

# 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 –

- (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.