

# 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)