be made in proceedings begun by originating summons, and in the summons an application may also be made for-

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- (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient under rule 12, or
- (b) alternatively, directions as to the further prosecution of the claim.

(2) Where in proceedings under this rule a claim is made under the Fatal Accidents Ordinance (Cap 22), the originating summons must include the particulars mentioned in section 5(4) of the Fatal Accidents Ordinance (Cap 22).

(4) An originating summons under this rule shall be in Form No. 10 in Appendix A.

(5) In this rule "settlement" (和解) includes a compromise.

12. Control of money recovered by person under disability (O. 80, r. 12)

(1) Where in any proceedings-

- (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability, or
- (b) money paid into court is accepted by or on behalf of a plaintiff who is a person under disability,

the money shall be dealt with in accordance with directions given by the Court, under this rule and not otherwise.

(2) Directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there.

(3) Without prejudice to the foregoing provisions of this rule, directions given under this rule may include any general or special directions that the Court thinks fit to give and, in particular, directions as to how the money is to be applied or dealt with and as to any payment to be made, either directly or out of the amount paid into court and whether before or after the money is transferred to or paid into a District Court, to the plaintiff, or to the next friend in respect of moneys paid or expenses incurred for or on behalf or for the benefit of the person under disability or for his maintenance or otherwise for his benefit or to the plaintiff's solicitor in respect of costs.

Remarks

(4) Where in pursuance of directions given under this rule money is paid into the Court of First Instance to be invested or otherwise dealt with there, the money (including any interest thereon) shall not be paid out, nor shall any securities in which the money is invested, or the dividends thereon, be sold, transferred or paid out of court, except in accordance with an order of the Court. (25 of 1998 s. 2)

(5) The foregoing provisions of this rule shall apply in relation to a counterclaim by or on behalf of a person under disability, as if for references to a plaintiff and a next friend there were substituted references to a defendant and to a guardian ad litem respectively. (81 of 1997 s. 59)

13. Provisions supplementary to rule 12 (O. 80, r. 13)

(HK)(3) Where money is ordered to be transferred to or paid into a District Court, the Registrar shall send a sealed copy of the judgment or order to the Registrar of the District Court.

15. Proceedings under Fatal Accidents Ordinance: apportionment by Court (O. 80, r. 15)

(1) Where a single sum of money is paid into court under ~~Order 22, rule 1~~ **Order 22**, in satisfaction of causes of action arising under the Fatal Accidents Ordinance (Cap 22) and sections 20 to 25 of the Law Amendment and Reform (Consolidation) Ordinance (Cap 23), and that sum is accepted, the money shall be apportioned between the different causes of action by the Court either when giving directions for dealing with it under rule 12 (if that rule applies) or when authorizing its payment out of court.

Rule 85,
Consequential
Amendments

(2) Where, in an action in which a claim under the Fatal Accidents Ordinance (Cap 22) is made by or on behalf of more than one person, a sum in respect of damages is adjudged or ordered or agreed to be paid in satisfaction of the claim, or a sum of money paid into court under ~~Order 22, rule 1~~ **Order 22**, is accepted in satisfaction of the cause of action under the said Ordinance, then, unless the sum has been apportioned between the persons entitled thereto by a jury, it shall be apportioned between those persons by the Court.
The reference in this paragraph to a sum of money paid into court shall be construed as including a reference to part of a sum so paid, being the part apportioned by the Court under paragraph (1) to the cause of action under the said Ordinances.

16. Service of certain documents on person under disability (O. 80, r. 16)

(1) Where in any proceedings a document is required to be served personally or in accordance with Order 10, rule 1(2) on any person and that person is a person under disability this rule shall apply.

(2) Subject to the following provisions of this rule and to Order 24, rule 16(3) and Order 26, rule 6(3) the document must be served-

- (a) in the case of a minor who is not also a mentally incapacitated person, on his father or guardian or, if he has no father or guardian, on the person with whom he resides or in whose care he is;
- (b) in the case of a mentally incapacitated person, on the person (if any) who is authorized under Part II of the Ordinance to conduct in the name of the mentally incapacitated person or on his behalf the proceedings in connection with which the document is to be served or, if there is no person so authorized, on the person with whom he resides or in whose care he is;

and must be served in the manner required by these rules with respect to the document in question. (81 of 1997 s. 59)

(3) Notwithstanding anything in paragraph (2), the Court may order that a document which has been, or is to be, served on the person under disability or on a person other than a person mentioned in that paragraph shall be deemed to be duly served on the person under disability.

(4) A judgment or order requiring a person to do, or refrain from doing, any act, a notice of motion or summons for the committal of any person, and a writ of subpoena against any person, must, if that person is a person under disability, be served personally on him unless the Court otherwise orders. This paragraph shall not apply to an order for interrogatories or for discovery or inspection of documents.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap. 4A)

Order 82 – DEFAMATION ACTIONS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Application (O. 82, r. 1)

These rules apply to actions for libel or slander subject to the following rules of this Order.

2. Indorsement of claim in libel action (O. 82, r. 2)

Before a writ in an action for libel is issued it must be indorsed with a statement giving sufficient particulars of the publications in respect of which the action is brought to enable them to be identified.

3. Obligation to give particulars (O. 82, r. 3)

(1) Where in an action for libel or slander the plaintiff alleges that the words or matters complained of were used in a defamatory sense other than their ordinary meaning, he must give particulars of the facts and matters on which he relies in support of such sense.

(2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

(3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published on a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply giving particulars of the facts and matters from which the malice is to be inferred.

Remarks

(4) This rule shall apply in relation to a counterclaim for libel or slander as if the party making the counterclaim were the plaintiff and the party against whom it is made the defendant.

4. Provisions as to payment into court (O. 82, r. 4)

(1) Where in an action for libel or slander against several defendants sued jointly the plaintiff, in accordance with ~~Order 22, rule 3(1)~~ **Order 22**, accepts money paid into court by any of those defendants in satisfaction of his cause of action against that defendant, then, notwithstanding anything in ~~rule 3(4)~~ of that Order, the action shall be stayed as against that defendant only, but-

Rule 86,
Consequential
Amendments

- (a) the sum recoverable under any judgment given in the plaintiff's favour against any other defendant in the action by way of damages shall not exceed the amount (if any) by which the amount of the damages exceeds the amount paid into court by the defendant as against whom the action has been stayed, and
- (b) the plaintiff shall not be entitled to his costs of the action against the other defendant after the date of the payment into court unless either the amount of the damages awarded to him is greater than the amount paid into court and accepted by him or the judge is of opinion that there was reasonable ground for him to proceed with the action against the other defendant.

(2) Where in an action for libel a party pleads the defence for which section 4 of the Defamation Ordinance (Cap 21) provides, ~~Order 22, rule 7~~ **Order 22, rule 23**, shall not apply in relation to that pleading.

5. Statement in open court (O. 82, r. 5)

(1) Where a party wishes to accept money paid into court in satisfaction of a cause of action for libel or slander, malicious prosecution or false imprisonment, that party may before or after accepting the money apply to a judge in chambers by summons for leave to make in open court a statement in terms approved by the judge.

(2) Where a party to an action for libel or slander, malicious prosecution or false imprisonment which is settled before trial desires to make a statement in open court, an application must be made to the Court for an order that an action be set down for trial, and before the date fixed for the trial a statement must be submitted for the approval of the judge before whom it is to be made.

(L.N. 404 of 1991)

6. Interrogatories not allowed in certain cases (O. 82, r. 6)

In an action for libel or slander where the defendant pleads that the words or matters complained of are fair comment on a matter of public interest or were

published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief shall be allowed.

7. Evidence in mitigation of damages (O. 82, r. 7)

In an action for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless 7 days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

8. Fulfilment of offer of amends under section 25 of the Defamation Ordinance (O. 82, r. 8)

(1) An application to the Court under section 25 of the Defamation Ordinance (Cap 21) to determine any question as to the steps to be taken in fulfilment of an offer of amends made under that section must, unless the application is made in the course of proceedings for libel or slander in respect of the publication to which the offer relates, be made before a judge in chambers.

(2) An originating summons by which such an application is made shall be in Form No. 10 in Appendix A.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 83A - MONEY LENDERS' ACTIONS

Remarks

1. Application and interpretation (O. 83A, r. 1)

(1) These rules apply to a money lender's action subject to the following rules of this Order.

(2) In these rules-

“money lender” (放債人) has the meaning assigned to it by section 2 of the Money Lenders Ordinance (Cap 163);

“money lender's action” (放債人訴訟) means an action for the recovery of money lent by a money lender or for the enforcement of any agreement or security relating to money so lent, being an action brought by the lender or an assignee.

2. Commencement of money lender's action (O. 83A, r. 2)

(1) Every money lender's action ~~shall be~~ may be begun by writ.

Rule 40,
Rec 10 to 16

(2) Before a writ beginning a money lender's action is issued it must be indorsed with a statement that at the time of the making of the loan or contract or the giving of the security in question the lender was licensed as a money lender.

3. Particulars to be included in statement of claim (O. 83A, r. 3)

Every statement of claim in a money lender's action (whether indorsed on the writ or not) must state-

- (a) the date on which the loan was made;
- (b) the amount actually lent to the borrower;
- (c) the rate per cent per annum of interest charged;
- (d) the date when the contract for repayment was made;
- (g) the amount repaid;
- (h) the amount due but unpaid;
- (i) the date upon which such unpaid sum or sums became due; and
- (j) the amount of interest accrued due and unpaid on every such sum.

4. Judgment on failure to give notice of intention to defend or in default of defence (O. 83A, r. 4)

- (1) In a money lender's action judgment on failure to give notice of intention to defend or in default of defence shall not be entered except with the leave of the Court.
- (2)
 - (a) An application for the grant of leave under this rule must be made by summons supported by an affidavit which must-
 - (i) prove that the money is due and payable;
 - (ii) give the particulars required by rules 2 and 3; and
 - (iii) exhibit a true copy of any agreement or security relating to the money lent,
and the original agreement or security must be produced at the hearing of the summons.
 - (b) The summons and a copy of the affidavit in support and of any exhibits referred to therein must, notwithstanding anything in Order 65, rule 9 be served on the defendant not less than 4 clear days before the day fixed for the hearing of the summons.
- (3) If the application is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued until after the time limited for acknowledgment of service of the writ.
- (4) On the hearing of such application, whether the defendant appears or not, the Court-
 - (a) may exercise the powers of the court under section 25 of the Money Lenders Ordinance (Cap 163);
 - (b) where it refuses leave under this rule to enter judgment on a claim or any part of a claim, may make or give any such order or directions as it might have made or given had the application been an application under Order 14, rule 1, for judgment on the claim.

5. (Repealed L.N. 129 of 2000)

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 89 - PROCEEDINGS BETWEEN HUSBAND AND WIFE

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Determination of questions as to property (O. 89, r. 1)

(HK)(1) Proceedings under section 6 of the Married Persons Status Ordinance (Cap 182) ~~must be~~ may be begun by originating summons.

Rule 41,
Rec 10 to 16

2. Provisions as to actions in tort (O. 89, r. 2)

(1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the first application by summons ~~or motion~~ in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 5(2) of the Married Persons Status Ordinance (Cap 182) should or should not be exercised.

Rule 42,
Rec 10 to 16

(3) Notwithstanding anything in Order 13 or Order 19, judgment on failure to give notice of intention to defend or in default of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment on failure to give notice of intention to defend, the summons shall not be issued before the time limited for acknowledging service of the writ.

(Enacted 1988)

3. Transitional provision relating to rule 42 of Amendment Rules 2007 (O. 89, r. 3)

Rule 43,
Rec 10 to 16

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

Remarks

pending, then the application is to be determined as if the amending rule had not been made.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 90 - PROCEEDINGS CONCERNING MINORS

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

3. Application to make a minor a ward of court (O. 90, r. 3)

(1) Where an action to which a minor is a party is proceeding, an application to make that minor a ward of court may be made by summons in the action; ~~but except in that case an application to make a minor a ward of court must be made by originating summons~~ **in any other case an application to make a minor a ward of court may be made by originating summons.**

Rule 44,
Rec 10 to 16

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made ex parte to the Registrar for leave to issue either an ex parte originating summons or an originating summons with the infant as defendant thereto; and, except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

(3) Particulars of any summons under this rule shall be recorded in the register of wards.

(3A) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the plaintiff shall-

- (a) on issuing the summons or before or at the first hearing thereof lodge in the Registry a certified copy of the entry in the birth register book kept under the Births and Deaths Registration Ordinance (Cap 174) or, as the case may be, in the Adopted Children Register maintained under the Adoption Ordinance (Cap 290), relating to the minor, or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(3B) The name of each party to the proceedings shall be qualified by a brief description in the body of the summons, of his interest in, or relationship to, the minor.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of his whereabouts.

(5) Every defendant other than the minor shall, forthwith after being served

Remarks

with the summons-

- (a) lodge in the Registry a notice stating the address of the defendant and the whereabouts of the minor or, as the case may be, that the defendant is unaware of his whereabouts, and
- (b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue of, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the Registry and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

3A. Enforcement of order by bailiff (O. 90, r. 3A)

The power of the Court of First Instance to secure, through an officer attending upon the Court, compliance with any direction relating to a ward of court may be exercised by an order addressed to the bailiff.

(25 of 1998 s. 2)

4. When minor ceases to be ward of court (O. 90, r. 4)

(1) A minor who, by virtue of section 26(2) of the High Court Ordinance, becomes a ward of court on the issue of a summons under rule 3 shall cease to be a ward of court- (25 of 1998 s. 2)

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the judge hearing it orders that the minor be made a ward of court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 26(3) of the said Ordinance to order that any minor who is for the time being a ward of court shall cease to be a ward of court.

(3) If no application for an appointment for the hearing of a summons under rule 3 is made within the period of 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application

Remarks

made by the summons must be left at the Registry immediately after the expiration of that period.

4B. Hearing of an application to make a minor a ward of Court

(O. 90, r. 4B)

(HK) An application to make a minor a ward of court may be disposed of in chambers and shall be heard by a judge.

5. Applications under the Guardianship of Minors Ordinance

(O. 90, r. 5)

Where there is pending any action or other proceeding by reason of which a minor is a ward of court, any application under the Guardianship of Minors Ordinance (Cap 13) with respect to that minor may be made by summons in the proceedings, but except in that case any such application must be made by originating summons.

6. Defendants to summons (O. 90, r. 6)

(1) Where the minor with respect to whom an application under the Guardianship of Minors Ordinance (Cap 13) is made is not the plaintiff he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but, subject to paragraph (2), any other person appearing to be interested in, or affected by, the application shall be made a defendant or be served with the summons, as the case may be.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

7. Hearing of applications as to guardianship, maintenance, etc.

(O. 90, r. 7)

(1) Applications as to the guardianship of minors may be disposed of in chambers and shall be heard by a judge.

(2) Applications as to the maintenance and advancement of any minor may be disposed of in chambers.

8. Verification and passing of guardians accounts (O. 90, r. 8)

(HK) A guardian's account must be verified and passed in the same manner as

Remarks

that provided by Order 30 in relation to a receiver's account or in such other manner as the Court may direct.

10. Removal of guardianship proceedings from the District Court

(O. 90, r. 10)

(1) An application for an order under section 24 of the Guardianship of Minors Ordinance (Cap 13) for the removal of an application from a District Court into the Court shall be made by an originating summons and, unless the Court otherwise directs, the summons need not be served on any person.

(2) The application may be heard by a master, but, if an order is made for the removal to the Court of the application to the District Court, that application shall be heard by a judge.

(HK)(3A) Section 44, subsections (1), (2) (except the proviso) and (4), of the District Court Ordinance (Cap 336) shall apply to an application ordered to be transferred to the Court under this rule.

(5) The application so removed shall proceed in the Court as if it had been made by originating summons.

11. Application of Matrimonial Causes Rules (O. 90, r. 11)

(1) The provisions of the Matrimonial Causes Rules (Cap 179 sub. leg.) relating to proceedings under section 48 of the Matrimonial Causes Ordinance (Cap 179) shall apply, with the necessary modifications, to proceedings under sections 13(1), 14 and 15 of the Guardianship of Minors Ordinance (Cap 13).

(2) The provisions of the Matrimonial Causes Rules (Cap 179 sub. leg.) relating to the drawing up and service of orders shall apply to proceedings under this Order as if they were proceedings under those rules.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 92 - LODGMENT, INVESTMENT, ETC. OF FUNDS IN COURT

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

2. Payment into court under the Trustee Ordinance (O. 92, r. 2)

(1) Subject to paragraph (2), any trustee wishing to make a payment into court under section 62 of the Trustee Ordinance (Cap 29) must make and file an affidavit setting out-

- (a) a short description of the trust and of the instrument creating it or, as the case may be, of the circumstances in which the trust arose,
- (b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known to him,
- (c) his submission to answer all such inquiries relating to the application of such money or securities as the Court may make or direct, and
- (d) an address where he may be served with any summons or order, or notice of any proceedings, relating to the money or securities paid into court.

(2) Where the money or securities represents a legacy, or residue or any share thereof, to which a minor or a person resident outside Hong Kong is absolutely entitled, no affidavit need be filed under paragraph (1) and the money or securities may be paid into court in the manner prescribed by the High Court Suitors' Funds Rules (Cap 4 sub. leg.) for the time being in force. (25 of 1998 s. 2)

4. Notice of lodgment (O. 92, r. 4)

Any person who has lodged money or securities in court in accordance with rule 2 must forthwith send notice of the lodgment to every person appearing from the affidavit on which the lodgment was made to be entitled to, or to have an interest in, the money or securities lodged.

5. Applications with respect to funds in court (O. 92, r. 5)

- (1) Where an application to the Court-
 - (a) for the payment or transfer to any person of any funds in court standing to the credit of any cause or matter or for the transfer of

Remarks

any such funds to a separate account or for the payment to any person of any dividend of or interest on any securities or money comprised in such funds;

- (b) for the investment, or change of investment, of any funds in court;
- (c) for payment of the dividends of or interest on any funds in court representing or comprising money or securities lodged in court under any enactment; or
- (d) for the payment or transfer out of court of any such funds as are mentioned in sub-paragraph (c),

is made the application may be disposed of in chambers.

(2) Subject to paragraph (3), any such application must be made by summons and, unless the application is made in a pending cause or matter or an application for the same purpose has previously been made by petition or originating summons, the summons must be an originating summons.

(3) Where an application under paragraph (1)(d) is required to be made by originating summons, then, if the funds to which the application relates do not exceed \$50000 in value, the application may be made ex parte to a master and the master may dispose of the application or may direct it to be made by originating summons. Unless otherwise directed, an ex parte application under this paragraph shall be made by affidavit.

(5) This rule does not apply to any application for an order under ~~Order 22~~
Order 22A.

(Enacted 1988)

Rule 87
Consequential
Amendments

Rules of the High Court (Amendment) Rules 2006

The Rules of the High Court (Cap 4A)

Order 100 - THE TRADE MARKS ORDINANCE

Remarks

2. Appeals and applications under the Trade Marks Ordinance

(O. 100, r. 2)

(1) Every appeal to the Court under the Trade Marks Ordinance (Cap 559), shall be heard and determined by a single judge. (35 of 2000 s. 98)

(2) Subject to rule 3, every application to the Court under the said Ordinance ~~must be begun by originating motion~~ **may be begun by originating summons in Form No. 10 in Appendix A.**

Rule 45
Rec 10-16

(3) ~~Notice of the motion~~ **The summons** by which any such application is made must be served on the Registrar of Trade Marks.

(4) Where the Registrar of Trade Marks refers to the Court an application under the said Ordinance made to him, then, unless within one month after receiving notification of the decision to refer, the applicant makes to the Court the application referred, he shall be deemed to have abandoned it.

(5) The period prescribed in relation to an appeal to which paragraph (1) applies or the period prescribed by paragraph (4) in relation to an application or appeal to which that paragraph applies may be extended by the Registrar of Trade Marks on the application of any party interested and may be so extended although the application is not made until after the expiration of that period, but the foregoing provision shall not be taken to affect the power of the Court under Order 3, rule 5, to extend that period.

(6) (Repealed 35 of 2000 s. 98)

3. Proceedings for infringement of registered trade mark: validity of registration disputed (O. 100, r. 3)

(1) Where in any proceedings a claim is made for relief for infringement of the right to the use of a registered trade mark, the party against whom the claim is made may in his defence put in issue the validity of the registration of that trade mark or may counterclaim for an order that the register of trade marks be rectified by cancelling or varying the relevant entry or may do both those things.

(2) A party to any such proceedings who in his pleading (whether a defence

Remarks

or counterclaim) disputes the validity of the registration of a registered trade mark must serve with the pleading particulars of the objections to the validity of the registration on which he relies in support of the allegation of invalidity.

(3) A party to any such proceedings who counterclaims for an order that the register of trade marks be rectified must serve on the Registrar of Trade Marks a copy of the counterclaim together with a copy of the particulars mentioned in paragraph (2); and the Registrar of Trade Marks shall be entitled to take such part in the proceedings as he may think fit but need not serve a defence or other pleading unless ordered to do so by the Court.

(Enacted 1988)

4. Transitional provision relating to rule 45 of Amendment Rules 2007 (O. 100, r. 4)

Rule 46
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 102 - THE COMPANIES ORDINANCE

Remarks

1. Definitions (O. 102, r. 1)

In this Order-
“the Ordinance” (條例) means the Companies Ordinance (Cap 32).

2. Applications to be made by originating summons (O. 102, r. 2)

~~(1) Except in the case of the applications mentioned in rules 3, 4 and 5 and applications made in proceedings relating to the winding up of companies, every application under the Ordinance must, in accordance with Order 5, rule 3, be made by originating summons.~~

Rule 47
Rec 10-16

(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.

(2) An originating summons under this rule shall be in Form No. 10 in Appendix A unless the application made by the summons is-

- (a) an application under section 167 of the Ordinance for an order to make provision for all or any of the matters mentioned in subsection (1) of that section where an order sanctioning the compromise or arrangement to which the application relates has previously been made, or
- (b) an application under section 302 of the Ordinance for an order directing a receiver or manager of a company to make good any such default as is mentioned in subsection (1) of that section, or
- (c) an application under section 306 of the Ordinance for an order directing a company and any officer thereof to make good any such default as is mentioned in that section.

(3) (Repealed 28 of 2003 s. 120)

(4) An application under section 168BD of the Ordinance for leave to dispense with the service of a written notice required by that section may be made by ex parte originating summons. (L.N. 80 of 2005)

Remarks**3. — ~~Application to be made by originating summons or motion~~ (O. 102, r. 3)**Rule 48
Rec 10-16

~~(1) — An application under section 100 of the Ordinance for rectification of the register of members of a company may be made by originating summons or originating motion.~~

~~(2) — An originating summons under this rule shall be in Form No. 10 in Appendix A.~~

4. — ~~Applications to be made by originating motion~~ (O. 102, r. 4)Rule 48
Rec 10-16

~~(1) — The following applications under the Ordinance must be made by originating motion, namely, applications—~~

- ~~(a) under section 30 for an order that a company be relieved from the consequences of default in complying with conditions constituting the company a private company,~~
- ~~(b) under section 45(3) for an order extending the time for delivery to the Registrar of Companies of any document required by that section to be delivered,~~
- ~~(c) under section 143 for an order declaring that the affairs of a company ought to be investigated by an inspector appointed by the Financial Secretary,~~
- ~~(d) under section 145(3) for an inquiry into any such case as is therein mentioned, and~~
- ~~(f) under section 290 for an order declaring a dissolution of a company which has not been wound up to have been void.~~

5. Applications to be made by petition (O. 102, r. 5)

(1) The following applications under the Ordinance must be made by petition, namely applications—

- (a) under section 8 to cancel the alteration of a private company's objects, (28 of 2003 s. 120)
- (b) under section 25A to cancel the alteration of a condition contained in a private company's memorandum, (28 of 2003 s. 120)
- (c) under section 48B to confirm a reduction of the share premium account of a company,
- (d) under section 50 to sanction the issue by a company of shares at a discount,
- (e) under section 49 to confirm a reduction of the capital redemption reserve fund of a company,
- (f) under section 59 to confirm a reduction of the share capital of a company,
- (g) under section 64 to cancel any variation or abrogation of the rights attached to any class of shares in a company,
- (h) under section 166 to sanction a compromise or arrangement between a company and its creditors or any class of them or between a company and its members or any class of them,

Remarks

- (i) under section 291(7) for an order restoring the name of a company to the register, where the application is made in conjunction with an application for the winding up of the company,
- (j) under section 323 to cancel the alteration of the form of a company's constitution, and
- (k) under section 358(2) for relief from liability of an officer of a company or a person employed by a company as auditor.

6. Entitlement of proceedings (O. 102, r. 6)

(2) Every originating summons, ~~notice of originating motion~~ and petition by which any such proceedings are begun and all affidavits, notices and other documents in those proceedings must be entitled in the matter of the company in question and in the matter of the Ordinance.

Rule 49
Rec 10-16

(3) (Repealed 28 of 2003 s. 120)

7. Summons for directions (O. 102, r. 7)

(1) After presentation of a petition by which any such application as is mentioned in rule 5 is made, the petitioner, except where his application is one of those mentioned in paragraph (2), must take out a summons for directions under this rule.

- (2) The applications referred to in paragraph (1) are-
- (a) an application under section 50 of the Ordinance to sanction the issue by a company of shares at a discount,
 - (b) an application under section 166 of the Ordinance to sanction a compromise or arrangement unless there is included in the petition for such sanction an application for an order under section 167 of the Ordinance, and
 - (c) an application under section 291(7) of the Ordinance for an order restoring the name of a company to the register.

(3) On the hearing of the summons the Court may by order give such directions as to the proceedings to be taken before the hearing of the petition as it thinks fit including, in particular, directions for the publication of notices and the making of any inquiry.

(4) Where the application made by the petition is to confirm a reduction of the share capital, the share premium account or the capital redemption reserve fund, of a company, then, without prejudice to the generality of paragraph (3), the Court may give directions-

- (a) for an inquiry to be made as to the debts of, and claims against, the company or as to any class or classes of such debts or claims;
- (b) as to the proceedings to be taken for settling the list of creditors entitled to object to the reduction and fixing the date by reference to

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which the list is to be made;
and the power of the Court under section 59(3) of the Ordinance to direct that section 59(2) thereof shall not apply as regards any class or classes of creditors may be exercised on any hearing of the summons.

(5) Rules 8 to 13 shall have effect subject to any directions given by the Court under this rule.

8. Inquiry as to debts: company to make list of creditors (O. 102, r. 8)

(1) Where under rule 7 the Court orders such an inquiry as is mentioned in paragraph (4) thereof, the company in question must, within 7 days after the making of the order, file in the Registry an affidavit made by an officer of the company competent to make it verifying a list containing-

- (a) the name and address of every creditor entitled to any debt or claim to which the inquiry extends,
- (b) the amount due to each creditor in respect of such debt or claim or, in the case of a debt or claim which is subject to any contingency or sounds only in damages or for some other reason does not bear a certain value, a just estimate of the value thereof, and
- (c) the total of those amounts and values.

(2) The deponent must state in the affidavit his belief that at the date fixed by the Court as the date by reference to which the list is to be made there is no debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, other than the debts or claims set out in the list and any debts or claims to which the inquiry does not extend, and must also state his means of knowledge of the matters deposed to.

(3) The list must be left at the office mentioned in paragraph (1) not later than one day after the affidavit is filed.

9. Inspection of list of creditors (O. 102, r. 9)

(1) Copies of the list made under rule 8 with the omission, unless the Court otherwise directs, of the amount due to each creditor and the estimated value of any debt or claim to which any creditor is entitled, shall be kept at the registered office of the company and at the office of that company's solicitor.

(2) Any person shall be entitled during ordinary business hours, on payment of a fee of one dollar, to inspect the said list at any such office and to take extracts therefrom.

10. Notice to creditors (O. 102, r. 10)

Within 7 days after filing the affidavit required by rule 8 the company must

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send by post to each creditor named in the list exhibited to the affidavit, at his last known address, a notice stating-

- (a) the amount of the reduction sought to be confirmed,
- (b) the effect of the order directing an inquiry as to debts and claims,
- (c) the amount or value specified in the list as due or estimated to be due to that creditor, and
- (d) the time fixed by the Court within which, if he claims to be entitled to a larger amount, he must send particulars of his debt or claim and the name and address of his solicitor, if any, to the company's solicitor.

11. Advertisement of petition and list of creditors (O. 102, r. 11)

After filing the affidavit required by rule 8 the company must insert, in such newspapers and at such times as the Court directs, a notice stating-

- (a) the date of presentation of the petition and the amount of the reduction thereby sought to be confirmed,
- (b) the inquiry ordered by the Court under rule 7,
- (c) the places where the list of creditors may be inspected in accordance with rule 9, and
- (d) the time within which any creditor not named in the list who claims to be entitled to any debt or claim to which the inquiry extends must send his name and address, the name and address of his solicitor, if any, and particulars of his debt or claim to the company's solicitor.

12. Affidavit as to claims made by creditors (O. 102, r. 12)

Within such time as the Court directs the company must file in the Registry an affidavit made by the company's solicitor and an officer of the company competent to make it-

- (a) proving service of the notices mentioned in rule 10 and advertisement of the notice mentioned in rule 11,
- (b) verifying a list containing the names and addresses of the persons (if any) who in pursuance of such notices sent in particulars of debts or claims, specifying the amount of each debt or claim,
- (c) distinguishing in such list those debts or claims which are wholly, or as to any and what part thereof, admitted by the company, disputed by the company or alleged by the company to be outside the scope of the inquiry, and
- (d) stating which of the persons named in the list made under rule 8, and which of the persons named in the list made under this rule, have been paid or consent to the reduction sought to be confirmed.

13. Adjudication of disputed claims (O. 102, r. 13)

If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debt or claim or in respect of the full amount

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claimed by him in respect of any debt or claim, then, unless the company is willing to secure payment of that debt or claim by appropriating the full amount of the debt or claim, the company must, if the Court so directs, send to that person by post at his last known address a notice requiring him-

- (a) within such time as may be specified in the notice, being not less than 4 clear days after service thereof, to file an affidavit proving his debt or claim or, as the case may be, so much thereof as is not admitted by the company, and
- (b) to attend the adjudication of his debt or claim at the place and time specified in the notice, being the time appointed by the Court for the adjudication of debts and claims.

14. Certifying lists of creditors entitled to object to reduction

(O. 102, r. 14)

The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under section 59(2) of the Ordinance shall be certified and filed by the Registrar and his certificate shall-

- (a) specify the debts or claims (if any) disallowed by the Court,
- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 59(2) of the Ordinance and other debts or claims;
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under the said section 59(2);
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 13 and state which of such debts or claims were allowed.

15. Evidence of consent of creditor (O. 102, r. 15)

The consent of a creditor to such reduction as is mentioned in rule 7(4) may be proved in such manner as the Court thinks sufficient.

16. Time, etc. of hearing of petition for confirmation of reduction

(O. 102, r. 16)

(1) A petition for the confirmation of any such reduction as is mentioned in rule 7(4) shall not, where the Court has directed an inquiry pursuant to that rule, be heard before the expiration of at least 8 clear days after the filing of the certificate mentioned in rule 14.

(2) Before the hearing of such a petition, a notice specifying the day appointed

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for the hearing must be published at such times and in such newspapers as the Court may direct.

17. Restriction on taking effect of order under section 50 (O. 102, r. 17)

Unless the Court otherwise directs, an order under section 50 of the Ordinance sanctioning the issue of shares at a discount shall direct that an office copy of the order be delivered to the Registrar of Companies within 10 days after the making of the order or such extended time as the Court may allow and that the order shall not take effect until such copy has been so delivered.

(Enacted 1988)

18. Transitional provision relating to rule 48 of Amendment Rules 2007 (O. 102, r. 18)

Rule 50
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 115 - DRUG TRAFFICKING (RECOVERY OF PROCEEDS) ORDINANCE (CAP 405)

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1. Interpretation (O. 115, r. 1)

(1) In this Order “the Ordinance” (條例) means the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap 405), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

2. Assignment of proceedings (O. 115, r. 2)

Subject to Order 32, rule 18, and to rule 12, the jurisdiction of the Court under the Ordinance shall be exercised by a judge of the Court in chambers notwithstanding that the originating process is ~~a motion~~ an originating summons.

(L.N. 296 of 1996)

Rule 51
Rec 10-16

2A. Application for confiscation order where person has died or absconded (O. 115, r. 2A)

(1)—An application for a confiscation order under section 3 where the defendant has died or absconded shall be made by the Secretary for Justice ~~by originating summons~~.

(89 of 1995 s. 30; L.N. 296 of 1996; L.N. 362 of 1997)

Rule 52
Rec 10-16

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

Remarks**3. Application for restraint order or charging order (O. 115, r. 3)**

(1) An application for a restraint order under section 10 or for a charging order under section 11 (to either of which may be joined an application for the appointment of a receiver) shall be made by the Secretary for Justice ~~ex parte by originating motion.~~

(L.N. 296 of 1996; L.N. 362 of 1997)

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

Rule 53
Rec 10-16

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

- (a) state, as the case may be, the grounds for believing that-
 - (i) the defendant has benefited from drug trafficking; or
 - (ii) the Court of First Instance will be satisfied as specified in section 15(1A); (89 of 1995 s. 30; 25 of 1998 s. 2)
- (b) state, as the case may be-
 - (i) that proceedings have been instituted against the defendant for a drug trafficking offence (giving particulars of the offence) and that they have not been concluded;
 - (ii) that, whether by the laying of an information or otherwise, a person is to be charged with a drug trafficking offence;
 - (iii) that an application for a confiscation order has been made in respect of the defendant where section 3(1)(a)(ii) or (7) is applicable; or
 - (iv) that an application has been made under section 15(1A) in respect of a confiscation order made against the defendant; (89 of 1995 s. 30)
- (c) to the best of the deponent's ability, give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property;
- (d) where proceedings have not been instituted, verify that the Secretary for Justice is to have the conduct of the proposed proceedings; (L.N. 362 of 1997)
- (e) where proceedings have not been instituted, indicate when it is intended that they should be instituted.

(3) An ~~originating motion~~ **originating summons** under paragraph (1) shall be entitled in the matter of the defendant, naming him, and in the matter of the Ordinance, and all subsequent documents in the matter shall be so entitled.

Rule 53
Rec 10-16

(4) Unless the Court otherwise directs, an affidavit under paragraph (2) may contain statements of information or belief with the sources and grounds thereof.

Remarks**4. Restraint order and charging order (O. 115, r. 4)**

(1) A restraint order may be made subject to conditions and exceptions, including but not limited to conditions relating to the indemnifying of third parties against expenses incurred in complying with the order, and exceptions relating to reasonable living expenses and reasonable legal expenses of the defendant, but the Secretary for Justice shall not be required to give an undertaking to abide by any order as to damages sustained by the defendant as a result of the restraint order. (89 of 1995 s. 30)

(2) Unless the Court otherwise directs, a restraint order made ex parte shall have effect until a day which shall be fixed for the hearing inter partes of the application and a charging order shall be an order to show cause, imposing the charge until such day.

(3) Where a restraint order is made the Secretary for Justice shall serve copies of the order and of the affidavit in support on the defendant and on all other named persons restrained by the order and shall notify all other persons or bodies affected by the order of its terms.

(4) Where a charging order is made the Secretary for Justice shall, unless the Court otherwise directs, serve copies of the order and of the affidavit in support on the defendant and, where the property to which the order relates is held by another person, on that person and shall serve a copy of the order on such of the persons or bodies specified in Order 50, rule 2(1)(b) to (d) as shall be appropriate.

(L.N. 362 of 1997)

5. Discharge or variation of order (O. 115, r. 5)

(1) Any person or body on whom a restraint order or a charging order is served or who is notified of such an order may apply by summons to discharge or vary the order.

(2) The summons and any affidavit in support shall be served on the Secretary for Justice and, where he is not the applicant, on the defendant, not less than 2 clear days before the date fixed for the hearing of the summons. (L.N. 296 of 1996; L.N. 362 of 1997)

(3) Upon the Court being notified that proceedings for the offences have been concluded or that the amount payment of which is secured by a charging order has been paid into court, any restraint order or charging order, as the case may be, shall be discharged.

6. Further application by Secretary for Justice (O. 115, r. 6)

(1) Where a restraint order or a charging order has been made the

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Secretary for Justice may apply (and, if so, by summons) or, where the case is one of urgency, ex parte- (L.N. 296 of 1996; L.N. 362 of 1997)

- (a) to discharge or vary such order; or
- (b) for a restraint order or a charging order in respect of other realisable property; or
- (c) for the appointment of a receiver.

(2) An application under paragraph (1) shall be supported by an affidavit which, where the application is for a restraint order or a charging order, shall to the best of the deponent's ability give full particulars of the realisable property in respect of which the order is sought and specify the person or persons holding such property.

(3) The summons and affidavit in support shall be served on the defendant and, where one has been appointed in the matter, on the receiver, not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

(4) Rule 4(3) and (4) shall apply to the service of restraint orders and charging orders respectively made under this rule on persons other than the defendant.

7. Realisation of property (O. 115, r. 7)

~~(1) An application under section 12 shall, where there have been proceedings against the defendant in the Court of First Instance, be made by the Secretary for Justice by summons and shall otherwise be made by originating motion. (L.N. 362 of 1997; 25 of 1998 s. 2)~~

Rule 54
Rec 10-16

(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.

(2) The summons or ~~originating motion~~ **originating summons**, as the case may be, shall be served with the evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant;
- (b) any person holding any interest in the realisable property to which the application relates; and
- (c) the receiver, where one has been appointed in the matter.

(3) The application shall be supported by an affidavit, which shall, to the best of the deponent's ability, give full particulars of the realisable property to which it relates and specify the person or persons holding such property,

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and a copy of the confiscation order, of any certificate issued by the Court under section 6(2) and of any charging order made in the matter shall be exhibited to such affidavit.

(4) The Court may, on an application under section 12, exercise the power conferred by section 13(1) to direct the making of payments by the receiver.

8. Receivers (O. 115, r. 8)

(1) Subject to this rule, the provisions of Order 30, rules 2 to 8 shall apply where a receiver is appointed in pursuance of a charging order or under section 10 or 12.

(2) Where the receiver proposed to be appointed has been appointed receiver in other proceedings under the Ordinance, it shall not be necessary for an affidavit of fitness to be sworn or for the receiver to give security, unless the Court otherwise orders.

(3) Where a receiver has fully paid the amount payable under the confiscation order and any sums remain in his hands, he shall apply by summons for directions as to the distribution of such sums.

(4) A summons under paragraph (3) shall be served with any evidence in support not less than 7 days before the date fixed for the hearing of the summons on-

- (a) the defendant; and
- (b) any other person who held property realised by the receiver.

9. Variation of confiscation order (O. 115, r. 9)

(1) The Secretary for Justice or defendant may apply by summons for an order under section 15(1).

(2) A summons under paragraph (1) shall be served, with any supporting evidence, not less than 7 days before the date fixed for the hearing of the summons on-

- (a) where the Secretary for Justice is making the application, the defendant;
- (b) where the defendant is making the application, the Secretary for Justice,

and, in either case, on the receiver, where one has been appointed in the matter.

(3) The Secretary for Justice may apply by summons for an order under section 15(1A). (89 of 1995 s. 30)

(89 of 1995 s. 30; L.N. 362 of 1997)

Remarks**10. Compensation (O. 115, r. 10)**

An application for an order under section 27 shall be made by summons, which shall be served, with any supporting evidence, on the person alleged to be in default and on the Secretary for Justice not less than 7 days before the date fixed for the hearing of the summons.
(L.N. 362 of 1997)

11. Disclosure of information (O. 115, r. 11)

(1) An application under section 23 shall be made by the Secretary for Justice by summons, which shall state the nature of the order sought and whether material sought to be disclosed is to be disclosed to a receiver appointed under section 10 or 12 or in pursuance of a charging order or to an authorized officer. (L.N. 362 of 1997)

(2) The summons and affidavit in support shall be served on the public body-

- (a) not less than 7 days before the date fixed for the hearing of the summons; and
- (b) where the public body is a Government Department, in accordance with Order 77, rule 4.

(3) The affidavit in support of an application under paragraph (1) shall state the grounds for believing that the conditions in section 23(4) and, if appropriate, section 23(7) are fulfilled.

12. Exercise of powers under section 29 (O. 115, r. 12)

The powers conferred on the Court by section 29 may be exercised by a judge in chambers and a Master.

13. Application for registration (O. 115, r. 13)

An application for registration of an external confiscation order under section 29(1) may be ex parte.

15. Evidence in support of application under section 29(1) (O. 115, r. 15)

An application for registration of an external confiscation order must be supported by an affidavit-

- (a) exhibiting the order or a verified or certified or otherwise duly authenticated copy thereof and, where the order is not in the English language, a translation thereof into English certified by

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- a notary public or authenticated by affidavit; and
- (b) stating-
- (i) that the order is in force and is not subject to appeal;
 - (ii) where the person against whom, or in relation to whose property, the order was made did not appear in the proceedings, that he received notice of the proceedings, in accordance with the law of the designated country concerned, in sufficient time to enable him to defend them; (89 of 1995 s. 30)
 - (iii) in the case of money, either that at the date of the application the sum payable under the order has not been paid or the amount which remains unpaid, as may be appropriate, or, in the case of other property, the property which has not been recovered; and
 - (iv) to the best of the deponent's knowledge, particulars of what property the person against whom, or in relation to whose property, the order was made holds in Hong Kong, giving the source of the deponent's knowledge. (89 of 1995 s. 30)

16. Register of orders (O. 115, r. 16)

- (1) The Registrar shall keep a register of the orders registered under the Ordinance.
- (2) There shall be included in such register particulars of any variation or setting aside of a registration, of any variation, satisfaction or discharge of a registered order, and of any execution issued on such an order.

17. Notice of registration (O. 115, r. 17)

- (1) Notice of the registration of an order must be served on the person against whom, or in relation to whose property, it was obtained by delivering it to him personally or by sending it to him at his usual or last known address or place of business or in such other manner as the Court may direct. (89 of 1995 s. 30)
- (2) Service of such a notice out of the jurisdiction is permissible without leave, and Order 11, rules 5, 6 and 8 shall apply in relation to such a notice as they apply in relation to a writ.
- (3) The notice shall state the period within which an application may be made to vary or set aside the registration and that the order will not be enforced until after the expiration of that period.

Remarks**18. Application to vary or set aside registration (O. 115, r. 18)**

An application by the person against whom, or in relation to whose property, an order was made to vary or set aside the registration of an order must be made to a judge by summons supported by affidavit.

(89 of 1995 s. 30)

19. Enforcement of order (O. 115, r. 19)

(1) An order registered under the Ordinance shall not be enforced until after the expiration of the period specified in accordance with rule 17(3) or, if that period has been extended by the Court, until after the expiration of the period so extended.

(2) If an application is made under rule 18, an order shall not be enforced until after such application is determined.

20. Variation, satisfaction and discharge of registered order

(O. 115, r. 20)

Upon the Court being notified by the applicant for registration that an order which has been registered has been varied, satisfied or discharged, particulars of the variation, satisfaction or discharge, as the case may be, shall be entered in the register.

21. Rules to have effect subject to orders (O. 115, r. 21)

Rules 12 to 20 shall have effect subject to the provisions of any order made under section 28.

22. Statement relating to drug trafficking (O. 115, r. 22)

(HK)(1) Where the Secretary for Justice or the defendant proposes to tender to the Court any statement or other document under section 5 he shall give a copy thereof as soon as practicable to the defendant or the Secretary for Justice, as the case may be, and to the appropriate officer of the Court. (89 of 1995 s. 30)

(2) Any statement tendered to the Court by the Secretary for Justice under section 5(1) shall include the following particulars, namely- (L.N. 362 of 1997)

- (a) the name of the defendant;
- (b) the name of the person who made the statement;
- (c) such information known to the person who made the statement as is relevant to-

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- (i) where section 3(1)(a)(ii) is applicable, the determination whether the defendant could have been convicted in respect of the drug trafficking offence or offences concerned;
- (ii) the determination whether the defendant has benefited from drug trafficking;
- (iii) the assessment of the value of the defendant's proceeds of drug trafficking. (89 of 1995 s. 30)

(L.N. 362 of 1997)

23. Investigation into drug trafficking-discharge and variation of orders (O. 115, r. 23)

(1A) An authorized officer shall make an application for an order under section 20 or a warrant under section 21 ex parte to a judge by laying an information on oath. (L.N. 142 of 1990)

(HK)(1) Where an order under section 20 has been made, the person required to comply with it may apply in writing to the appropriate officer of the Court for the order to be discharged or varied, and on hearing such an application the Court may discharge the order or make such variations to it as it thinks fit.

(2) Subject to paragraph (3), where a person proposes to make an application under paragraph (1) for the discharge or variation of an order, he shall give a copy of the application, not later than 48 hours before the making of the application, to the authorized officer by whom the application for an order was made, or if such officer is not known or cannot be found, to another authorized officer, together with a notice indicating the time and place at which the application for discharge or variation is to be made.

(3) The Court may direct that paragraph (2) need not be complied with if it is satisfied that the person making the application has good reason to seek a discharge or variation of the order as soon as possible and it is not practicable to comply with that paragraph.

(L.N. 282 of 1989)

24. Application for continued detention of seized property (O. 115, r. 24)

(1) An application under section 24C(2) for an order to authorize the continued detention of seized property ~~shall be made by ex parte originating motion in Form No. 107 in Appendix A~~ **may be made by originating summons in Form No. 10 in Appendix A.**

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Rec 10-16

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

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- (a) state what the seized property consists of (including, in the case of money, the amount and currency thereof) and the date on which and the place at which it was seized;
- (b) state the grounds for suspecting that the seized property is specified property; and
- (c) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(L.N. 296 of 1996)

25. Order for continued detention of seized property (O. 115, r. 25)

(1) Where an order is made under section 24C(2), the applicant shall, as soon as is practicable, serve a copy of the order on each person affected by the order.

(2) An order under section 24C(2) shall be in Form No. 108 in Appendix A.

(3) In rules 26(3) and (4), 27, 28(2) and 29(3) and (4), “affected person” (受影響的人), in relation to any summons or order referred to in those rules, means a person-

- (a) on whom a copy of an order made under section 24C(2) has been served pursuant to paragraph (1) where the seized property (or any part thereof) the subject of the summons or first-mentioned order is or was the subject of the second-mentioned order; or
- (b) in respect of whom the Court has made an order under rule 31 in connection with the summons or first-mentioned order.

(L.N. 296 of 1996)

26. Application for further detention of seized property (O. 115, r. 26)

(1) An application under section 24C(3) for an order to authorize the further detention of seized property shall be made by summons in the proceedings commenced under rule 24.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall-

- (a) state the grounds for suspecting that the seized property is specified property; and
- (b) give particulars, in terms of the matters referred to in section 24C(2)(b), as to why the continued detention of the seized property is justified.

(3) The summons and the affidavit in support shall be served on each affected person not less than 5 clear days before the date fixed for the

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hearing of the summons.

(4) Affidavit evidence in response to the summons shall be served by an affected person on-

- (a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)
- (b) each other affected person,

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

27. Order for further detention of seized property (O. 115, r. 27)

Where an order is made under section 24C(3), the applicant shall, as soon as is practicable, serve a copy of the order on each affected person.

(L.N. 296 of 1996)

28. Application for release of seized property (O. 115, r. 28)

(1) An application under section 24C(4)(a) for the release of seized property detained by an order under section 24C(2) or (3) shall be made by summons which shall state the grounds on which the application is made.

(2) The summons and any affidavit in support shall be served on-

- (a) the Secretary for Justice on behalf of the authorized officer who obtained the order by virtue of which the seized property is detained; and (L.N. 362 of 1997)
- (b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(3) Any affidavit in opposition to the summons shall be served on-

- (a) the person who made the application under paragraph (1); and
- (b) each of the other persons referred to in paragraph (2)(a) and (b),

not less than 2 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

29. Application for forfeiture of seized property (O. 115, r. 29)

(1) An application under section 24D(1) for the forfeiture of seized property shall be made by summons in the proceedings under which any order under rule 24 has been obtained.

(2) An application under paragraph (1) shall be supported by an affidavit, which shall state the grounds for believing that the seized property-

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- (a) in whole or in part directly or indirectly represents any person's proceeds of drug trafficking;
- (b) has been used in drug trafficking; or
- (c) is intended for use in drug trafficking.

(3) The summons and the affidavit in support referred to in paragraphs (1) and (2) shall be served on each affected person not less than 14 clear days before the date fixed for the hearing of the summons.

(4) Any affidavit in opposition to the summons shall be served by an affected person on-

- (a) the Secretary for Justice on behalf of the applicant; and (L.N. 362 of 1997)
- (b) each other affected person,

not less than 5 clear days before the date fixed for the hearing of the summons.

(L.N. 296 of 1996)

30. Release of seized property (O. 115, r. 30)

Where in relation to any seized property-

- (a) an order under section 24C(2) expires without an order being made under section 24C(3);
- (b) an order under section 24C(3) expires without a further order being made thereunder; or
- (c) a direction is obtained under section 24C(4),

then, unless the Court has directed that an issue be stated and tried as between affected persons, the property shall be forthwith released on such terms, if any, as the Court thinks fit to the person from whom the property was seized or to such other person as appears to be entitled to it.

(L.N. 296 of 1996)

31. Joinder and payment into Court (O. 115, r. 31)

(1) Without prejudice to its powers under Order 15, rule 6, the Court may either of its own motion or on application order that any person who may be affected by any order made by it be joined as a party to the proceedings.

(2) The Court may order that the property which is the subject of an application or order shall be paid into or lodged in Court on such terms as it thinks fit.

(L.N. 296 of 1996)

32. Service of documents (O. 115, r. 32)

(1) Without prejudice to Order 65, any documents required to be served

Remarks

on a party under rules 25 to 29 may be served in accordance with the provisions of this rule.

(2) Where documents are required to be served on a party from whom property has been seized and that party has provided an authorized officer with an address or facsimile number at which any such document may be served, the documents may be served by leaving them at or sending them by registered mail to that address or by sending it by facsimile to the number provided.

(3) If that party has refused to provide an authorized officer with any such address or facsimile number and there is no other method of serving him or if it is otherwise not possible to serve a party, the documents may be served on that party by exhibiting them on a notice board at a place to which the public have access on the ground floor of the High Court Building but where any application made under rule 25, 26, 27, 28 or 29 is so served, the applicant shall state in his affidavit of service why this method of service has been adopted and the Court shall consider whether to give directions for some other form of service (including substituted service) by the applicant. (25 of 1998 s. 2)

(4) A body corporate which is not incorporated in Hong Kong and which is not registered under Part XI of the Companies Ordinance (Cap 32) may be served by leaving the document to be served at or by sending it by registered mail to the registered office or principal place of business of that body corporate.

(L.N. 296 of 1996)

33. Power to extend or abridge time (O. 115, r. 33)

Rules 26(3) and (4), 28(2) and (3), and 29(3) and (4) shall not operate to prejudice the power of the Court under Order 3, rule 5, to extend or abridge the period within which a person is required or authorized by any of those rules to do any act in any proceedings.

(L.N. 296 of 1996)

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

Rule 56
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 118 - (HK) INTERPRETATION AND GENERAL CLAUSES ORDINANCE (CAP 1)

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

PART XII-SEARCH AND SEIZURE OF JOURNALISTIC MATERIAL

1. Interpretation (O. 118, r. 1)

In this Order “the Ordinance” (條例) means the Interpretation and General Clauses Ordinance (Cap 1), and a section referred to by number means the section so numbered in the Ordinance.

(L.N. 242 of 1996)

2. Application (O. 118, r. 2)

This Order applies to proceedings under sections 84, 85 and 87.

(L.N. 242 of 1996)

3. Proceedings under section 84 (O. 118, r. 3)

(1) An application for an order under section 84 ~~shall be~~ **may be** made by originating summons in the expedited form supported by affidavit.

Rule 57
Rec 10-16

(2) The affidavit shall contain the evidence relied on to show that the conditions set out in section 84(3) have been fulfilled.

(3) Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

(4) Notwithstanding Order 28, rule 1A, a copy of the originating summons and affidavit shall be served on the respondent not less than 3 clear days before the date fixed for the hearing of the application.

(L.N. 242 of 1996)

Remarks

4. Proceedings under section 85 (O. 118, r. 4)

(1) An application for a warrant under section 85 ~~shall be~~ **may be** made ex parte by originating summons supported by affidavit.

Rule 58
Rec 10-16

(2) The affidavit shall-

- (a) state which of the grounds set out in section 85 is relied on;
- (b) contain the evidence relied on in support of those grounds; and
- (c) specify the name, rank, title and address of the officer who has approved the making of the application.

(3) Unless the court otherwise directs, the affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

(4) All applications under section 85 shall be heard in chambers.

(L.N. 242 of 1996)

5. Proceedings under section 87 (O. 118, r. 5)

(1) An application for an order under section 87 shall be made by summons which may be supported by affidavit.

(2) The summons shall set out the grounds on which the applicant relies.

(3) A copy of the summons and affidavit (if any) shall be served on the person named in the warrant pursuant to section 86(1)(a) by delivering it to him not less than 3 clear days before the date fixed for the hearing of the summons.

(4) Unless the court otherwise directs, a party wishing to adduce evidence shall do so by affidavit, and such affidavit may contain statements of information or belief with the sources and grounds of such information or belief.

(L.N. 242 of 1996)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 119 - (HK) PREVENTION OF BRIBERY ORDINANCE (CAP 201)

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

PART III-POWERS OF INVESTIGATION

1. Interpretation (O.119, r. 1)

(1) In this Order “the Ordinance” (條例) means the Prevention of Bribery Ordinance (Cap 201), and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

2. Application of this Order (O. 119, r. 2)

This Order applies to an application made to the Court under Part III of the Ordinance.

3. Assignment of proceedings (O. 119, r. 3)

An application to which this Order applies shall be heard by a judge in chambers.

4. Form of application (O. 119, r. 4)

Subject to rule 6, an application to which this Order applies ~~shall be made by ex parte notice of motion in Form 109~~ **may be made ex parte by originating summons in Form No. 11 in Appendix A** and, except for an application made under section 14D of the Ordinance, be supported by affidavit.

Rule 59
Rec 10-16

5. Restrictions on access to documents, etc. (O. 119, r. 5)

(1) The notice of motion, affidavit, if any, information and all other

Remarks

documents relating to the application shall be treated as confidential and shall, immediately on the determination of the application, be placed in a packet and sealed by order of the judge by whom the application was heard.

(2) The packet shall be kept in the custody of the Court in a place to which the public has no access or in such other place as the judge may authorize and shall not-

- (a) be opened;
- (b) have its contents removed;
- (c) be copied; or
- (d) be destroyed,

except by order of a judge.

6. Variation or revocation of orders (O. 119, r. 6)

(1) An application made under section 14D of the Ordinance shall be made by summons issued in the proceedings in which the order which it is sought to vary or revoke was made and shall state, so far as the applicant is able, the grounds on which the application is made.

(2) The summons and any affidavit in support shall be served on the Commissioner not less than 3 clear days before the hearing of the application.
(L.N. 222 of 1997)

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

Rule 60
Rec 10-16

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Order 121 - CHILD ABDUCTION AND CUSTODY ORDINANCE (Cap 512)

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

PROCEEDINGS AND APPLICATIONS

1. Interpretation (O. 121, r. 1)

(1) In this Order "the Ordinance" means the Child Abduction and Custody Ordinance (Cap 512) and a section referred to by number means the section so numbered in the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance have the same meanings in this Order as in the Ordinance.

(3) In this Order, unless the context otherwise requires-

“application” means an application under the Convention or the Ordinance;

“decision” includes a judgment or an order of any judicial authority as well as an order of an administrative authority;

“relevant authority” includes the Court, a District Court and a juvenile court.

2. Mode of application (O. 121, r. 2)

(1) Subject to paragraph (2), every originating application ~~shall be~~ **may be** made by originating summons in Form No. 10 in Appendix A.

Rule 61
Rec 10-16

(2) Where an applicant seeks a direction under rule 9 without having filed an originating summons, the Court may, on sufficient cause being shown, allow such an application to be made on the applicant's undertaking to the Court to issue an originating summons as soon as possible and on such other terms, if any, as the Court thinks fit.

3. Application for return of a child (O. 121, r. 3)

(1) An application for the return of a child shall be supported by an affidavit

Remarks

sworn by the applicant or, if the circumstances of the case justify it, a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as it is possible to do so-

- (a) state the following-
 - (i) the matters specified in Article 8(a) to (d) of the Convention;
 - (ii) if applicable, the matters stated in Article 8(e) and (f) of the Convention;
 - (iii) particulars of any pending or concluded proceedings, including proceedings out of Hong Kong, relating to the child;
 - (iv) any other information which may assist in securing the return of the child;
- (b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, in a case of urgency, the affidavit may be filed as soon as possible after the application.

4. Application for a declaration under section 10 (O. 121, r. 4)

(1) An application for a declaration that the removal or retention of the child was wrongful shall be supported by an affidavit sworn by the applicant or, if the circumstances of the case justify it, by a person duly authorized to swear it on behalf of the applicant, and the affidavit shall, so far as is possible-

- (a) state-
 - (i) full particulars of the request made by the requesting state;
 - (ii) the matters specified in Article 8(a) to (c) of the Convention and all other facts on which the applicant relies;
- (b) exhibit all relevant documents.

(2) The affidavit shall be filed at the same time as the application except that, where the case is one of urgency, the affidavit may be filed as soon as possible after the application.

5. Defendants (O. 121, r. 5)

(1) The following persons shall be made defendants to an application for the return of a child-

- (a) the person alleged in the affidavit to have brought into Hong Kong the child in respect of whom the application under the Convention is made;
- (b) the person with whom the child is alleged in the affidavit to be;
- (c) any parent or guardian of the child who is not otherwise a party;
- (d) the person in whose favour a decision, including a decision of a relevant authority in a Contracting State other than Hong Kong,

Remarks

- relating to custody has been made, if he is not otherwise a party;
and
(e) any other person who has a sufficient interest in the welfare of the child.

(2) The persons referred to in paragraph (1)(b) to (e) shall be made defendants to an application under section 10.

6. Time for acknowledging service (O. 121, r. 6)

The time limited for acknowledging service of an originating summons issued pursuant to rule 2 is 7 days after the service of the originating summons, including the day of service, or 14 days after the service of the originating summons, including the day of service, where the service has taken place outside the jurisdiction.

7. Further evidence (O. 121, r. 7)

(1) Any defendant may within 5 days after acknowledging service of the originating summons file and serve on the other parties any affidavit on which he intends to rely.

(2) The plaintiff may within 5 days thereafter file and serve on the defendant an affidavit in reply.

8. Assignment of proceedings (O. 121, r. 8)

Every application shall be heard and determined by a judge, except that applications to extend time and to join a defendant may be heard by a Master, and shall be dealt with in chambers unless the Court otherwise directs.

9. Interim directions (O. 121, r. 9)

An application for interim directions under section 7 may, where the case is one of urgency, be made ex parte.

10. Stay of proceedings (O. 121, r. 10)

(1) A person wishing to give notice under Article 16 of the Convention that there has been a wrongful removal or retention of a child who is the subject of proceedings relating to the merits of rights of custody shall file in the Registry a notice to that effect, which shall contain a concise statement of the nature of those proceedings and shall identify the relevant authority before which they

Remarks

are pending.

(2) A notice given under paragraph (1) shall be verified on affidavit by the person giving it and the affidavit shall be filed at the same time as the notice.

(3) The Registrar, upon receipt of such notice and affidavit, shall as soon as practicable, provide the relevant authority with copies thereof.

11. Authenticated copy of Court's order (O. 121, r. 11)

(1) A person who wishes to make an application under the Convention in a Contracting State other than Hong Kong and who wishes to obtain from the Court an authenticated copy of an order of the Court relating to the child in respect of whom the application is to be made shall apply in writing in that behalf to the Registrar.

(2) An application under paragraph (1) shall specify, so far as it is possible to do so-

- (a) the name and date of birth of the child;
- (b) the date of the order and the short title of the proceedings in which the order was made;
- (c) the nature of the application which is intended to be made, identifying the Contracting State in which the application is intended to be made;
- (d) the relationship of the applicant to the child;
- (e) the address of the applicant.

(3) On receipt of an application under this rule, the Registrar shall send by post to the applicant at the address indicated in the application an authenticated copy of the order or, if he is unable to locate the order, shall notify the applicant accordingly.

(4) The authenticated copy of the order shall be an office copy sealed with the Seal of the Court and endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of an order obtained in the Court and that it is issued for the purposes of the Convention.

(L.N. 119 of 1998)

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Appendix A – FORMS

Remarks

No. 1

Writ of Summons

(O. 6 r. 1)

(Hong Kong Coat of Arms)

IN THE HIGH COURT OF HONG KONG

COURT OF FIRST INSTANCE

19, No.

Between	A.B.	Plaintiff
	AND	
	C.D.	Defendant

TO THE DEFENDANT (name)

of

(address)

.

THIS WRIT OF SUMMONS has been issued against you by the above-named Plaintiff in respect of the claim set out on the back.

Within (14 days) after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Registry of the High Court the accompanying ACKNOWLEDGMENT OF SERVICE stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith ~~without further notice~~ **without further notice.**

Rule 66
Rec 18

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].

Remarks

Issued from the Registry of the High Court this day of
19

Note:-This Writ may not be served later than 12 calendar months beginning with
that date unless renewed by order of the Court.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying
form.

(Back of No. 1)

*[Statement of Claim]

The Plaintiff's claim is for

*Where words appear between square brackets delete if inapplicable.

*(Signed if statement of claim indorsed.)

(Where the Plaintiff's claim is for a debt or liquidated demand only: If, within the
time for returning the Acknowledgment of Service, the Defendant pays the
amount claimed and \$ for costs and, if the Plaintiff obtains an order for
substituted service, the additional sum of \$, further proceedings will
be stayed. The money must be paid to the Plaintiff or his Solicitor.)

THIS WRIT was issued by
of
.

Solicitors for the said Plaintiff whose address is
*(or where the Plaintiff sues in person.

THIS WRIT was issued by the said Plaintiff who resides
at
.....
.... and (if the Plaintiff does not reside within the jurisdiction) whose address for
service
is

(L.N. 251 of 1997; 25 of 1998 s. 2)

No. 14

Acknowledgment of Service of Writ of Summons

(O. 12 r. 3)

Directions for Acknowledgment of Service

1. The accompanying form of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court at the following address:-

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings MUST ALSO file a DEFENCE which must be written in either the Chinese or the English language with the registry and serve a copy thereof on the Solicitor for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear at the top of the back), the Defence must be filed and served within ~~14 days~~ **28 days** after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

Rule 66
Rec 18

If a Statement of Claim is not indorsed on the Writ, the Defence must be filed and served within ~~14 days~~ **28 days** after a Statement of Claim has been served on the Defendant.

If the Defendant fails to file and serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

~~3. — A STAY OF EXECUTION against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgement is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must within that time, ISSUE A SUMMONS for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.~~

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.

See attached Notes for Guidance

Notes for Guidance

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Registry of the High Court.

- [2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him and a writ served by post or by insertion through the Defendant's letter box is treated as having been served on the seventh day after the date of posting or insertion.]

- (Note: Not applicable if the defendant is a company served at its registered office.)

3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".

4. Where the Defendant is a FIRM and a Solicitor is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "partner in the firm of (.....)" after his name.

5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.

6. Where the Defendant is a LIMITED COMPANY the form must be completed by a Solicitor or by someone authorized to act on behalf of the Company, but the Company can take no further step in the proceedings without a Solicitor acting on its behalf.

7. Where the Defendant is a MINOR or a MENTAL Patient, the form must be completed by a Solicitor acting for a guardian ad litem.

8. A Defendant acting in person may obtain help in completing the form at the Registry of the High Court.

9. These notes deal only with the more usual cases. In case of difficulty a Defendant in person should refer to paragraph 8 above.

(Heading as in No. 1 to be completed by plaintiff)

Remarks

ACKNOWLEDGMENT OF SERVICE
OF WRIT OF SUMMONS

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

Delay may result in judgment being entered against a Defendant whereby he or his Solicitor may have to pay the costs of applying to set it aside.

see Notes 1,
3, 4 and 5.

1. State the full name of the Defendant by whom or on whose behalf the service of the Writ is being acknowledged.
2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes no

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)~~

Rule 66
Rec 18

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

Where words appear between square brackets, delete if inapplicable.

Service of the Writ is acknowledged accordingly.
(Signed) [Solicitor] ()
[Defendant in person]

Address
for
service

Remarks

Notes as to Address for Service

Solicitor. Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong.

Defendant in person. Where the Defendant is acting in person, he must give his residence OR, if he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" (居所) means its registered or principal office.

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Indorsement by plaintiff's solicitor (or by plaintiff if suing in person) of his name, address and reference, if any.

(L.N. 251 of 1997; L.N. 313 of 1997; 25 of 1998 s. 2; L.N. 129 of 2000)

No. 15

Acknowledgment of Service of Originating Summons

(O. 10 r. 5)

Directions for Acknowledgment of Service

The accompanying form **1. The accompanying form** of ACKNOWLEDGMENT OF SERVICE should be detached and completed by a Solicitor acting on behalf of the Defendant or by the Defendant if acting in person. After completion it must be delivered or sent by post to the Registry of the High Court of the following address:-

Rule 66
Rec 18

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.

Rule 66
Rec 18

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.

See over for Notes for Guidance

Remarks

[Back of page (1)]

Notes for Guidance

[As in No. 14 substituting "originating summons" for "writ of summons".]

(Heading as in No. 8 or 10 to be completed by plaintiff)

ACKNOWLEDGMENT OF SERVICE
OF ORIGINATING SUMMONS

If you intend to instruct a Solicitor to act for you, give him this form IMMEDIATELY.

Important. Read the accompanying directions and notes for guidance carefully before completing this form. If any information required is omitted or given wrongly, THIS FORM MAY HAVE TO BE RETURNED.

- see Notes 1, 3, 4 and 5.
1. State the full name of the Defendant by whom or on whose behalf the service of the Originating Summons is being acknowledged.
 2. State whether the Defendant intends to contest the proceedings (tick appropriate box)

yes no

Where words appear between square brackets, delete if inapplicable.

~~Service of the Originating Summons is acknowledged accordingly.~~Rule 66
Rec 18see
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.

Notes as to Address for Service

Solicitor. Where the Defendant is represented by a Solicitor, state the Solicitor's place of business in Hong Kong.

Defendant in person. Where the Defendant is acting in person, he must give his residence OR, if he does not reside in Hong Kong, he must give an address in Hong Kong where communications for him should be sent. In the case of a limited company, "residence" (居所) means its registered or principal office.

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Indorsement by plaintiff's Solicitors (or by plaintiff if suing in person) of his name, address and reference, if any.

(L.N. 251 of 1997; 25 of 1998 s. 2)

Remarks

No. 16

Admission (liquidated amount)

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

(Heading as in action)

Rule 66

Rec 18

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

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

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

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><u>A The defendant has admitted the whole of my claim</u></p> <p><u>Tick only one box below and complete all the judgment details at B.</u></p> <p><input type="checkbox"/> <u>I accept the defendant's proposal for payment</u></p> <p><u>Say how the defendant intends to pay. The court will send the defendant an order to pay. You will also be sent a copy.</u></p> <p><input type="checkbox"/> <u>The defendant has not made any proposal for payment</u></p> <p><u>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.</u></p> <p><input type="checkbox"/> <u>I do NOT accept the defendant's proposal for payment</u></p> <p><u>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.</u></p>	<p><u>B Judgment details</u></p> <p><u>I would like the judgment to be paid</u></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%;"><u>Amount of claim as admitted</u></td> <td style="width: 5%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td><u>Interest (if any)</u></td> <td></td> <td></td> </tr> <tr> <td><u>Period from</u></td> <td></td> <td></td> </tr> <tr> <td><u>to</u></td> <td></td> <td></td> </tr> <tr> <td><u>Rate%</u></td> <td></td> <td></td> </tr> <tr> <td><u>Court fees</u></td> <td></td> <td></td> </tr> <tr> <td><u>Solicitor's costs (if any) on issuing claim</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;"><u>Sub Total</u></td> <td></td> <td></td> </tr> <tr> <td><u>Solicitor's costs (if any) on entering judgment</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;"><u>Sub Total</u></td> <td></td> <td></td> </tr> <tr> <td><u>Deduct amount (if any) paid since issue</u></td> <td></td> <td></td> </tr> <tr> <td style="text-align: right;"><u>Amount payable by defendant</u></td> <td></td> <td></td> </tr> </table>	<u>Amount of claim as admitted</u>			<u>Interest (if any)</u>			<u>Period from</u>			<u>to</u>			<u>Rate%</u>			<u>Court fees</u>			<u>Solicitor's costs (if any) on issuing claim</u>			<u>Sub Total</u>			<u>Solicitor's costs (if any) on entering judgment</u>			<u>Sub Total</u>			<u>Deduct amount (if any) paid since issue</u>			<u>Amount payable by defendant</u>		
<u>Amount of claim as admitted</u>																																					
<u>Interest (if any)</u>																																					
<u>Period from</u>																																					
<u>to</u>																																					
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<u>Sub Total</u>																																					
<u>Deduct amount (if any) paid since issue</u>																																					
<u>Amount payable by defendant</u>																																					

I certify that the information given is correct

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

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

Date

No. 16B

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.

A I DO NOT accept the defendant's part admission

If you tick this box the claim will proceed as a defended claim.

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.

The defendant has not made any proposal for payment

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.

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 to be paid

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

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

I certify that the information given is correct

Signed

(Claimant)(Claimant's solicitor)(next friend)

Position or office held

(If signing on behalf of firm or company)

Date

No. 16C

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

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

<u>Mortgage (including second mortgage)</u>	\$ _____ per
<u>Rent</u>	\$ _____ per
<u>Rates</u>	\$ _____ per
<u>Gas</u>	\$ _____ per
<u>Electricity</u>	\$ _____ per
<u>Water charges</u>	\$ _____ per
<u>Housekeeping, food, school meals</u>	\$ _____ per
<u>Travelling expenses</u>	\$ _____ per
<u>Children's clothing</u>	\$ _____ per
<u>Maintenance payments</u>	\$ _____ per
<u>Others (not court orders or credit debts listed in boxes 9 and 10)</u>	
	\$ _____ per
	\$ _____ per
	\$ _____ per
<u>Total expenses</u>	\$ _____ per

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

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

9 Court orders

<u>Court</u>	<u>Action No.</u>	\$ _____ per
<u>Total court order instalments</u>		\$ _____ 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

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

Date

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

(Claimant)(Claimant's solicitor)(next friend)

**Position or
office held**

(if signing on
behalf of firm
or company)

Date

No. 16E

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 to be paid

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

	\$
<u>Enter amounts as shown</u>	
Amount of offer	
Court fees entered on claim	
Solicitor's costs (if any) on issuing claim	
Solicitor's costs (if any) on entering judgment	
<u>Sub Total</u>	
Deduct amount (if any) paid since issue	
<u>Amount payable by defendant</u>	

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

Remarks

No. 17

Notice to be indorsed on copy of counterclaim

(O. 15 r. 3(6))

To X. Y.

~~Take notice that, within [14 days]~~ **1. Take notice that, within [28 days]** after service of this defence and counterclaim on you, counting the day of service, you must acknowledge service and state in your acknowledgment whether you intend to contest the proceedings. If you fail to do so or if your acknowledgment does not state your intention to contest the proceedings, judgment may be given against you without further notice.

Rule 66
Rec 18

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.

IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.
(L.N. 251 of 1997)

No. 23

Rule 88
Rec 38-43, 132

Notice of payment into court

~~(O. 6 r. 2; O. 22 rr. 1, 2)~~

~~(Heading as in action)~~

~~Take notice that~~

~~The defendant has paid \$ into court.~~

~~The said \$ is in satisfaction of (the cause of action) (all the causes of action) in respect of which the plaintiff claims (and after taking into account and satisfying the above named defendant's cause of action for~~

~~..... in respect of which he counterclaims).~~

~~or~~

Remarks

The said \$ is in satisfaction of the following causes of action in respect of which the plaintiff claims, namely, (and after taking into account as above).

or

Of the said \$, \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above) and \$ is in satisfaction of the plaintiff's cause(s) of action for (and after taking into account as above).

Dated the day of 19

(L.N. 251 of 1997)

No. 24

Notice of acceptance of money paid into court

(O. 22 r. 3)
(Heading as in action)

Take notice that the plaintiff accepts the sum of \$ paid in by the defendant C.D. in satisfaction of the cause(s) of action in respect of which it was paid in and in respect of which the plaintiff claims (against that defendant) (and abandons the other causes of action in respect of which he claims in this action).

Dated the day of 19

No. 86A

Rule 157
Rec 144-148

Notice of application for leave to apply for Judicial Review

(O. 53 r. 3)

No.

IN THE HIGH COURT OF HONG KONG
COURT OF FIRST INSTANCE

Applicant

<p>Notice of Application for leave to apply for Judicial Review (O. 53, r. 3)</p>
<p>This form must be read together with Notes for Guidance obtainable from the Registry.</p>
<p>To the Registrar, High Court, Hong Kong.</p>

Remarks

Name, address and description of applicant	
Judgment, order, decision or other proceeding in respect of which relief is sought	

Relief Sought

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)

Note: Grounds must be supported by an affidavit which verifies the facts relied on.

(L.N. 251 of 1997; 25 of 1998 s. 2)

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))**

Remarks

This form must be read together with Notes for Guidance obtainable from the Registry.

To the Registrar, High Court, Hong Kong.

<u>Name and description of applicant</u>	
<u>Judgment, order, decision or other proceeding in respect of which relief is sought</u>	
<u>Relief Sought</u>	
<u>Name, address and description of interested parties</u>	
<u>Name and address of applicant's solicitors, or, if no solicitors acting, the address for service of the applicant</u>	
<u>Signed</u>	<u>Dated</u>

Grounds On Which Relief is Sought
(If there has been any delay, include reasons here).

Made this _____ day of _____ 2007.

No. 107

Rule 62
Rec 10 to 16

~~Application for order for continued
detention of seized property~~

(O. 115 r. 24)

IN THE HIGH COURT OF HONG KONG
COURT OF FIRST INSTANCE

IN THE MATTER OF
THE DRUG TRAFFICKING (RECOVERY
OF PROCEEDS) ORDINANCE (CAP 405)

BETWEEN

{ }
and

Applicant

{ }

Respondent

Remarks

NOTICE OF MOTION

TAKE NOTICE that the High Court of Hong Kong will be moved before the Honourable Mr.

Justice _____
on _____ day, the _____ day
of _____ at _____ o'clock in the _____
noon or so soon thereafter as the Applicant can be heard by the Applicant FOR
ORDERS THAT
[here set out relief]

AND that the costs of and incidental to this application may be paid
by _____

Dated the _____ day of _____ 19 _____

(Sd.) _____

The address for service of the
Applicant, _____,
is _____ Hong Kong.
(L.N. 296 of 1996; 25 of 1998 s. 2)

No. 109

Rule 62
Rec 10 to 16

**Application under Part III of the Prevention of
Bribery Ordinance**

(O. 119 r. 4)
IN THE HIGH COURT OF HONG KONG
COURT OF FIRST INSTANCE

IN THE MATTER OF THE PREVENTION
OF BRIBERY ORDINANCE (CAP 201)

BETWEEN _____ Applicant

{} Respondent
and
{}

NOTICE OF MOTION

Remarks

TAKE NOTICE that the High Court of Hong Kong will be moved before the Honourable Mr.

Justice

on day, the day

of at o'clock in

the noon or so soon thereafter as the Applicant

can be heard by the Applicant FOR ORDERS THAT-

[here set out orders sought]

AND that the costs of and incidental to this application may be paid

by

.....

Dated the day of 19

(Sd.)

The address for service of the

Applicant,

.....,

is

..... Hong Kong.

(L.N. 222 of 1997; 25 of 1998 s. 2)

(Enacted 1988)

No. 110

Rule 100
Rec 52-60.62

**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)

Remarks

<u>To the Registrar, High Court, Hong Kong.</u>	
<u>Name and address of applicant</u>	
<u>Title and reference number of the proceedings in which the order under section 27(2) of the High Court Ordinance (Cap. 4) was made</u>	
<u>Order sought</u>	
<u>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</u>	
<u>Signed</u>	<u>Dated</u>

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.

Rules of the High Court (Amendment) Rules 2007

The Rules of the High Court (Cap 4A)

Appendix D

CODE OF CONDUCT FOR EXPERT WITNESS (O.38 R. 37AA)

Remarks

Application of code

Rule 119
Rec 102, 103 and 107

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

Remarks

- (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.

Remarks

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.

HIGH COURT FEES (AMENDMENT) RULES 2007

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

1. First Schedule amended

The First Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) is amended –

- (a) in item 19, by repealing “or any assessment under Order 62, rule 21(4), for every \$100 or fraction of \$100 of the amount allowed” and substituting “or any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A), for every \$100 or fraction of \$100 of the amount claimed”;
- (b) in item 19a, by adding “under Order 62, rule 21B or 21C” after “taxation”;
- (c) in item 23, by adding “or made under section 21M of the Ordinance” after “a cause”;
- (d) by adding –
“25. Filing a notice of application under section 27 of the Ordinance for leave to institute or continue proceedings or make an application.
\$_____”.

Made this day of 2007.

HIGH COURT FEES (AMENDMENT) RULES 2007

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

High Court Fees Rules (Cap. 4D)**Schedule 1****Remarks**

COMMENCEMENT OF A CAUSE OR MATTER

	Fee
1. On sealing-	
(a) a writ of summons (except a concurrent, renewed or amended writ);	
(b) an originating summons;	
(c) an originating notice of motion;	
(d) an originating petition;	
(e) an originating ex parte application;	
(f) any other originating document.	In each case \$1045.00

ENTRY OR SETTING DOWN FOR TRIAL IN COURT

2. (a) Setting down a cause or issue for hearing;	
(b) Setting down a civil appeal, motion or summons for hearing;	
(c) Entering a reference for hearing of an assessment of damages by the Registrar.	In each case \$1045.00

TAKING EVIDENCE, ETC.

3. For every witness examined de bene esse by a judge or the Registrar, per day or part thereof.....	\$ 880.00
4. Attendance of a public officer to produce or prove in the High Court any record or document (25 of 1998 s. 2).....	\$ 440.00

Remarks

- | | | |
|----|--|--|
| 5. | Attendance of a public officer to give evidence as an expert witness,
per hour or part thereof | \$ 440.00
(or such other
fee as is
specially
assessed by
the judge or
Registrar) |
| 6. | Attendance of a public officer to give evidence other than as an
expert witness, per hour or part thereof | \$ 220.00
(with a
minimum of
\$440.00) |
| 7. | Attendance by the Registrar or officer outside the High Court
(25 of 1998 s.2)..... | \$1045.00 |

COPIES, TRANSLATIONS AND SEARCHES

- | | | |
|-----|---|-----------|
| 8. | (a) Copy of documents typed in the Registry and certifying same,
per page | \$ 36.00 |
| | (b) Additional copies, per page..... | \$ 4.00 |
| 9. | (a) Photostatic copy of a document made in the Registry, per
page | \$ 4.00 |
| | (b) Photostatic copy and certification, per page | \$ 5.50 |
| | (c) Photostatic copy of a library book, per page..... | \$ 4.00 |
| 10. | (a) Translation made in the Registry of a document from Chinese
into English, or vice versa including certificate, per page..... | \$ 72.00 |
| | (b) Transcription and translation made in the Registry, from Chinese
into English, or vice versa, of a tape or recording including
certificate, per page..... | \$ 132.00 |
| | (c) (Repealed L.N. 364 of 1992) | |

Remarks

- | | |
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| 11. (a) Certifying translations made outside the Registry, from Chinese into English, and vice versa, per page | \$ 36.00 |
| (b) Certifying transcription made outside the Registry, from Chinese into English, and vice versa, of a tape or recording, per page | \$ 36.00 |
| 12. Search in the Registry, for each document or file referred to or required | \$ 18.00 |

SERVICE

- | | |
|---|-----------|
| 13. Service of a document by a bailiff, per document..... | \$ 110.00 |
| 14. Arresting any person | \$ 630.00 |
| 15. Execution of writ of possession..... | \$1045.00 |

EXECUTION

- | | |
|--|---------------------------|
| 16. On sealing- | |
| (a) a warrant for arrest of a defendant, for the arrest and detention of a ship or for the attachment of property before judgment; | |
| (b) a writ of execution or writ of possession; | |
| (c) a writ of habeas corpus; | |
| (d) a prohibitory order; | |
| (e) an order for the examination of a judgment debtor (or an officer thereof); | |
| (f) a prohibition order. | In each case
\$1045.00 |

BAILIFF'S EXPENSES

- | | |
|---|--|
| 17. (a) Watchman's fee, per day or part thereof | \$ 330.00 |
| (b) Caretaker's fee, per day or part thereof | Actual
expenditure
(L.N. 364 of
1992) |

Remarks

18. Caretaker or watchman's transportation expenses..... Actual expenditure plus 20% thereof being administrative charges (L.N. 364 of 1992)

TAXATION OF COSTS

19. On the taxation of a bill of costs ~~or any assessment under Order 62, rule 21(4), for every \$100 or fraction of \$100 of the amount~~ **allowed or any assessment or determination of costs pursuant to any court order or Ordinance (except assessment under Order 62, rule 9 or 9A), for every \$100 or fraction of \$100 of the amount claimed -** Rule 1

- | | |
|----------------------------------|---------|
| (a) for the first \$100000 | \$ 6.00 |
| (b) for the next \$150000 | \$ 4.00 |
| (c) for the next \$250000 | \$ 3.00 |
| (d) for the remainder | \$ 1.00 |

- 19a. Processing of a bill of costs which is withdrawn less than 7 days before the appointment for taxation **under Order 62, rule 21B or 21C**..... 10% of the taxing fee which would be payable if the bill was to be allowed in full or \$1000 whichever is the less (L.N. 345 of 1989)

MISCELLANEOUS FEES

20. On the sale of a ship or goods in an admiralty case, for every \$1500 or part thereof of the price \$ 15.00

Annex G

Remarks

21. Authentication of document by the Registrar \$ 125.00
22. On sealing of a notice in Form No. 80 under Order 50, rule 11(2)
(L.N. 364 of 1992) \$1045.00
23. On sealing of an injunction order undertaken before commencement
of a cause **or made under section 21M of the Ordinance** (L.N.
364 of 1992) \$1045.00
24. Registration of an enduring power of attorney (L.N. 283 of 1997)..... \$ 440.00

Rule 1,
Rec 69
(Fee to be
decided)

(Enacted. 1988. L.N. 364 of 1992; L.N. 141 of 1994; L.N. 337 of 2000; L.N. 25 of 2001)

- 25. Filing a notice of application under section 27 of the Ordinance for leave to institute or continue proceedings or make an application.** \$ _____

Civil Justice Reform
Recommendations Requiring Amendments to
Subsidiary Legislation under the High Court Ordinance

The Steering Committee has identified that, in respect of the High Court, 84 recommendations in the Final Report on CJR require amendments to subsidiary legislation under the High Court Ordinance (“HCO”), including the Rules of the High Court (“RHC”) (Cap. 4A) and the High Court Fees Rules (“HCFR”) (Cap. 4D).

2. The 84 recommendations, the Rules they affect, and the relevant Amendment Rules in the Draft HC Amendment Rules at **Annex D** and HCF(A)R **Annex G** are tabulated below.

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 4: Overriding Objectives and Case Management Powers Recommendations 2 – 4, 81 and 82			
1.	<p>Recommendation 2</p> <p>A rule should be introduced identifying underlying (rather than overriding) objectives of the system of civil justice to assist in the interpretation and application of rules of court, practice directions and procedural jurisprudence and to serve as a statement of the legitimate aims of judicial case management.</p>	<p><u>RHC</u></p> <p>New Order 1A</p> <p>New Order 1B</p>	Rule 1
2.	<p>Recommendation 3</p> <p>The underlying objectives referred to in Recommendation 2 should be stated as (i) increasing cost-effectiveness in the court’s procedures; (ii) the expeditious disposal of cases; (iii) promoting a sense of reasonable proportion and procedural economy in respect of how cases are litigated; (iv) promoting greater equality between parties; (v) facilitating settlement; and (vi) distributing the court’s resources fairly, always recognizing that the primary aim of judicial case management should be to secure the just resolution of the parties’ dispute in accordance with their substantive rights.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
3.	<p>Recommendation 4</p> <p>Rules should be introduced (along the lines of CPR 1.4) listing available case management measures and conferring (along the lines of CPR 3.1) specific case management powers on the court, including power to act of its own motion, exercisable generally and (unless excluded) in addition to powers provided by specific rules, in the light of the underlying objectives referred to in Recommendation 2.</p>		
4.	<p>Recommendation 81</p> <p>The parties should be encouraged by rule and practice direction, backed by costs sanctions, to adopt a reasonable and cooperative attitude in relation to all procedural issues.</p>		
5.	<p>Recommendation 82</p> <p>Where the court considers one or more procedural directions to be necessary or desirable and unlikely to be controversial between the parties, it ought to have power, of its own motion and without hearing the parties, to give the relevant directions by way of an order <i>nisi</i>, with liberty to the parties to apply within a stated period for that order not to be made absolute.</p>		
<p>Section 5: Pre-action Protocols Recommendations 7 – 9 and 84</p>			
6.	<p>Recommendation 7</p> <p>Rules should be introduced enabling the court when exercising any relevant power, in its discretion, to take into account a party’s non-compliance with any applicable pre-action protocol in accordance with the terms of the protocol in question.</p>	<p><u>RHC</u> Orders 1, 2, 11, 15 and 62</p> <p><u>N.B.</u> HCO section 52B, District Court Ordinance (“DCO”) section 53, Small Claims Tribunal Ordinance Schedule and Lands Tribunal Ordinance (“LTO”) section 12 also affected, see Item 1 of Annex C</p>	Rules 2-8
7.	<p>Recommendation 8</p> <p>In exercising its discretion, the court should bear it in mind that special allowances may have to be made in relation to unrepresented litigants, if it is the case that, not having access to legal advice, they were unaware of any applicable protocol obligations or, if aware of them, that they were unable fully to comply with them without legal assistance.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
8.	<p>Recommendation 9</p> <p>A procedure should be introduced to enable parties who have settled their substantive dispute to bring costs-only proceedings by way of originating summons and subject to practice directions, for a party-and-party taxation of the relevant pre-settlement costs.</p>		
9.	<p>Recommendation 84</p> <p>While it would be open to a party who has failed to comply with a self-executing order to seek relief from the prescribed consequences of his non-compliance, such relief should not be automatic and, if granted, should generally be granted on suitable terms as to costs and otherwise.</p>		
<p>Section 6 : Commencement of Proceedings Recommendations 10 – 16</p>			
10.	<p>Recommendation 10</p> <p>Application of the RHC should continue to be excluded in relation to the classes of proceedings set out in O 1 r 2(2) (“the excluded proceedings”).</p>	<p><u>RHC</u></p> <p>Orders 1, 2, 5, 7, 8, 9, 17, 28, 30, 53, 73, 75, 76, 80, 83A, 89, 90, 100, 102, 115, 118, 119, 121 and Appendix A</p>	Rules 9-62
11.	<p>Recommendation 11</p> <p>In so far as appropriate, other specialised types of proceedings governed by their own procedural rules and requirements should be added to the excluded proceedings and special provision should be made in respect of election petitions.</p>		
12.	<p>Recommendation 12</p> <p>The rules of the RHC making it mandatory to commence certain proceedings by writ or, as the case may be, by originating summons, should be abolished.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
13.	<p>Recommendation 13 In all cases other than the excluded proceedings, the parties should be permitted to commence proceedings either by writ or by originating summons, with the RHC indicating that a writ is appropriate where a substantial dispute of fact is likely and that an originating summons is appropriate where the main issue is one of law or construction, without involving any substantial dispute of fact.</p>		
14.	<p>Recommendation 14 Originating motions and petitions should be abolished (save where they are prescribed for commencing any of the excluded proceedings).</p>		
15.	<p>Recommendation 15 Unless the court otherwise directs (in accordance with applicable laws), all hearings of originating summonses should take place in open court.</p>		
16.	<p>Recommendation 16 It should continue to be the case that an inappropriate mode of commencement does not invalidate steps taken in the proceedings so commenced and that in such cases, the court should give suitable directions for continuation of the proceedings in an appropriate manner.</p>		
<p>Section 7: Disputing Jurisdiction Recommendation 17</p>			
17.	<p>Recommendation 17 Order 12 r 8 should be amended to the extent necessary to bring into its scheme for disputing the court's jurisdiction, applications for the court to decline to exercise jurisdiction over the plaintiff's claim and to grant a discretionary stay of the action.</p>	<p><u>RHC</u> Order 12</p>	<p>Rules 63-64</p>

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 8: Default Judgments and Admissions Recommendation 18			
18.	Recommendation 18 Provisions along the lines of Part 14 of the CPR should be adopted in relation to claims for liquidated and unliquidated sums of money with a view to enabling defendants to propose payment terms (as to time and instalments) in submitting to entry of judgment by default.	<u>RHC</u> Appendix A, New Order 13A	Rules 65-66
Section 9: Pleadings Division 1 - Recommendations 22 - 24			
19.	Recommendation 22 Proposal 10 (requiring defences to be pleaded substantively) should be adopted.	<u>RHC</u> Order 18	Rules 67-69
20.	Recommendation 23 An exception to the general rule deeming the defendant to have admitted any untraversed allegation of fact in the statement of claim should be created along the lines of CPR 16.5(3) so that a defendant who has adequately set out the nature of his case in relation to which the untraversed allegation is relevant, is deemed not to admit and to put the plaintiff to proof of such allegation.		
21.	Recommendation 24 Proposal 10 should not be extended to pleadings subsequent to the defence.		
Section 9: Pleadings Division 2 - Recommendations 26 – 32 and 35			
22.	Recommendation 26 Proposal 11 (requiring pleadings to be verified by a statement of truth) should be adopted as modified and supplemented by Recommendations 27 to 32.	<u>RHC</u> Orders 18, 20 and 38 New Order 41A	Rules 70-77

Item No.	Recommendations	Rules Affected	Amendment Rules
23.	<p>Recommendation 27 The rules should indicate the level or class of officer or employee who may sign a statement of truth verifying pleadings on behalf of a party that is a corporation, a partnership or an analogous organization or association.</p>		
24.	<p>Recommendation 28 The rules should set out (along the lines of 22PD3.7 and 22PD3.8) the effect in law of a legal representative signing a statement of truth to verify a pleading on behalf of the party concerned.</p>		
25.	<p>Recommendation 29 Insurers (or lead insurers) and the Hong Kong Motor Insurers Bureau should be authorized to sign a statement of truth to verify a pleading on behalf of the party or parties concerned (along the lines of 22PD3.6A and 22PD3.6B).</p>		
26.	<p>Recommendation 30 The period allowed for defendants to file their defence should be increased to allow adequate time to plead substantively to a plaintiff's claim and to verify the defence.</p>		
27.	<p>Recommendation 31 The possibility of proceedings for contempt being brought against a person who verifies a pleading by a statement of truth without believing that the factual allegations contained in the pleading are true should be maintained, but the rule should make it clear that such proceedings (to be brought either by the Secretary for Justice with the leave of the court) are subject to the general law of contempt and to be contemplated only in cases where sanctions for contempt may be proportionate and appropriate.</p>		
28.	<p>Recommendation 32 A rule should be adopted making it clear that a party who has reasonable grounds for so doing, may advance alternative and mutually inconsistent allegations in his pleading and verify the same with a statement of truth.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
29.	<p>Recommendation 35 Voluntary particulars should be expressly required to be verified by a statement of truth.</p>		
<p>Section 9: Pleadings Division 3 - Recommendations 33 and 34</p>			
30.	<p>Recommendation 33 The court should have power to require, of its own motion and in such manner as it sees fit, any party or parties to particularise or amend their pleadings where clarification is necessary for disposing fairly of the cause or matter or for saving costs.</p>	<p><u>RHC</u> Order 18</p>	<p>Rule 78</p>
31.	<p>Recommendation 34 The existing rule should be amended to make it clear that a court will only order delivery of further and better particulars where such order is necessary for disposing fairly of the matter or for saving costs.</p>		
<p>Section 11: Sanctioned Offers and Payments Recommendations 38 – 43 and 132</p>			
32.	<p>Recommendation 38 Proposal 15 (for introducing sanctioned offers and payments along the lines of CPR 36) should be adopted as modified and supplemented by Recommendations 39 to 43.</p>	<p><u>RHC</u> Order 22 New Order 22A New Order 62A Appendix A</p>	<p>Rules 79-90</p>
33.	<p>Recommendation 39 The defendant's position under Order 22 should in substance be preserved, but with the addition of the relevant ancillary provisions found in CPR 36.</p>		
34.	<p>Recommendation 40 While parties should be encouraged to settle their disputes by negotiation, offers made before commencement of the proceedings should not qualify as sanctioned offers, save to the extent that a pre-action protocol which has been adopted in relation to particular specialist list proceedings provides otherwise in respect of such specialist list proceeding.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
35.	<p>Recommendation 41 A sanctioned offer or payment should be required to remain open for acceptance for 28 days after it is made (such 28 day period falling before commencement of the trial), unless leave is granted by the court for its earlier withdrawal. Thereafter, the offer could be withdrawn and if not, would continue to be capable of acceptance.</p>		
36.	<p>Recommendation 42 The rules should make it clear that the court will continue to exercise its discretion as to costs in relation to any offers of settlement which do not meet the requirements to qualify as sanctioned offers.</p>		
37.	<p>Recommendation 43 The rules should make it clear that a plaintiff may qualify for an award of additional interest along the lines of Part 36 where he makes a sanctioned offer which satisfies the prescribed requirements, but not otherwise.</p>		
38.	<p>Recommendation 132 The procedure for making sanctioned offers and payments should be extended to pending costs taxations, save in relation to legally-aided parties.</p>		
<p>Section 12: Interim Remedies and Mareva Injunctions in Aid of Foreign Proceedings Recommendations 49 - 51</p>			
39.	<p>Recommendation 49 The mode of commencing an application for a Mareva injunction in aid of foreign proceedings or arbitrations, including possible initial <i>ex parte</i> applications, should be prescribed and provision made for the procedure thereafter to be followed.</p>	<p><u>RHC</u> Orders 29, 30 and 73 <u>HCFR</u> First Schedule</p>	Rules 91-93

Item No.	Recommendations	Rules Affected	Amendment Rules
40.	<p>Recommendation 50</p> <p>The relevant provisions should state that such Mareva injunctions are entirely in the court's discretion and that in the exercise of that discretion, the court is to bear it in mind that its jurisdiction is only ancillary and intended to assist the processes of the court or arbitral tribunal which has primary jurisdiction.</p>	<p><u>N.B.</u> HCO section 21L, new sections 21M and 21N; Arbitration Ordinance section 2GC and new section 49 also affected.</p>	
41.	<p>Recommendation 51</p> <p>Provision should be made empowering the court to make such incidental orders as it considers necessary or desirable with a view to ensuring the effectiveness of any Mareva injunction granted, to the same extent that it is able to make such orders in relation to purely domestic Mareva injunctions.</p>	<p>See Item Nos. 3-6 of Annex C.</p>	
<p>Section 13: Case management, Timetabling and Milestones Recommendations 52 – 60 and 62</p>			
42.	<p>Recommendation 52</p> <p>Procedures should be introduced for establishing a court-determined timetable taking into account the reasonable wishes of the parties and the needs of the particular case.</p>	<p><u>RHC</u> Order 25</p>	<p>Rules 94-97</p>
43.	<p>Recommendation 53</p> <p>As the first part of the summons for directions procedure, the parties should be required (i) to complete a questionnaire giving specified information and estimates concerning the case with a view to facilitating case management by the court; and (ii) to propose directions and a timetable to be ordered by the court, preferably put forward by agreement amongst the parties, but with the court affording unrepresented litigants leeway in their observance of these requirements.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
44.	<p>Recommendation 54</p> <p>Unless it appears to the court that a hearing of the summons for directions is in any event desirable, the court ought to make orders <i>nisi</i> giving such directions and fixing such timetable for the proceedings as it thinks fit in the light of the questionnaire and without a hearing. However, any party who objects to one or more of the directions given, should be entitled to have the summons for directions called on for a hearing.</p>		
45.	<p>Recommendation 55</p> <p>Where, at the summons for directions stage, the court's view is that a case management conference is desirable, the court should fix a timetable up to the date of the case management conference, that date constituting the first milestone, with further milestones to be fixed when the case management conference is held.</p>		
46.	<p>Recommendation 56</p> <p>A date for a pre-trial review and the trial date or the trial period should be fixed as milestone dates either at the summons for directions or at any case management conference held.</p>		
47.	<p>Recommendation 57</p> <p>Where all the parties agree to a variation of time-limits for non-milestone events in the timetable, they may effect such variations by recording the agreement in counter-signed correspondence to be filed as a matter of record with the court, provided that the agreed variations do not involve or necessitate changes to any milestone date.</p>		
48.	<p>Recommendation 58</p> <p>Where a party cannot secure the agreement of all the other parties for a time extension relating to a non-milestone event, a court should have power to grant such extension only if sufficient grounds are shown and provided that any extension granted does not involve or necessitate changing the trial date or trial period. It should be made clear in a practice direction that where an extension is granted, it is likely to involve an immediate "unless order" specifying a suitable sanction.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
49.	<p>Recommendation 59</p> <p>A court should have power, on the application of the parties or of its own motion, to give further directions and to vary any aspect of the timetable, including its milestone dates, but it should be made clear in a practice direction that a court would only contemplate changing a milestone date in the most exceptional circumstances.</p>		
50.	<p>Recommendation 60</p> <p>Where the parties fail to obtain a timetable, the court should not compel them to continue with the proceedings. However, where a pre-trial milestone date has been set, the court should, after giving prior warning, strike out the action provisionally if no one appears at that milestone hearing. A plaintiff should have 3 months to apply to reinstate the action for good reason, failing which the action should stand dismissed and the defendant should automatically be entitled to his costs. Thereafter, the defendant should have a further three months to reinstate any counterclaim, which would also stand dismissed with no order as to costs in default of such application.</p>		
51.	<p>Recommendation 62</p> <p>The recommendations made in this Final Report regarding timetables and milestones should not apply to cases in the specialist lists save to the extent that the courts in charge of such lists should choose to adopt them in a particular case or by issuing appropriate practice directions and subject to what has previously been recommended regarding the retention of a Running List.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 14: Vexatious Litigants Recommendation 69			
52.	<p>Recommendation 69 All applications to have a person declared a vexatious litigant should be made directly to the single judge.</p>	<p><u>RHC</u> Order 32, New Order 32A New Form 110 to Appendix A</p> <p><u>HCFR</u> First Schedule</p> <p><u>N.B.</u> HCO section 27 also affected. See Item Nos. 7-8 of Annex C.</p>	Rules 98-101
Section 16: Discovery Recommendations 76, 79 and 80			
53.	<p>Recommendation 76 Such jurisdiction should be exercisable where it is shown by the applicant that he and the respondent are both likely to be parties to the anticipated proceedings and that disclosure before the proceedings have been started is necessary to dispose fairly of the anticipated proceedings or to save costs.</p>	<p><u>RHC</u> Orders 24 and 62</p> <p><u>N.B.</u> HCO sections 42, 43, 45, new section 41A; DCO sections 47B, 47C and 47E, and new section 47AA also affected.</p>	Rules 102-105
54.	<p>Recommendation 79 The requirements to be met and procedure to be followed when seeking orders referred to in the Recommendation 78 should be as laid down by O 24 r 7A in respect of section 42(1) orders and by O 24 r 13, with any necessary or desirable modifications.</p>	<p>See Item nos. 9-11 of Annex C.</p>	
55.	<p>Recommendation 80 Proposal 29 (for the case management of discovery by the courts) should be adopted, but with <i>Peruvian Guano</i> principles as the primary measure of discovery, taken as the starting-point for such case management.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 17: Interlocutory Applications Recommendations 83, 85 and 86			
56.	<p>Recommendation 83</p> <p>When disposing of interlocutory applications after the summons for directions, the court should normally make orders which specify the automatic consequences of non-compliance appropriate and proportionate to the non-compliance in question. Orders specifying such consequences may, if appropriate, also be made where the interlocutory application is heard before the summons for directions. However, the directions given on the summons for directions itself should generally not specify any such consequences.</p>	RHC Order 32	Rules 106-107
57.	<p>Recommendation 85</p> <p>All interlocutory applications (other than time summonses and applications for relief against the implementation of sanctions imposed by self-executing orders previously made) should be placed before the master who may either to determine the application on the papers and without a hearing or to fix the summons for hearing either directly before a judge in chambers or before a master.</p>		
58.	<p>Recommendation 86</p> <p>Rules and practice directions should be issued, in respect of the setting of the timetable and the filing of evidence, skeleton arguments and costs statements to enable the master to exercise his discretion as aforesaid.</p>		
Section 17: Summary Assessment of Costs Recommendations 88, 89 and 92			
59.	<p>Recommendation 88</p> <p>The court should, whenever appropriate (whether as a response to an unwarranted application or unwarranted resistance to an application, with a view to saving costs; or otherwise), make a summary assessment of costs when disposing of interlocutory applications.</p>	RHC Order 62	Rules 108-110

Item No.	Recommendations	Rules Affected	Amendment Rules
60.	<p>Recommendation 89 Rules and practice directions along the lines indicated in this section of the Final Report should be adopted to regulate the making and implementation of orders for the summary assessments of costs.</p>		
61.	<p>Recommendation 92 Judges and masters should be empowered to make provisional summary assessments of costs, whereby the assessed sum must promptly be paid but allowing either party, at the end of the main proceedings, to insist on a taxation of the relevant costs with a view to adjusting the quantum of the payment made, but with the party who insists on such a taxation being at risk as to a special order for the costs of the taxation and other possible sanctions in the event that the taxation does not result in a proportionate benefit to him.</p>		
Section 18: Wasted Cost Recommendations 94 - 97			
62.	<p>Recommendation 94 Rules along the lines of paragraphs 53.4 to 53.6 of the CPR Practice Direction on Costs, modified to exclude reference to liability based on negligence, should be issued providing guidance for the exercise of the court's discretion and discouraging disproportionate satellite litigation in relation to wasted costs orders.</p>	<p><u>RHC</u> Order 62</p> <p><u>N.B.</u> HCO section 52A also affected. See Item Nos. 12-15 of Annex C.</p>	<p>Rule 111-113</p>
63.	<p>Recommendation 95 Applications for wasted costs orders should generally not be made or entertained until the conclusion of the relevant proceedings.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
64.	<p>Recommendation 96</p> <p>Rules should be issued making it clear (i) that it is improper to threaten wasted costs proceedings with a view to pressurising or intimidating the other party or his lawyers; and (ii) that any party who wishes to put the other side's lawyers on notice of a potential claim for wasted costs against them should not do so unless he is able, when doing so, to particularise the misconduct of such lawyers which is alleged to be causing him to incur wasted costs and to identify evidence or other materials relied on in support.</p>		
65.	<p>Recommendation 97</p> <p>Barristers should be made subject to liability for wasted costs under O 62 r 8.</p>		
Section 19: Witness Statements and Evidence Recommendation 100			
66.	<p>Recommendation 100</p> <p>Proposal 37 (for introducing greater flexibility in permitting a witness to amplify or supplement his witness statement) should be adopted, replacing O 38 r 2A(7)(b) by a rule along the lines of CPR 32.5(3) and (4).</p>	<p><u>RHC</u> Order 38</p>	Rule 114
Section 20: Expert Evidence Recommendations 102, 103 and 107			
67.	<p>Recommendation 102</p> <p>A rule along the lines of CPR 35.3 declaring that expert witnesses owe a duty to the court which overrides any obligation to those instructing or paying the expert should be adopted.</p>	<p><u>RHC</u> Order 38 New Appendix D</p>	Rules 115-119

Item No.	Recommendations	Rules Affected	Amendment Rules
68.	<p>Recommendation 103</p> <p>A rule along the lines of CPR 35.10(2) combined with Part 36 of the NSW rules should be adopted, making it a requirement for the reception of an expert report or an expert's oral testimony that (a) the expert declares in writing (i) that he has read the court-approved Code of Conduct for Experts and agrees to be bound by it, (ii) that he understands his duty to the court, and (iii) that he has complied and will continue to comply with that duty; and (b) that his expert report be verified by a statement of truth.</p>		
69.	<p>Recommendation 107</p> <p>The court should be given power to order the parties to appoint a single joint expert upon application by at least one of the parties, subject to the court being satisfied, having taken into account certain specified matters, that the other party's refusal to agree to a SJE is unreasonable in the circumstances.</p>		
<p>Section 21: Case Management Trials</p> <p>Recommendation 108</p>			
70.	<p>Recommendation 108</p> <p>A rule along the lines of O 34 r 5A of the Western Australian Rules of the Supreme Court should be adopted, setting out the court's powers of case management in relation to trials, together with a practice direction providing that such powers should primarily be exercised at the pre-trial review.</p>	<p><u>RHC</u> Order 35</p>	<p>Rule 120</p>
<p>Section 22: Leave to Appeal</p> <p>Division 1 - Recommendation 109</p>			
71.	<p>Recommendation 109</p> <p>An appeal should lie as of right from the master to the judge (whether from a decision on the papers or after a contested hearing) but with the introduction of fresh evidence for the purposes of the appeal precluded save in exceptional circumstances.</p>	<p><u>RHC</u> Order 58</p>	<p>Rule 121</p>

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 22: Leave to Appeal Division 2 - Recommendations 110 and 112			
72.	<p>Recommendation 110 Interlocutory appeals from the CFI judge to the Court of Appeal should be subject to a condition of leave to appeal save in relation to (i) defined classes of interlocutory decisions which are decisive of substantive rights; and (ii) certain other defined categories of decisions, including those concerning committal, habeas corpus and judicial review.</p>	<p><u>RHC</u> Order 59</p> <p><u>N.B.</u> HCO section 14 and section 34B and new section 14AA;</p>	Rules 122-123
73.	<p>Recommendation 112 A procedure designed to avoid separate oral hearings of applications for leave to appeal should be adopted, generally requiring any application before the CFI judge to be made at the original hearing and, if refused, for any further application for leave to be made in writing and usually dealt with by the Court of Appeal comprising two Justices of Appeal, on the papers and without an oral hearing. Where considered necessary, the Court of Appeal should be able to direct that there be an oral hearing before the original two judges or before a panel of three judges.</p>	<p>DCO section 63; LTO section 11; and Employees' Compensation Ordinance ("ECO") section 23 also affected. See Item Nos. 16-20 of Annex C.</p>	
Section 23: Appeals Recommendation 120			
74.	<p>Recommendation 120 Applications which are interlocutory to pending appeals should be dealt with on paper by two Justices of Appeal, who should have power to make any orders necessary without a hearing, giving brief reasons for their decision; or, alternatively, to direct that there be a hearing before themselves or before a panel of three judges.</p>	<p><u>RHC</u> Order 59</p> <p><u>N.B.</u> HCO section 34B also affected. See Item No. 21 of Annex C.</p>	Rule 124

Item No.	Recommendations	Rules Affected	Amendment Rules
Section 24: General Approach to Inter-party Costs Recommendation 122			
75.	<p>Recommendation 122</p> <p>The principle that the costs should normally “follow the event” should continue to apply to the costs of the action as a whole. However, in relation to interlocutory applications, that principle should be an option (which would often in practice be adopted) but should not be the prescribed “usual order”. Costs orders aimed at deterring unreasonable interlocutory conduct after commencement of the proceedings should be given at least equal prominence in practice, with the court being directed to have regard to the underlying objectives mentioned in relation to Proposal 1. These powers should not apply to pre-action conduct.</p>	<p><u>RHC</u> Order 62</p>	<p>Rules 122-128</p>
Section 27: Taxing the Other Side’s Costs Division 1 - Recommendation 131			
76.	<p>Recommendation 131</p> <p>Proposal 57 (for the abolition of a special rule governing taxation of counsel’s fees) should be adopted.</p>	<p><u>RHC</u> First Schedule to Order 62</p>	<p>Rule 129</p>
Section 27: Taxing the Other Side’s Costs Division 2 - Recommendation 134 Division 3 – Recommendations 135-136 Division 4 – Miscellaneous Division 5 – Transitional arrangement			
77.	<p>Recommendation 134</p> <p>The court should have a general discretion to conduct provisional taxations on the papers, with any party dissatisfied with the award being entitled to require an oral taxation hearing, but subject to possible costs sanctions if he fails to do materially better at the hearing.</p>	<p><u>RHC</u> Order 62</p> <p><u>HCFR</u> First Schedule</p>	<p>Rules 130-146</p>

Item No.	Recommendations	Rules Affected	Amendment Rules
78.	<p>Recommendation 135 Rules or practice directions, backed by flexible costs sanctions, should be introduced requiring the parties to a taxation to file documents in prescribed form, with bills of costs supported by and cross-referenced to taxation bundles and objections to items in such bills taken on clearly stated grounds.</p>		
79.	<p>Recommendation 136 Rules conferring a broad discretion on the court in respect of the costs of a taxation and giving guidance as to the exercise of such discretion should be introduced along the lines of CPR 44.14 and CPR 47.18, suitably modified to fit local circumstances.</p>		
<p>Section 31: Judicial Review Recommendations 144 - 148</p>			
80.	<p>Recommendation 144 Rules along the lines of CPR 54.1 to 54.3, suitably adapted, retaining the present terminology, should be adopted for defining the scope of judicial review proceedings in Hong Kong.</p>	<p><u>RHC</u> Order 53 Appendix A</p>	<p>Rules 147-157</p>
81.	<p>Recommendation 145 Provision should be made to enable persons wishing to be heard at the substantive hearing, subject to the court's discretion, to be heard in support of, as well as in opposition to, an application for judicial review.</p>		
82.	<p>Recommendation 146 Applications for leave to bring a claim for judicial review should be required to be served with all supporting evidence on the proposed respondent and on any other persons known by the applicant to be directly affected by the claim, unless the court otherwise direct.</p>		

Item No.	Recommendations	Rules Affected	Amendment Rules
83.	<p>Recommendation 147 Persons served should be given the choice of either acknowledging service and putting forward written grounds for resisting the application or grounds in support additional to those relied on by the applicant; or declining to participate unless and until the applicant secures leave to bring the claim for judicial review.</p>		
84	<p>Recommendation 148 If leave is granted, the order granting leave and any case management directions should be required to be served by the applicant on the respondent (whether or not he has acknowledged service) and on all interested parties who have acknowledged service, such persons then becoming entitled, if they so wish, to file grounds and evidence to contest or to support on additional grounds, the claim for judicial review.</p>		

Proposed Amendments to the Rules of the District Court (Cap. 336H)

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.1 Citation, Application, Interpretation and Forms	(1) Definitions of ‘practice direction’, ‘pre-action protocol’ and ‘Amendment Rules 2007’ in r.4 (2) — (3) —	Amendments of RHC followed Definition of ‘an action for personal injuries’ in r.4 of RHC added for consistency between RHC & RDC r.7A of RHC added for consistency between RHC & RDC	Substantially the same, with some variations in RDC to cater for the specific needs of the District Court
—	Addition of the whole O.1A on Objective	Amendments of RHC followed	The same
—	Addition of the whole O.1B on Case Management Powers	Amendments of RHC followed	The same

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.2 Effect of Non-compliance	(1) Amendments in r.1(3) (2) Additions of rr.3, 4, 5 & 6	Amendments of RHC followed Amendments of RHC followed	The same
O.3 Time	—	No amendment	Substantially the same, with no provision for vacation business in RDC
O.4 Transfer and Consolidation of Proceedings	—	No amendment	Substantially the same, with r.1 in RDC to deal with application to transfer proceedings to the Court of First Instance

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.5 Mode of Beginning Civil Proceedings in Court	(1) Deletion of rr.2 and 3 (2) Amendments in r.4 (3) Amendments in r.5	Amendments of RHC followed Amendments of RHC followed The whole r.5 of RHC (with latest amendments) added for consistency between RHC & RDC	Substantially the same, with r.6 of RHC (right to sue in person) and transitional provision (validity of proceedings previously commenced by originating motion & petition) omitted in RDC
O.5A Right to Act in Person	—	No amendment	Specific provision for DC
O.6 Writs of Summons : General Provisions	—	No amendment	Substantially the same, with specific r.5(1)(c) in RDC to deal with the need of the District Court
O.7 Originating Summonses : General Provisions	Additions of rr.2(1A), (1B), (1C)	Amendments of RHC followed	The same

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.8 Originating and Other Motions	Amendments in r.1	The whole order (with latest amendments) and the corresponding forms of RHC added for consistency between RHC & RDC	The same
O.9 Petitions	Amendments in r.1	The whole order of RHC (with latest amendments) added for consistency between RHC & RDC	Substantially the same, with r.6 of RHC (the right to defend in person) omitted in RDC
O.10 Service of Originating Process : General Provisions	—	r.5(2) of RHC added for consistency between RHC & DCC	The same
O.11 Service of Process, etc., Out of Jurisdiction	(1) Amendments in r.1(1)(ob) (2) —	Amendments of RHC followed r.9 modified so that it would apply also to notice of motion and petition	Substantially the same, with fewer types of cases covered by the rule in RDC

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.12 Acknowledge of Service of Writ or Originating Summons	(1) Amendments in r.8 (2) Addition of r.11	Amendments of RHC followed Amendments of RHC followed	Substantially the same, save that there is no rule in RDC to deal with application by director to represent limited company
O.13 Failure to Give Notice of Intention to Defend	—	r.5 amended for consistency between RHC & RDC	The same
—	Addition of the whole O.13A on Admissions	Amendments of RHC followed	The same
O.14 Summary Judgment	—	r.6 modified upon the repeal of RDC O.23A	The same
O.14A Disposal of Case on Point of Law	—	No amendment	The same

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.15 Causes of Action, Counterclaims and Parties	Addition of r.5A	Amendments of RHC followed, with modification as to the reference to the provisions in the primary legislation	The same
O.16 Third Party and Similar Proceedings	—	No amendment	The same
O.17 Interpleader	(1) Amendments in r.3 (2) —	Amendments of RHC followed r.10 modified upon the repeal of RDC O.23A	The same

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.18 Pleadings	(1) Amendments in r.2 (2) — (3) Amendments in r.12 (4) Addition of r.12A (5) Amendments in rr.13 & 14 (6) Amendments in r.19 (7) Addition of r.20A (8) — (9) — (10) Additions of rr.23 & 24	Amendments of RHC followed r.7A(2)(a) amended to follow the wordings of RHC to maintain consistency Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed, with the provision modified to extend its application to petition Amendments of RHC followed r.21(3) modified upon the repeal of RDC O.23A r.22 of RDC repealed Amendments of RHC followed	Substantially the same, with r.5 of RHC (vacation business) omitted in RDC

Existing Order of the Rules of the District Court (“RDC”)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the Proposed Amendments
O.19 Default of Pleadings	—	No amendment	The same
O.20 Amendment	Addition of r.13	Amendments of RHC followed	The same
O.21 Withdrawal and Discontinuance	(1) — (2) —	r.3(2) modified upon the repeal of RDC O.23A r.5(2) modified upon the repeal of RDC O.23A	The same
O.22 Payment Into and Out of Court	Revision of the whole order with the new title “Offers to Settle and Payment Into Court”	Amendments of RHC followed	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
—	Addition of the whole O.22A on Miscellaneous Provisions About Payment Into Court	Amendments of RHC followed with modification in r.4 (reference to High Court Suitors’ Fund Rules be changed to District Court Suitors’ Funds Rules)	The same
O.23 Security for Costs	—	No amendment	The same
O.23A Directions for Actions Begun by Writ	—	The whole O.23A repealed for consistency between RHC & RDC	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.24 Discovery and Inspection of Documents	<p>(1) —</p> <p>(2) —</p> <p>(3) Amendments in rr.7A & 8</p> <p>(4) —</p> <p>(5) Addition of r.15A</p> <p>(6) —</p>	<p>rr.1 & 2 of RHC added for consistency between RHC & RDC</p> <p>rr.3, 4 & 5 amended to follow the wordings of RHC to maintain consistency</p> <p>Amendments of RHC followed, with modification as to the reference to the provisions in the primary legislation</p> <p>r.9 amended, following the wordings of RHC to maintain consistency</p> <p>Amendments of RHC followed</p> <p>r.16 amended, following the wordings of RHC to maintain consistency</p>	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
—	(1) Amendments in O.25 (2) —	The whole O.25 of RHC (with latest amendments) added for consistency between RHC & RDC Special transitional provision added to cover the transitional arrangement after the repeal of RDC O.23A	The same
O.26 Interrogatories	—	The whole order amended, following the format and wordings of RHC to maintain consistency	The same
O.27 Admissions	—	rr.2(1), 4 & 5 modified upon the repeal of RDC O.23A	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.28 Originating Summons Procedure	(1) Addition of r.3A (2) — (3) — (4) —	Amendments of RHC followed rr.4(4) & 8(2) modified upon the repeal of RDC O.23A r.9(3) of RHC added for consistency between RHC & RDC r.9(4) Modified upon the repeal of RDC O.23A	The same
O.29 Interlocutory Injunctions, Interim Preservation of Property, Interim Payment, etc.	(1) — (2) — (3) — (4) Amendments in r.16	rr.2(5), 7(2) & 11(2) amended, following the wordings of RHC to maintain consistency r.11(3) of RHC added for consistency between RHC & RDC r.14 modified upon the repeal of RDC O.23A Amendments of RHC followed	Substantially the same, with the omission of the new r.8A (application for interim relief in aid of foreign proceedings) in RDC

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.30 Receivers	Amendments in r.1	r.1 amended, following the wordings of RHC (with latest amendments) to maintain consistency	Substantially the same, with the omission of the new r.9 (appointment of receiver in aid of foreign proceedings) in RDC
O.31 Sales, etc., of Land by Order of Court	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.32 Interlocutory Applications and Other Proceedings in Chambers	<p>(1) —</p> <p>(2) —</p> <p>(3) Amendments in r.3</p> <p>(4) —</p> <p>(5) —</p> <p>(6) Additions of rr.11A & 11B</p>	<p>Heading of the Order amended, following that of RHC to maintain consistency</p> <p>r.1 amended, following the wordings of RHC to maintain consistency</p> <p>Amendments of RHC followed</p> <p>Provisions starting from r.7 to the end of the Order amended, following the provisions in RHC to maintain consistency but with r.9 (application under Mental Health Ordinance), r.10 (application relating to appeal proceedings) and r.11(1)(da) (application relating to vexatious litigants under s.27 of High Court Ordinance) omitted</p> <p>Existing r.8 of RDC repealed for consistency between RHC & RDC</p> <p>Amendments of RHC followed</p>	<p>Substantially the same, with the omission of the new r.11(1)(da) (application relating to vexatious litigants under s.27 of the High Court Ordinance) in RDC</p>

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.33 Place and Mode of Trial	—	r.4(1) amended, following the wordings of the RHC to maintain consistency	Substantially the same, with no provision for trial by jury in RDC
O.34 Setting Down for Trial Action Begun by Writ	(1) Amendments in r.8(3) (2) —	The whole O.34 repealed and replaced by the same order in RHC (with the latest amendments) to maintain consistency Special transitional provision added to cover the transitional arrangement after the repeal of the old O.34	The same
O.35 Procedure at Trial	(1) Addition of r.3A (2) —	Amendments of RHC followed r.10(b) amended, following the wordings of RHC to maintain consistency	Substantially the same, with no provision for trial by jury in RDC

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.36 Trial Before, And Inquiries By, Master	(1) — (2) —	Heading of the Order amended, following that of RHC to maintain consistency r.9(3)(d) amended, following the wordings of RHC to maintain consistency	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.37 Damages : Assessment After Judgment and Orders for Provisional Damages	<p>(1) —</p> <p>(2) —</p> <p>(3) —</p> <p>(4) —</p> <p>(5) —</p>	<p>r.1(1) amended, following the wordings of RHC to maintain consistency</p> <p>Existing r.1(1A) repealed and replaced by the same provision in RHC to maintain consistency</p> <p>r.2 amended, following the wordings of RHC to maintain consistency</p> <p>r.4 of RHC added for consistency between RHC & RDC, but deleting the reference to jury trial</p> <p>r.10(4) modified upon the repeal of RDC O.23A</p>	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
O.38 Evidence	<p>(1) —</p> <p>(2) Amendments in r.2A</p> <p>(3) Addition of r.4A</p> <p>(4) —</p> <p>(5) —</p>	<p>r.2(3) amended, extending its application to “originating motion or petition”</p> <p>r.2A amended, following the wordings of RHC with the latest amendments (except : (i) the reference to jury trial be deleted; and (ii) Clerk of Court be substituted by Chief Judicial Clerk)</p> <p>Amendments of RHC followed</p> <p>r.6 of RHC added for consistency between RHC & RDC</p> <p>r.7(1)(a) modified upon the repeal of RDC O.23A</p>	Substantially the same, with r.19 of RHC (writ of subpoena in aid of inferior court or tribunal) omitted in RDC

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments to the Rules of the High Court (“RHC”)	Proposed Amendments to the RDC	Comparison between the RHC & RDC after the proposed amendments
	<p>(6) Amendments in r.35</p> <p>(7) Addition of r.35A</p> <p>(8) —</p> <p>(9) Additions of rr.37A, 37B & 37C</p>	<p>Amendments of RHC followed, and sub-rule (1) modified upon the repeal of RDC O.23A</p> <p>Amendments of RHC followed</p> <p>r.36(1)(b) modified upon the repeal of RDC O.23A</p> <p>Amendments of RHC followed</p>	
O.39 Evidence by Deposition	—	No amendment	Substantially the same, with r.15 of RHC (perpetuation of testimony) omitted and no provision for ‘letter of request’ proceedings in RDC
O.40 Court Expert	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.41 Affidavits	—	No amendment	The same
—	Addition of the new O.41A on Statements of Truth	Amendments of RHC followed	The same
O.42 Judgments and Orders	(1) — (2) —	r.4(3)(k) of RHC added for consistency between RHC & RDC r.4(3)(l) amended, following the wordings of RHC to maintain consistency	Substantially the same, with some differences in the wordings of r.5B because of the different governing provisions in the primary legislations
O.43 Accounts and Inquiries	—	No amendment	The same
O.44 Proceedings Under Judgments and Orders	—	r.12(1A) of RHC added for consistency between RHC & RDC	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.44A Probation Order Before or After Judgment and Attachment of Property Before Judgment	—	No amendment	Substantially the same, with no restriction on the amount of compensation awarded under rr.5 & 12 of RDC
O.45 Enforcement of Judgments and Orders : General	—	No amendment	The same
O.46 Writs of Execution : General	—	No amendment	The same
O.47 Writs of Fieri Facias	—	No amendment	The same
O.48 Examination of Judgment Debtor, etc	—	r.3 amended, following the wordings of RHC to maintain consistency	The same
O.49 Garnishee Proceedings	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.49B Execution and Enforcement of Judgment for Money by Imprisonment	—	r.1AA of RHC added for consistency between RHC & RDC	The same
O.50 Charging Orders, Stop Orders, etc.	—	Existing r.16 of RDC deleted to maintain consistency with RHC	The same
O.51 Receivers : Equitable Execution	—	No amendment	The same
O.52 Committal	(1) — (2) — (3) —	r.3 amended, adopting the use of motion in committal proceedings for consistency between RHC & RDC r.3(1A) of RHC added for consistency between RHC & RDC r.6(3) amended, following the wordings of RHC to maintain consistency	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.58 Appeals	(1) Amendments in r.1 (2) —	Amendments of RHC followed r.2 amended, adding the additional considerations for leave to appeal against interlocutory order as laid down in the new s. 14AA of the draft High Court Ordinance	Substantially different, as the appeal mechanism is different in both courts

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.62 Costs	<ul style="list-style-type: none"> (1) Addition of new definitions in r.1(1) (2) Amendments in r.3 (3) Addition of r.3A (4) Amendments in rr.5 & 7 (5) Amendments in r.8 (6) Additions of rr.8A, 8B, 8C & 8D (7) Amendments in rr.9 & 9A (8) Additions of rr.9B, 9C & 9D (9) Amendments in r.10 (10) Addition of r.11A (11) Amendments in rr. 12 & 13 	<ul style="list-style-type: none"> Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed, with modification as to the reference to the provisions in the primary legislation Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed Amendments of RHC followed 	<p>Substantially the same, with the following major differences :</p> <ul style="list-style-type: none"> (1) no provision in RDC to deal with taxation of the bill of costs of solicitor under the Legal Practitioners Ordinance; (2) no provision in RDC to deal with taxation of costs in arbitration proceedings; (3) scale of costs is usually 2/3 of that awarded in the Court of First Instance (r.32(1A) of RDC);

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
	<p>(12) Addition of r.13A</p> <p>(13) Addition of r.17A</p> <p>(14) Amendments in r.21</p> <p>(15) Additions of rr.21A, 21B, 21C & 21D</p> <p>(16) Amendments in r.22</p> <p>(17) Deletion of r.23</p> <p>(18) Amendments in rr.24, 26, 28 & 28A</p> <p>(19) Additions of rr.32A, 32B & 32C</p> <p>(20) Amendments in rr.33 & 35</p> <p>(21) Additions of rr.36 and 37</p> <p>(22) —</p>	<p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Schedule 1, Part I, Item 5(a)(viii) amended, following the wordings of RHC to maintain consistency</p>	<p>(4) certificate of counsel is required in the District Court for recovery of counsel's fee for a claim less than \$150,000 (Schedule 1, Part II, Item 2(3) of RDC)</p>

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
	<p>(23) Deletion of Schedule 1, Part II, Item 1(1)</p> <p>(24) Amendments in Schedule 1, Part II, Item 2(5)</p> <p>(25) Scale costs and fixed costs under Schedules 1 & 2</p>	<p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Subject to revision after collecting the views in the consultation</p>	
—	Addition of the new O.62A on Costs Offer and Payments Into Court	Amendments of RHC followed	The same
O.63 Registry	—	No amendment	Substantially the same, with rr.8 (inspection of powers of attorney) and 10 (enrolment of instrument) of RHC omitted which are not relevant to the District Court

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.64 Court Offices	—	No amendment	Substantially the same, with no provision for vacations in RDC
O.65 Service of Documents	—	No amendment	The same
O.66 Paper, Printing, Notices and Copies	—	No amendment	The same
O.67 Change of Solicitor	—	No amendment	The same
O.68 Official Shorthand Note	—	No amendment	The same
O.72 Particular Proceedings	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.77 Proceedings By and Against Government	—	r.12(1) modified upon the repeal of RDC O.23A	Substantially the same, with rr.14 and 18 of RHC omitted as they are not relevant to the District Court (relating to certain proceedings involving the Government)
O.78 Transferred Proceedings	—	r.3(2) modified upon the repeal of RDC O.23A	Substantially different, as the rules deal with proceedings transferred to the court from another court
O.79 Tribunal Proceedings Transferred or Removed to the Court	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.80 Disability	(1) — (2) Amendments in r.11(1) (3) Amendments in r.15	r.6(3) of RHC added for consistency between RHC & RDC Amendments of RHC followed Amendments of RHC followed	Substantially the same, with r.13 of RHC (for money paid into District Court pursuant to order made by Court of First Instance) omitted in RDC
O.81 Partners	—	No amendment	The same
O.82 Defamation Actions	Amendments in r.4	Amendments of RHC followed	Substantially the same, with the omission of r.8 of RHC (for application under s.25 of the Defamation Ordinance) which is not relevant to the District Court
O.83A Money Lenders' Actions	Amendments in r.2(1)	Amendments of RHC followed	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.84A Actions Arising Out of Hire-Purchase or Conditional Sale Agreements	—	No amendment	The same
O.85 Administration and Similar Actions	—	No amendment	The same
O.86 Actions for Specific Performance, etc. : Summary Judgment	—	r.5 modified upon the repeal of RDC O.23A	The same
O.88 Mortgage Actions	—	No amendment	The same
O.89 Proceedings Between Husband and Wife	Amendments in r.1(1)	Amendments of RHC followed	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
O.90 Proceedings Concerning Minor	Amendments in r.3(1)	r.1(1) amended, providing that the application may be made by originating summons to maintain consistency with RHC	Different, because of the difference in jurisdiction
O.90A Proceedings Concerning Judgment Summons	—	No amendment	Specific rule for RDC
O.92 Lodgment, Investment, etc. of Funds in Court	Amendments in r.5(5)	Amendments of RHC followed	The same
O.93 Applications under Variation of Trusts Ordinance	—	No amendment	The same
O.113 Summary Proceedings for Possession of Land	—	No amendment	The same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
Forms Appendix A	<p>(1) Amendments in Form No. 1</p> <p>(2) —</p> <p>(3) Amendments in Form No. 14</p> <p>(4) Amendments in Form No. 15</p> <p>(5) Additions of Forms Nos. 16, 16A, 16B, 16C, 16D & 16E</p> <p>(6) Amendments in Form No. 17</p> <p>(7) Deletion of Form Nos. 23 & 24</p> <p>(8) —</p> <p>(9) —</p>	<p>Amendments of RHC followed</p> <p>Form No. 13 of RHC added, with modification to cater for the proceedings in the District Court</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Amendments of RHC followed</p> <p>Form No. 26 amended, following the wordings of RHC to maintain consistency</p> <p>Form No. 38 of RHC added, with modification to cater for proceedings in the District Court</p>	Substantially the same

Existing Order of the Rules of the District Court (RDC)	Proposed Amendments of the Rules of the High Court (RHC)	Proposed Amendments of the RDC	Comparison between the RHC & RDC after the proposed amendments
	(10) —	Form No. 85 amended, following the wordings of RHC to maintain consistency	
—	Addition of the new Appendix D on Code of Conduct for Expert Witnesses	Amendments of RHC followed	The same