

Rules of the District Court (Amendment) Rules 2008

The Rules of the District Court (Cap. 336H)

Order 13A – ADMISSIONS IN CLAIMS FOR PAYMENT OF MONEY

Remarks

1. Interpretation (O. 13A, r. 1)

Rule 40
Rec 18

(1) In this Order – “claim” (申索) means –

- (a) where in an action the plaintiff makes only one claim, that claim; and
- (b) where in an action the plaintiff makes more than one claim, all the claims in the action.

(2) For the purposes of rules 6(1)(b) and 7(1)(b), the amount of a claim is treated as unliquidated if the claim consists of a claim for a liquidated amount of money and a claim for an unliquidated amount of money.

2. Making an admission (O. 13A, r. 2)

(1) Where the only remedy that 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).

(2) Where the defendant makes an admission as mentioned in paragraph (1), the plaintiff may 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.

(3) The Court may allow a party to amend or withdraw an admission if the Court considers it just to do so having regard to all the circumstances of the case.

(4) In this rule, “person under disability” (無行為能力的人) has the

meaning assigned to it in Order 80, rule 1.

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 –

- (a) after the expiry of the period for filing it specified in paragraph (1)(a) if the plaintiff has not obtained a default judgment under Order 13 or 19; and
- (b) after the expiry of the period for filing it specified in paragraph (1)(b) if the admission is filed and served before the date or the period fixed under Order 28, rule 2 for the hearing of the originating summons.

(3) If the defendant files an admission under paragraph (2), this Order applies as if he had made the admission specified in paragraph (1)(a) or (b), as the case may be.

4. Admission of whole of claim for liquidated amount of money (O. 13A, r. 4)

(1) This rule applies where –

- (a) the only remedy that 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 (5), (6) and (7) apply;
- (b) where the defendant has requested time to pay, rule 9 applies.

(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) 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.

(6) Upon receipt of the request for judgment, the Court shall enter judgment.

(7) 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 that the plaintiff is seeking is the payment of a liquidated amount of money; and
- (b) the defendant admits part of the claim in satisfaction of the whole 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 whole 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 whole 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 whole claim is stayed until he files the notice.

(5) If the plaintiff accepts the amount admitted in satisfaction of the whole 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), (7) and (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) Upon 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 times and 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 that 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 in the Registry 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) Upon 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 that 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 in the Registry 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), (7) and (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) Upon 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) by the date or at the times and 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 in the Registry 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. Power 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 may give such directions as 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 for time to pay, he may obtain judgment by filing in the Registry a request for judgment in Form No. 16A, 16B or 16E (as the case may be) in Appendix A.

(5) Upon 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 by the date or at the times and rate specified in the defendant's request for time to pay.

(7) Where judgment is for payment by instalments at the times and rate

specified in the defendant's request for time to pay, then unless the Court otherwise orders and subject to paragraph (8), execution of the judgment is stayed pending payment.

(8) If the defendant fails to pay an instalment or part of an instalment in accordance with the judgment, the stay of execution pursuant to paragraph (7) immediately ceases and the plaintiff may enforce the payment of the whole amount adjudged to be paid or the whole of any unpaid balance.

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 in the Registry 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 by the date or at the times and rate of payment determined by the Court.

(4) Where the Court is to determine the date or the times and rate of payment, it –

(a) may do so without a hearing; but

(b) shall consider –

(i) the information set out in the defendant's admission filed in the Registry;

(ii) the reasons why the plaintiff does not accept the defendant's proposal for payment; and

(iii) all other relevant matters.

(5) If there is to be a hearing to determine the date or the times 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 date or the times 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 the applicant is served with notice of the determination.

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

(1) Judgment under rule 4, 5 or 7 must 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 that he is doing so –
 - (i) under the terms of a contract;
 - (ii) under a specified enactment; or
 - (iii) on some other specified basis;
- (b) where interest is claimed under section 49 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 writ or originating summons (O. 13A, r. 13)

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

(2) Where a writ of summons, an originating summons or any other originating process 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. 16 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 (O. 13A, r. 14)

(1) This Order (other than rule 13) applies in relation to a writ of summons, an originating summons or any other originating process served before the commencement of this Order if –

- (a) in the case of a writ of summons, the plaintiff has not obtained a default judgment under Order 13 or 19;

- (b) in the case of an originating summons, the admission is filed and served before the date or the period fixed under Order 28, rule 2; and
- (c) in the case of any other originating process, the period specified in rule 3(1)(c) for filing and serving an admission under rule 4, 5, 6 or 7 has not expired.

(2) This Order applies in relation to a 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.

(3) Where a defendant has made a claim against a person not already a party to the action under Order 16, rule 1 or 8, this Order applies in relation to that claim and any other claim made under Order 16, rule 9 with the necessary modifications as if –

- (a) a reference to a plaintiff were a reference to the person who makes the claim; and
- (b) a reference to a defendant were a reference to the person against whom the claim is made.