

Rules of the District Court (Amendment) Rules 2008

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

Remarks

~~Order 22 -- PAYMENT INTO AND OUT OF COURT~~

Rule 61
Rec 38, 39, 41-43

~~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 2 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made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.~~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 2 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 2 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 2 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 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 49 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 2 or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them.~~

~~**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.~~

~~(3) Rule 1(5) shall not apply in relation to money paid into court in an action~~

~~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 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.~~

~~(2)— Subject to paragraph (3), money paid into court under an order of the Court or a certificate of a master shall not be paid out except in pursuance of an order of the Court.~~

~~(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 appropriated 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.~~

~~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 \$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.~~

~~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 District Court Suitors' Funds Rules (Cap 336 sub. leg.) and the Trustee Ordinance (Cap 29).~~

~~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.~~

~~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 this Order.~~

Order 22 - OFFERS TO SETTLE AND PAYMENTS INTO COURT

Rule 61
Rec 38, 39, 41-43

I. PRELIMINARY

1. Interpretation (O. 22, r. 1)

(1) In this Order –
“claim” (申索) includes, where the context so permits or requires, a counterclaim;

“counterclaim” (反申索) includes, where the context so permits or requires, a claim;

“defendant” (被告人) includes, where the context so permits or requires, a defendant to a counterclaim;

“offeree” (受提議者) means the party to whom an offer is made;

“offeror” (提議者) means the party who makes an offer;

“plaintiff” (原告人) includes, where the context so permits or requires, a counterclaiming defendant;

“sanctioned offer” (附帶條款和解提議) means an offer made (otherwise than by way of a payment into court) in accordance with this Order;

“sanctioned payment” (附帶條款付款) means an offer made by way of a payment into court in accordance with this Order;

“sanctioned payment notice” (附帶條款付款通知書) means the notice relating to a sanctioned payment required to be filed under rule 8(2).

(2) Where in an action the plaintiff makes more than one claim, a reference in this Order to –

- (a) the whole claim is to be construed as a reference to all the claims in their entirety;
- (b) a part of a claim is to be construed as a reference to any one or more of the claims or a part of any one or more of the claims;
and
- (c) an issue arising from a claim is to be construed as a reference to an issue arising from one or more of the claims.

2. Offer to settle with specified consequences (O. 22, r. 2)

(1) A party to an action containing a money claim or a non-money claim or both arising from any cause or causes of action may make an offer to settle the whole claim, a part of it or any issue arising from it 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) has the consequences specified in rules 20, 21, 22, 23 and 24 (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 does not have the consequences specified in this Order, unless the Court so orders.

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. Defendant’s offer to settle (O. 22, r. 3)

(1) An offer by a defendant to settle the whole or part of a claim or an issue arising from the claim does not have the consequences specified in this Order unless it is made by way of sanctioned offer or a sanctioned

payment or both.

(2) Where an offer by a defendant involves a payment of money to the plaintiff, the offer must be made by way of a sanctioned payment.

(3) A sanctioned payment may only be made after the proceedings have commenced.

4. Plaintiff's offer to settle (O. 22, r. 4)

An offer by a plaintiff to settle the whole or part of a claim or an issue arising from the claim does not have the consequences specified in this Order unless it is made by way of a sanctioned offer.

5. Form and content of sanctioned offer (O. 22, r. 5)

(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 arising from it.

(3) A sanctioned offer must –

(a) state whether it relates to the whole claim or to part of it or to an issue arising from 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 26(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 may be made at any time after the commencement of the proceedings but may not be made before such commencement.

(7) A sanctioned offer made not less than 28 days before the commencement of the trial must provide that after the expiry of 28 days from the date the sanctioned offer is made, the offeree may only accept it if –

(a) the parties agree on the liability for costs; or

(b) the Court grants leave to accept it.

(8) 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 grants leave to accept it.

6. Service of sanctioned offer (O. 22, r. 6)

An offeror shall serve the sanctioned offer –

- (a) on the offeree; and
- (b) where the offeree is an aided person, on the Director of Legal Aid.

7. Withdrawal or diminution of sanctioned offer (O. 22, r. 7)

(1) A sanctioned offer made not less than 28 days before the commencement of the trial may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish it.

(2) A sanctioned offer made less than 28 days before the commencement of the trial may be withdrawn or diminished if the Court grants leave to withdraw or diminish it.

(3) If there is subsisting an application to withdraw or diminish a sanctioned offer, the sanctioned offer may not be accepted unless the Court grants leave to accept it.

(4) If the Court dismisses an application to withdraw or diminish a sanctioned offer or grants leave to diminish the sanctioned offer, it may by order specify the period within which the sanctioned offer or diminished sanctioned offer may be accepted.

(5) If a sanctioned offer is withdrawn, it does not have the consequences specified in this Order.

8. Notice of sanctioned payment (O. 22, r. 8)

(1) A sanctioned payment may relate to the whole claim or to part of it or to an issue arising from it.

(2) A defendant who makes a sanctioned payment shall file with the Court a notice in Form No. 23 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 an issue arising from it and if so to which part or issue it relates;
- (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 26(2); and
- (f) if a sum of money has been paid into court (other than as security for costs), states whether the sanctioned payment has taken into account that sum of money.

9. Service of sanctioned payment (O. 22, r. 9)

A defendant who makes a sanctioned payment shall –

- (a) serve the sanctioned payment notice –
 - (i) on the plaintiff; and
 - (ii) where the plaintiff is an aided person, on the Director of Legal Aid; and
- (b) file with the Court a certificate of service of the notice.

10. Withdrawal or diminution of sanctioned payment (O. 22, r. 10)

(1) A sanctioned payment may not be withdrawn or diminished before the expiry of 28 days from the date the sanctioned payment is made unless the Court grants leave to withdraw or diminish it.

(2) If there is subsisting an application to withdraw or diminish a sanctioned payment, the sanctioned payment may not be accepted unless the Court grants leave to accept it.

(3) If the Court dismisses an application to withdraw or diminish a sanctioned payment or grants leave to diminish the sanctioned payment, it may by order specify the period within which the sanctioned payment or diminished sanctioned payment may be accepted.

(4) If a sanctioned payment is withdrawn, it does not have the consequences specified in this Order.

11. Offer to settle claim for provisional damages (O. 22, r. 11)

(1) A defendant may make a sanctioned payment in respect of a claim that includes a claim for provisional damages.

(2) Where the defendant makes a sanctioned payment under paragraph (1), 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 15,

the sanctioned payment has the consequences specified in rule 20, 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 unless the Court has disposed of the application made under paragraph (5).

(7) In this rule, “provisional damages” (暫定損害賠償) means damages for personal injuries that are to be assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 72E of the Ordinance.

12. Time when sanctioned offer or sanctioned payment is made and accepted (O. 22, r. 12)

(1) A sanctioned offer is made when it is served on the offeree.

(2) A sanctioned payment is made when a sanctioned payment notice is served on the offeree.

(3) An amendment to a sanctioned offer is effective when its details are served on the offeree.

(4) An amendment to a sanctioned payment is effective when notice of the amendment is served on the offeree.

(5) A sanctioned offer or a sanctioned payment is accepted when notice of its acceptance is served on the offeror.

13. Service of notice of acceptance of plaintiff's sanctioned offer
(O. 22, r. 13)

(1) Where there is more than one defendant, a defendant who serves on the plaintiff a notice of acceptance of the plaintiff's sanctioned offer shall at the same time serve a copy of the notice on the other defendant or defendants.

(2) A defendant on whom a copy of the notice has been served may within 14 days after the service apply to the Court for –

- (a) a direction as to any question of costs between him and the defendant who has accepted the plaintiff's sanctioned offer; and
- (b) any other direction relating to the acceptance of the plaintiff's sanctioned offer.

(3) No application may be made under paragraph (2) after the expiry of the 14-day period referred to in that paragraph.

14. Clarification of sanctioned offer or sanctioned payment notice
(O. 22, r. 14)

(1) The offeree may, within 7 days of a sanctioned offer or a sanctioned 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 service of 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 pursuant to an application made under paragraph (2), it shall specify the date when the sanctioned offer or sanctioned payment is to be treated as having been made.

(4) Where a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) are joined in an action, with or without any other cause of action, the plaintiff is not entitled under paragraph (1) to request the defendant to make an apportionment of the sanctioned payment between the causes of action under those Ordinances.

III. ACCEPTANCE OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

15. Time for acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 15)

(1) Subject to rules 7(3) and 10(2), 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 files with the Court and serves on the defendant a 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 the leave of the Court; and

(ii) if the parties do not agree on the liability for costs, only accept the offer or payment with the leave of the Court.

(3) Where the leave of the Court is required under paragraph (2), the Court shall, if it grants leave, make an order as to costs.

(4) A notice of acceptance of a sanctioned payment must be in Form No. 24 in Appendix A.

16. Time for acceptance of plaintiff's sanctioned offer (O. 22, r. 16)

(1) Subject to rule 7(3), 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 files with the Court and serves on the plaintiff a 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 the leave of the Court; and

(ii) if the parties do not agree on the liability for costs, only accept the offer with the leave of the Court.

(3) Where the leave of the Court is required under paragraph (2), the Court shall, if it grants leave, make an order as to costs.

17. Payment out of a sum in court on acceptance of sanctioned payment (O. 22, r. 17)

Subject to rules 18(4) and 19 and Order 22A, rule 2, 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. 25 in Appendix A.

18. Acceptance of sanctioned offer or sanctioned payment made by one or more, but not all, defendants (O. 22, r. 18)

(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 15(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 15(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.

19. Other cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O. 22, r. 19)

(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) the money in court may not be paid out except in pursuance of an order of the Court.

(2) Where the Court grants leave to a plaintiff to accept a sanctioned offer or a sanctioned payment after the trial has commenced –

(a) the money in court may not be paid out except in pursuance of an order of the Court; 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 not be paid out except in pursuance of an order of the Court.

(4) Where a plaintiff accepts a sanctioned payment made in satisfaction of –

(a) a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23);
or

(b) a cause of action under the Fatal Accidents Ordinance (Cap. 22) where more than one person is entitled to the money,

the money in court may not be paid out except in pursuance of an order of the Court.

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

20. Costs consequences of acceptance of defendant's sanctioned offer or sanctioned payment (O. 22, r. 20)

(1) Where a defendant's sanctioned offer or sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court otherwise orders.

(2) Where –

(a) a sanctioned offer or a sanctioned payment relating to a part of the claim or an issue arising from the claim is accepted; and

(b) at the time of serving notice of acceptance the plaintiff abandons the other parts of the claim or other issues arising from the claim,

the plaintiff is entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court otherwise orders.

(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.

21. Costs consequences of acceptance of plaintiff's sanctioned offer (O. 22, r. 21)

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff is entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance, unless the Court otherwise orders.

(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.

22. Other consequences of acceptance of sanctioned offer or sanctioned payment (O. 22, r. 22)

(1) If a sanctioned offer or a sanctioned payment relates to the whole claim and is accepted, the claim is stayed.

(2) In the case of acceptance of a sanctioned offer which relates to the whole claim –

(a) the stay is upon the terms of the offer; and

(b) either party may apply to enforce those terms without the need to commence new proceedings.

(3) If a sanctioned offer or a sanctioned payment which relates only to a part of the claim or an issue arising from the claim is accepted –

(a) the claim is stayed as to that part or issue, and in the case of the sanctioned offer, the stay is upon the terms of the offer;

(b) either party may apply to enforce those terms without the need to commence new proceedings; and

(c) 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 takes 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 commence new proceedings unless the Court otherwise orders.

23. Costs consequences where plaintiff fails to do better than sanctioned offer or sanctioned payment (O. 22, r. 23)

(1) This rule applies where a plaintiff –

(a) fails to obtain a judgment better than the sanctioned payment;

or

(b) fails to obtain a judgment that is more advantageous than a defendant's sanctioned offer.

(2) The Court may by order disallow all or part of any interest otherwise payable under section 49 of the Ordinance on the whole or part of any sum of money awarded to the plaintiff for some or all of the period after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.

(3) The Court may 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.

(4) The Court may also order that the defendant is entitled to –

(a) his costs on the indemnity basis after the latest date on which the plaintiff could have accepted the payment or offer without requiring the leave of the Court; and

(b) interest on the costs referred to in paragraph (3) or subparagraph (a) at a rate not exceeding 10% above judgment rate.

(5) Where this rule applies, the Court shall make the orders referred to in paragraphs (2), (3) and (4) unless it considers it unjust to do so.

(6) In considering whether it would be unjust to make the orders referred to in paragraphs (2), (3) and (4), the Court shall take into account all the circumstances of the case including –

(a) the terms of any sanctioned payment or sanctioned offer;

(b) the stage in the proceedings at which any sanctioned payment or sanctioned offer was made;

- (c) the information available to the parties at the time when the sanctioned payment or 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 payment or offer to be made or evaluated.

(7) The power of the Court under this rule is in addition to any other power it may have to award or disallow interest.

24. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 24)

(1) This rule applies where –

- (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 judgment rate for some or all of the period after 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 after the latest date on which 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 judgment 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 at which 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

25. Restriction on disclosure of sanctioned offer or sanctioned payment (O. 22, r. 25)

(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 or the master hearing or determining the action or counterclaim or any question or issue as to the debt or damages 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 22 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.

26. Interest (O. 22, r. 26)

(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 is to 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.

27. Money paid into court under order (O. 22, r. 27)

(1) On making any payment into court under an order of the Court or a certificate of a master, the party making the payment shall give notice of the payment in Form No. 25A in Appendix A to every other party to the proceedings.

(2) Unless the Court otherwise orders, a defendant who has paid money into court in pursuance of an order made under Order 14 may –

(a) by notice served on the plaintiff, appropriate the whole or any part of the money and any additional payment, if necessary, in satisfaction of any particular claim made by the plaintiff and specified in the notice; or

(b) if he pleads a tender, by his pleading served on the plaintiff, appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered.

(3) Any money appropriated in accordance with paragraph (2) is deemed to be –

(a) in the case of paragraph (2)(a), a sanctioned payment when the notice is served on the plaintiff; and

(b) in the case of paragraph (2)(b), money paid into court with a plea of tender when the pleading is served on the plaintiff, and this Order applies accordingly.

(4) A notice served on the plaintiff in accordance with paragraph (2)(a) is deemed to be a sanctioned payment notice.

28. Transitional provision relating to Part 9 of Amendment Rules 2008 (O. 22, r. 28)

Where –

(a) a payment into court has been made in accordance with Order 22 (“the repealed Order”) repealed by rule 61 (“the repealing rule”) of the Amendment Rules 2008; and

(b) the disposal of the payment is pending immediately before the commencement of the repealing rule,

then nothing in Division 1 of Part 9 of the Amendment Rules 2008 applies in relation to that payment, and the repealed Order and all the other provisions amended or repealed by that Division, as in force immediately before the commencement, continue to apply in relation to that payment as if that Division had not been made.