

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~~

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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made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.~~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~~

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~~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~~

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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~~

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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

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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.~~

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~~(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

Remarks

I. PRELIMINARY

Rule 79,
Rec 38 to 43
and 132

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;

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“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

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(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

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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 –

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- (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

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- 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. MISCELLANEOUS23. 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;

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- (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.