

# Rules of the District Court (Amendment) Rules 2008

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

### Order 32 – INTERLOCUTORY APPLICATIONS AND OTHER PROCEEDINGS IN CHAMBERS

#### Remarks

#### I. INTERLOCUTORY APPLICATIONS

**1. Mode of making interlocutory applications (O. 32, r. 1)**

Except as otherwise provided in these Rules, every interlocutory application 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.

**2. Issue of summons (O. 32, r. 2)**

(1) Issue of a summons by which an interlocutory application is 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. Service 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.

**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. Interlocutory applications to be heard in chambers (O. 32, r. 7)**

Subject to rule 15, every interlocutory application shall be heard and determined in chambers.

**8. Revocation and variation of directions or orders (O. 32, r. 8)**

Any interlocutory direction or order made or taking effect under these Rules (including any order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent direction or order of the Court made at or before the trial of the action in connection with which the original direction or order was made.

**8A. Application for a direction under the Limitation Ordinance (O. 32, r. 8A)**

Rule 105

**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.**

## II. PROCEEDINGS IN CHAMBERS

### 9. Disposal of particular matters in chambers (O. 32, r. 9)

The judge may, by any judgment or order made in court in any proceedings, direct that such matters in the proceedings as he may specify shall be disposed of in chambers.

### 10. Subpoena for attendance of witness (O. 32, r. 10)

(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 any master 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.

### 11. Obtaining assistance of experts (O. 32, r. 11)

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.

### 12. Notice of filing, etc. of affidavit (O. 32, r. 12)

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.

### 13. Papers for use of Court, etc. (O. 32, r. 13)

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.

**14. Notes of proceedings in chambers (O. 32, r. 14)**

A note shall be kept of all proceedings in chambers 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.

**15. Adjournment into or from Court (O. 32, r. 15)**

The hearing of any application or other matter in chambers may be adjourned from chambers into court and from court into chambers.

**16. Jurisdiction of the Registrar and master (O. 32, r. 16)**

(1) The Registrar and any master shall have power to hear and determine all interlocutory applications and 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 matters relating to the conditions of admission to bail;**
- (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;
- (f) any other matter or proceeding which by any of these Rules is required to be heard only by a judge.

Rule 106  
Clarification

(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.

(3) The Registrar and any master shall have authority to administer oaths and take affidavits for the purpose of proceedings in the Court.

~~(4) 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.~~

Rule 106  
Clarification

**16A. Interlocutory applications (O. 32, r. 16A)**

Rule 104  
Rec 83, 85 & 86

**(1) A master may –**

- (a) determine an interlocutory application without an oral hearing; or**

(b) adjourn 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 date of the giving of those directions and the date of 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 of costs referred to in subparagraph (c).

(4) Where the determination of the application is adjourned for the 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) Paragraph (4) is subject to a direction given under paragraph (3).

(6) 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.

16B. Court's power to specify consequences of failure to comply with court order on interlocutory application (O. 32, r. 16B)

Rule 104  
Rec 83, 85 & 86

(1) Where the Court makes an order on an interlocutory application before –

(a) a case management summons in the action is taken out under Order 25; or

(b) it gives directions relating to the management of the case under Order 25, rule 2(1)(a), (2)(a) or (4),

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) a case management summons 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 2(1)(a), (2)(a) or (4),

it shall, unless there are special circumstances which render it inexpedient to do so, specify the consequences 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.

**17. Reference of matter to judge (O. 32, r. 17)**

(1) 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.

(2) No appeal shall lie from an order of the Registrar or any master made under paragraph (1).

**18. Power to direct hearing in Court (O. 32, r. 18)**

(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.