

Rules of the District Court (Amendment) Rules 2008

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

Remarks

Rule 78
Rec 52-60, 62

~~Order 23A – DIRECTIONS FOR ACTIONS BEGUN BY WRIT~~

~~1. — Application and interpretation (O. 23A, r. 1)~~

- ~~(1) — This Order applies to all actions begun by writ except—~~
- ~~(a) — actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;~~
 - ~~(b) — actions in which the plaintiff or defendant has applied for, or the Court has on its own motion ordered under Order 18, rule 21, trial without pleadings or further pleadings and directions have been given under that rule;~~
 - ~~(c) — actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;~~
 - ~~(d) — actions in which directions have been given under Order 29, rule 7; and~~
 - ~~(e) — actions in which an order for the taking of an account has been made under Order 43, rule 1.~~

~~(2) — In this Order—~~
~~“agreed directions” (協定指示) means directions or orders agreed between the parties and taking effect under rule 4;~~

~~“automatic directions” (自動指示) means directions taking effect automatically under rule 5;~~

~~“direction” (指示) and “order” (命令) mean any direction or order as to any matter capable of being dealt with by interlocutory application in the action under these Rules;~~

~~“directions hearing” (指示聆訊) means a directions hearing under rule 9;~~

~~“summons for directions” (要求作指示的傳票) means a summons under rule 7 for a directions hearing.~~

~~2. — Duties of the parties: general (O. 23A, r. 2)~~

~~— As soon as the pleadings are closed, it shall be the duty of every party to the action—~~

- ~~(a) to consider what directions and orders are required for the future course of the action so as to secure the just, expeditious and economic disposal of the action; and~~
- ~~(b) to endeavour to reach agreement with the other parties as to the directions and orders required.~~

3. — Agreed and automatic directions: application (O. 23A, r. 3)

- ~~— The provisions of rules 4 and 5 apply except where—~~
 - ~~(a) the Court has of its own motion ordered a directions hearing; or~~
 - ~~(b) there is a pending application for any such direction or order as is mentioned in rule 1(1).~~

4. — Agreed directions (O. 23A, r. 4)

- ~~(1) Subject to rule 6 and paragraphs (3) and (4), where all parties agree either—~~
 - ~~(a) that the only direction or order required is a direction that, within 3 months of the close of pleadings, the plaintiff shall apply for a pre-trial review under Order 34; or~~
 - ~~(b) that such directions and orders as are agreed, including a direction as to the time within which the plaintiff shall apply for a pre-trial review under Order 34, are the only directions and orders required, a memorandum filed in the Registry which sets out the agreed directions and orders and is indorsed by each of the parties shall take effect as if the directions and orders set out in the memorandum had been made by the Court.~~
- ~~(2) Where such agreement has been reached—~~
 - ~~(a) the plaintiff shall, as soon as practicable thereafter, draw up such a memorandum and take all steps necessary to ensure that it is promptly indorsed by the other parties and is filed in the Registry; and~~
 - ~~(b) the other parties shall, as soon as practicable after receipt of the memorandum, indorse their consent on it.~~
- ~~(3) Nothing in this rule shall require any step to be taken where all the parties agree that the only directions or orders required are automatic directions.~~
- ~~(4) Nothing in this rule shall be construed as enabling the parties to rescind or vary any direction or order made by the Court.~~

5. — Automatic directions (O. 23A, r. 5)

- ~~(1) Subject to rule 6 and paragraphs (3) and (5), where, upon the expiry of 21~~

~~days after the close of pleadings, no memorandum has been filed under rule 4 and no summons for directions has been issued, the following directions shall thereupon take effect automatically-~~

- ~~(a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 3, and inspection within 7 days thereafter in accordance with Order 24, rule 9;~~
- ~~(b) each party to serve on the other parties, within 6 weeks, written statements under Order 38, rule 2A of the oral evidence which the party intends to lead on any issues of fact to be decided at the trial;~~
- ~~(c) where any party intends to place reliance at the trial on expert evidence, he shall, within 6 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;~~
- ~~(d) unless the expert evidence is agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding paragraph, except that the number of expert witness shall be limited to one for each party;~~
- ~~(e) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal; and~~
- ~~(f) within 3 months after the time for inspection of documents has expired under subparagraph (a) the plaintiff shall apply for a pre-trial review under Order 34.~~

~~(2) Where paragraph (1)(c) applies to more than one party the reports shall be disclosed by mutual exchange, medical for medical and non-medical for non-medical, within the time provided or as soon thereafter as the reports on each side are available.~~

~~(3) In a personal injury action, other than an action in which the pleadings contain an allegation of a negligent act or omission in the course of medical treatment, paragraph (1) shall have effect with the following modifications-~~

- ~~(a) where liability is admitted or where the action arises out of a road accident, discovery under paragraph (1)(a) shall be limited to disclosure by the plaintiff of any documents relating to special damages;~~
- ~~(b) the number of expert witnesses limited by paragraph (1)(d) shall be 2 medical experts and one expert of any other kind for each party; and~~
- ~~(c) photographs, a sketch plan and the contents of any police accident report shall be receivable in evidence at the trial and shall be agreed if possible.~~

~~(4) For the purposes of this rule-~~

~~“documents relating to special damages” (關乎專項損害賠償的文件) include-~~

- ~~(a) documents relating to any industrial injury, industrial disablement~~

- ~~or sickness benefit rights; and~~
~~(b) where the claim is made under the Fatal Accidents Ordinance (Cap. 22), documents relating to any claim for dependency on the deceased;~~

~~“a road accident” (道路意外) means an accident on land due to a collision or apprehended collision involving a vehicle.~~

~~(5) Where, prior to the expiry of the period referred to in paragraph (1), the Court has made a direction or order dealing with any matter referred to in paragraph (1), (2) or (3), nothing in this rule shall affect such direction or order and the automatic directions taking effect under this rule shall be limited to such directions (if any) under paragraph (1), (2) or (3) as relate to matters not dealt with by such direction or order.~~

~~**6.— Agreed and automatic directions: further provisions (O. 23A, r. 6)**~~

~~(1) Where, after automatic directions have taken effect, there are agreed directions, the agreed directions shall, upon the filing of a memorandum under rule 4, take effect in the place of the automatic directions.~~

~~(2) Where, after automatic directions have taken effect, a party takes out a summons for directions, automatic directions not already complied with shall cease to have effect.~~

~~(3) Nothing in rule 4 or 5 shall limit the power of the Court, of its own motion or on the application of any party, to hold a directions hearing or otherwise to make such directions and orders as it thinks fit.~~

~~**7.— Summons for directions (O. 23A, r. 7)**~~

~~(1) Except where the Court otherwise allows, an application for a directions hearing shall be by summons for directions.~~

~~(2) Where—~~

~~(a) neither subparagraph (a) nor subparagraph (b) of rule 3 applies; and~~

~~(b) upon the expiration of 14 days after the close of pleadings, no memorandum has been filed under rule 4,~~

~~any party who contends that automatic directions are inappropriate and that the Court should make other directions or orders shall, within 21 days after the close of pleadings, take out a summons for directions.~~

~~(3) Any party may at any stage of the proceedings take out a summons for directions.~~

~~(4) A party who takes out a summons for directions shall apply, so far as it~~

~~practicable to do so, for all the directions and orders he desires for the future course of the action.~~

8.—Duty of parties to whom summons for directions is addressed

~~(O. 23A, r. 8)~~

~~(1)—Every party to whom a summons for directions is addressed must, so far as it is practicable to do so, apply at the directions hearing for all such directions and orders which have not been applied for in the summons for directions as he desires for the future course of the action.~~

~~(2)—Any such application shall be by notice served on all the other parties and filed in the Registry not less than 7 days before the directions hearing.~~

~~(3)—For the purposes of these Rules, a notice under this rule shall be treated as a summons for the directions and orders specified in the notice.~~

9.—Directions hearing (O. 23A, r. 9)

~~(1)—At any stage of the proceedings, the Court may of its own motion and shall on the application of any party by a summons for directions, conduct a directions hearing for the making of all such directions and orders for the future course of the action as appear best adapted to serve the just, expeditious and economical disposal of the action.~~

~~(2)—Subject to paragraph (3), the Court shall endeavour to secure that all matters which shall be or are likely to be necessary or desirable to be dealt with by interlocutory application in the action, and which have not already been dealt with, are disposed of at the directions hearing.~~

~~(3)—Where an order for the transfer of the action to the Court of First Instance is made at the directions hearing, nothing in this Order shall be construed as requiring the Court to make any further order.~~

10.—Adjournment of hearing (O. 23A, r. 10)

~~(1)—If the Court is of the opinion at the directions hearing that it is not possible to give all the directions and orders which ought to be given for the future course of the action, the Court shall deal forthwith with such of those matters as it considers can be conveniently dealt with forthwith and shall adjourn the hearing to allow the remaining matters to be dealt with, and the Court may adjourn the hearing more than once.~~

~~(2)—If the directions hearing is adjourned and any party desires to apply at the resumed hearing for any orders or directions not applied for at the directions~~

~~hearing, he shall, not less than 7 days before the resumed hearing, serve on all the other parties and file at the Registry a notice specifying the additional orders or directions he will apply for at the resumed hearing.~~

~~(3) Rule 8(3) shall apply to a notice under paragraph (2) as it applies to that rule.~~

11.— Admissions and agreements to be made (O. 23A, r. 11)

~~—At the directions hearing the Court shall endeavour to secure that the parties make all admissions and all agreements as to the future course of the action which ought reasonably to be made by them and may cause the order on the directions hearing, or, if the hearing is adjourned, the resumed hearing, to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.~~

12.— Duty to give all information at hearing (O. 23A, r. 12)

~~(1) Subject to paragraph (3), no affidavit shall be used on the directions hearing except by the leave or direction of the Court, but, subject to paragraph (5), it shall be the duty of the parties and their advisers at the directions hearing to give all such information and produce all such documents as the Court may reasonably require.~~

~~(2) The Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under this paragraph shall be given or produced to all the parties present or represented at the directions hearing as well as to the Court.~~

~~(3) No leave shall be required by virtue of paragraph (1) for the use of an affidavit at a directions hearing where the affidavit is used to support an application for an order which, under any of these Rules, is required to be supported by an affidavit.~~

~~(4) If the Court at a directions hearing requires a party or his solicitor or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (5), the Court may—~~

~~(a) cause the facts to be recorded in the order on the directions hearing or, if the directions hearing is adjourned, the resumed hearing, with a view to such special order, if any, as to costs as may be just being made at the trial; or~~

~~(b) if it appears to the Court to be just so to do, order the whole or any~~

~~part of the pleadings of the party concerned to be struck out, or, if the party is the plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.~~

~~(5) Notwithstanding anything in the foregoing provisions of this rule, no information or documents which are privileged from disclosure shall be required to be given or produced under this rule by or by the advisers of any party otherwise than with the consent of that party.~~

13. ~~Direction for pre-trial review (O. 23A, r. 13)~~

~~Subject to rule 9(3), the order made on the directions hearing, or, if the hearing is adjourned, the resumed hearing, shall~~

- ~~(a) fix a period within which the plaintiff shall apply for a pre-trial review under Order 34; and~~
- ~~(b) record each party's estimate of the length of the trial.~~

14. ~~Costs (O. 23A, r. 14)~~

~~(1) If the Court is of the opinion~~

- ~~(a) that a directions hearing was rendered necessary because of the unreasonable refusal or failure of a party to agree directions or to take any step required under rule 4(2); or~~
- ~~(b) that a party acted unreasonably in taking out a summons for directions;~~

~~the Court may order that party to pay all the costs wasted by his unreasonable conduct including the cost of the directions hearing.~~

~~(2) Subject to paragraph (3), where any interlocutory application in the action is made otherwise than at a directions hearing, if the Court is of the opinion that the application ought to have been made at a directions hearing, the Court may order the applicant to pay the costs of the application irrespective of the outcome of the application or make such other order as to costs as the Court thinks fit having regard to the failure of the applicant to make the application at a directions hearing.~~

~~(3) Paragraph (2) shall not apply to an application under Order 14, Order 16, rule 2, Order 19, Order 21, Order 23 or Order 86.~~