

Rules of the High Court (Amendment) Rules 2008

The Rules of the High Court (Cap. 4A)

Order 62 – COSTS

Remarks

COSTS

PRELIMINARY

1. Interpretation (O. 62, r. 1)

(1) In this Order –
“certificate” (證明書) includes allocatur;

(HK) “contentious business” (爭議事務) means business done, whether as a barrister, solicitor or advocate, in or for the purpose of proceedings begun before the Court or before an arbitrator appointed under the Arbitration Ordinance (Cap. 341) not being common form probate business; (10 of 2005 s. 166)

“costs” (訟費) include fees, charges, disbursements, expenses and remuneration;

“the Court” (法院、法庭) means the High Court or any one or more judges thereof, whether sitting in Court or in chambers, the Registrar or assistant registrar or master; (25 of 1998 s. 2)

(HK) “District Court” (地方區域法院) means the District Court established under the provisions of the District Court Ordinance (Cap. 336), and any judge of that court;

Rule 235

“legal representative” (法律代表), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party;

Rule 189
Rec 94-97

(HK) “mentally disordered person” (精神紊亂的人) means a person who is so far disabled in mind or who is so mentally ill or subnormal due to arrested or incomplete development of mind as to render it either necessary or expedient that he, either for his own sake or in the public interest, should be placed and kept under control;

(HK) “non-contentious business” (非爭議事務) means any business done by and as a solicitor which is not contentious business;

“party entitled to be heard on taxation” (有權在訟費評定中獲聆聽的一方) means –

Rule 224
Clarification

(a) a party entitled to payment of costs;

(b) a party who has acknowledged service or taken any part in the

- proceedings which gave rise to the taxation proceedings, and who is directly liable under a costs order made against him;
(c) a person who has given the party entitled to payment of costs and the Registrar written notice that he has a financial interest in the outcome of the taxation; or
(d) a person in respect of whom a direction has been given under rule 21(3);

“taxed costs” (經評定的訟費) means costs taxed in accordance with this Order;

(HK) “taxing master” (訟費評定官) means the Registrar as taxing master.;

“wasted costs order” (虛耗訟費命令) means an order made under section 52A(4) of the Ordinance.

Rule 189
Rec 94-97

(2) In this Order, references to a fund, being a fund out of which costs are to be paid or which is held by a trustee or personal representative, include references to any estate or property whether immovable or personal held for the benefit of any person or class of persons; and references to a fund held by a trustee or personal representative include references to any fund to which he is entitled (whether alone or together with any other person) in that capacity, whether the fund is for the time being in his possession or not.

2. Application (O. 62, r. 2)

(HK)(1) This Order shall apply to all proceedings in the Court, except non-contentious or common form probate proceedings and proceedings in matters of prize.

(2) Where by virtue of any Ordinance the costs of or incidental to any proceedings before an arbitrator or umpire or before a tribunal or other body constituted by or under any Ordinance, not being proceedings in the High Court, are taxable in the Court of First Instance, the following provisions of this Order, that is to say, rule 7(4) ~~and (5), rule 8(6), rules 14 to 16, rule 17(1), rule 18, rule 21 (except paragraph (3)), rules 22 to 26 , rule 8D (except paragraph (4)), rule 8E, rule 9(D)(1) and (4), rules 13 and 13A, rules 14 to 16, rule 17(1), rules 17A and 17B, rule 18, rules 21 (except paragraph (4)), 21A, 21B, 21C and 21D, rules 22 to 26, rule 28A (except paragraphs (4) and (7)), rules 32A and 32B~~ and rules 33 to 35, shall have effect in relation to proceedings for taxation of those costs as they have effect in relation to proceedings for taxation of the costs of or arising out of proceedings in the High Court.

Rule 225
Consequential
Amendment

(2A) Where rule 22 has effect under paragraph (2), a reference to the Court of First Instance in rule 22(9)(a) is to be construed as a reference to the arbitrator, umpire, tribunal or other body, as the case may be.

(3) This Order shall have effect subject to the provisions of the District Court Ordinance (Cap. 336) and to any rules made thereunder and to any other enactment.

Remarks

(4) ~~The powers and discretion of the Court as to costs under section 52A of the Ordinance (which provides that the costs of and incidental to proceedings in the High Court shall be in the discretion of the Court and that the Court shall have full power to determine by whom and to what extent the costs are to be paid)~~ The powers and discretion of the Court as to costs under sections 52A and 52B of the Ordinance and under the enactments relating to the costs of criminal proceedings to which this Order applies shall be exercised subject to and in accordance with this Order.
(25 of 1998 s. 2)

Rule 8
Rec 9

ENTITLEMENT TO COSTS

3. ~~When costs to follow the event~~ Order as to entitlement to costs (O. 62, r. 3)

Rule 220
Rec 122

(1) Subject to the provisions of this Order, no party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the Court.

(2) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings (other than interlocutory proceedings), the Court shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.

(2A) If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any interlocutory proceedings, it may, subject to this Order, order the costs to follow the event or make such other order as it sees fit.

(3) The costs of and occasioned by any amendment made without leave in the writ of summons or any pleading shall be borne by the party making the amendment, unless the Court otherwise orders.

(4) The costs of and occasioned by any application to extend the time fixed by these rules, or any direction or order thereunder, for serving or filing any document or the doing of any other act (including the costs of any order made on the application) shall be borne by the party making the application, unless the Court otherwise orders.

(5) If a party on whom a notice to admit facts is served under Order 27, rule 2, refuses or neglects to admit the facts within 7 days after the service on him of the notice or such longer time as may be allowed by the Court, the costs of proving the facts shall be paid by him, unless the Court otherwise orders.

(6) If a party –
(a) on whom a list of documents is served in pursuance of any provision of Order 24, or

(b) on whom a notice to admit documents is served under Order 27, rule 5, gives notice of non-admission of any of the documents in accordance with Order 27, rule 4(2) or 5(2) as the case may be, the costs of proving that document shall be paid by him, unless the Court otherwise orders.

(7) Where a defendant by notice in writing and without leave discontinues his counterclaim against any party or withdraws any particular claim made by him therein against any party, that party shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim or his costs occasioned by the claim withdrawn, as the case may be, incurred to the time of receipt of the notice of discontinuance or withdrawal.

~~(8) Where a plaintiff accepts money paid into Court by a defendant who counterclaimed against him, then, if the notice of payment given by that defendant stated that he had taken into account and satisfied the cause of action or, as the case may be, all the causes of action in respect of which he counterclaimed, that defendant shall, unless the Court otherwise directs, be entitled to his costs of the counterclaim incurred to the time of receipt of the notice of acceptance by the plaintiff of the money paid into court.~~

Rule 115
Consequential
Amendments

(9) Where any person claiming to be a creditor –
(a) seeks to establish his claim to a debt under any judgment or order in accordance with Order 44, or
(b) comes in to prove his title, debt or claim in relation to a company in pursuance of any such notice as is mentioned in Order 102, rule 13, he shall, if his claim succeeds, be entitled to his costs incurred in establishing it, unless the Court otherwise directs, and, if his claim or any part of it fails, may be ordered to pay the costs of any person incurred in opposing it.

(10) Where a claimant is entitled to costs under paragraph (9), the amount of the costs shall be fixed by the Court unless it thinks fit to direct taxation, and the amount fixed or allowed shall be added to the claimant's debt.

(11) Where a claimant (other than a person claiming to be a creditor) having established a claim to be entitled under a judgment or order in accordance with Order 44 has been served with notice of the judgment or order pursuant to rule 3 or 15 of that Order, he shall, if he acknowledges service of the notice be entitled as part of his costs of action (if allowed) to costs incurred in establishing his claim, unless the Court otherwise directs; and where such a claimant fails to establish his claim or any part of it he may be ordered to pay the costs of any person incurred in opposing it.

(12) Where an application is made in accordance with Order 24, rule 7A or Order 29, rule 7A, for an order under section 41, 42 or 44 of the Ordinance, the person against whom the order is sought shall be entitled, unless the Court otherwise directs, to his costs of and incidental to the application and of complying with any order made thereon and he may, after giving the applicant 7 days' notice of his intention to do so, tax such costs and, if they are not paid within 4 days after taxation, sign judgment for them.

4. Stage of proceedings at which costs to be dealt with (O. 62, r. 4)

(1) Costs may be dealt with by the Court at any stage of the proceedings or after the conclusion of the proceedings; and any order of the Court for the payment of any costs may, if the Court thinks fit, and the person against whom the order is made is not an assisted person, require the costs to be paid forthwith notwithstanding that the proceedings have not been concluded.

(2) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the Court of First Instance from any other court **or tribunal**, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court **or tribunal** ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed. (25 of 1998 s. 2)

Rule 236

(3) Where under paragraph (2) the Court makes an order as to the costs of any proceedings before another court, rules 28, 31 and 32 shall not apply in relation to those costs, but, except in relation to costs of proceedings transferred or removed from the ~~District Court~~ **District Court or the Lands Tribunal**, the order –

Rule 234
Logical
Extension

(a) shall specify the amount of the costs to be allowed, or

(b) shall direct that the costs shall be assessed by the court **or tribunal** before which the proceedings took place or taxed by an officer of that court **or tribunal**, or

Rule 236

(c) if the order is made on appeal from the ~~District Court~~ **District Court or the Lands Tribunal** in relation to proceedings in that court **or tribunal**, may direct that the costs shall be taxed by the taxing master.

5. Special matters to be taken into account in exercising discretion

(O. 62, r. 5)

(1) The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account –

(aa) the underlying objectives set out in Order 1A, rule 1;

Rule 221
Rec 122

(a) any such offer of contribution as is mentioned in Order 16, rule 10, which is brought to its attention in pursuance of a reserved right to do so;

(b) any payment of money into court and the amount of such payment;

(c) any written offer made under Order 33, rule 4A(2); ~~and~~

~~(d) any written offer made under Order 22, rule 14, provided that the Court shall not take such an 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 Order 22.~~

Rule 116
Consequential
Amendment

(d) any written offer which is expressed to be “without prejudice save as to costs” and which relates to any issue in the proceedings, but

the Court may not take the 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 sanctioned payment or a sanctioned offer under Order 22;

- (e) **the conduct of all parties;**
- (f) **whether a party has succeeded on part of his case, even if he has not been wholly successful; and**
- (g) **any admissible offer to settle made by a party which is drawn to the Court's attention.**

Rule 221
Rec 122

(2) For the purpose of paragraph (1)(e), the conduct of the parties includes –

- (a) **whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;**
- (b) **the manner in which a party has pursued or defended his case or a particular allegation or issue;**
- (c) **whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim; and**
- (d) **conduct before, as well as during, the proceedings.**

6. Restriction of discretion to order costs (O. 62, r. 6)

(1) Notwithstanding anything in this Order or in section 52A of the Ordinance –

- (c) unless the Court is of opinion that there was no reasonable ground for opposing the will, no order shall be made for the costs of the other side to be paid by the party opposing a will in a probate action who has given notice with his defence to the party setting up the will that he merely insists upon the will being proved in solemn form of law and only intends to cross-examine the witnesses produced in support of the will.

(2) Where a person is or has been a party to any proceedings in the capacity of trustee, personal representative or mortgagee, he shall, unless the Court otherwise orders, be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative or the mortgaged property, as the case may be; and the Court may otherwise order only on the ground that the trustee, personal representative or mortgagee has acted unreasonably or, in the case of a trustee or personal representative, has in substance acted for his own benefit rather than for the benefit of the fund.

6A. Costs orders in favour of or against non-parties (O. 62, r. 6A)

(1) Where the Court is considering whether to exercise its power under section 52A or 52B of the Ordinance to make a costs order in favour of or against a person who is not a party to the relevant proceedings –

- (a) **that person must be joined as a party to the proceedings for the purposes of costs only; and**

Rule 260
Steering
Committee's
Recommendation

(b) that person must be given a reasonable opportunity to attend a hearing at which the Court shall consider the matter further.

(2) This rule does not apply where the Court is considering whether to make –

(a) a wasted costs order; or

(b) an order under section 41 or 42 of the Ordinance.

7. Costs arising from misconduct or neglect (O. 62, r. 7)

(1) Where in any cause or matter any thing is done or omission is made improperly or unnecessarily by or on behalf of a party, the Court may direct that any costs to that party in respect of it shall not be allowed to him and that any costs occasioned by it to other parties shall be paid by him to them.

(2) Without prejudice to the generality of paragraph (1), the Court shall for the purpose of that paragraph have regard in particular to the following matters, that is to say –

(aa) the underlying objectives set out in Order 1A, rule 1;

(a) the omission to do any thing the doing of which would have been calculated to save costs;

(b) the doing of any thing calculated to occasion, or in a manner or at a time calculated to occasion, unnecessary costs;

(c) any unnecessary delay in the proceedings.

(3) The Court may, instead of giving a direction under paragraph (1) in relation to any thing done or omission made, direct the taxing master to inquire into it and, if it appears to him that such a direction as aforesaid should have been given in relation to it, to act as if the appropriate direction had been given.

(4) The taxing master shall, in relation to any thing done or omission made in the course of taxation ~~and in relation to any failure to procure taxation~~, have the same power to disallow or to award costs as the Court has under paragraph (1) to direct that costs shall be disallowed to or paid by any party.

~~(5) Where a party entitled to costs fails to procure or fails to proceed with taxation, the taxing master in order to prevent any other parties being prejudiced by that failure, may allow the party so entitled a nominal or other sum for costs or may certify the failure and the costs of the other parties.~~

~~8. Personal liability of solicitor for costs (O. 62, r. 8)~~

~~(1) Subject to the following provisions of this rule, where in any proceedings costs are incurred improperly or without reasonable cause or are wasted by undue delay or by any other misconduct or default, the Court may make against any solicitor whom it considers to be responsible whether personally or through a servant or agent an order~~

~~(a) disallowing the costs as between the solicitor and his client; and~~

Rule 227
Rec 122

Rule 237
Tidying up

Rule 190
Rec 94-97

- ~~(b) — directing the solicitor to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or~~
- ~~(c) — directing the solicitor personally to indemnify such other parties against costs payable by them.~~

~~(2) — No order under this rule shall be made against a solicitor unless he has been given a reasonable opportunity to appear before the Court and show cause why the order should not be made except where any proceeding in Court or in chambers cannot conveniently proceed, and fails or is adjourned without useful progress being made,—~~

- ~~(a) — because of the failure of the solicitor to attend in person or by a proper representative; or~~
- ~~(b) — because of the failure of the solicitor to deliver any document for the use of the Court which ought to have been delivered or to be prepared with any proper evidence or account or otherwise to proceed.~~

~~(3) — Before making an order under this rule the Court may, if it thinks fit refer the matter (except in the case of undue delay in the drawing up of, or in any proceedings under, an order or judgment as to which the Registrar has reported to the Court) to a taxing master for inquiry and report and direct the solicitor in the first place to show cause before the taxing master.~~

~~(4) — The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs. (L.N. 375 of 1991)~~

~~(5) — The Court may direct that notice of any proceedings or order against a solicitor under this rule shall be given to his client in such manner as may be specified in the direction.~~

~~(6) — Where in any proceedings before a taxing master the solicitor representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing master may direct the solicitor to pay costs personally to any of the parties to those proceedings, and where any solicitor fails to leave his bill of costs [with the documents required by this Order] for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing master otherwise directs, the solicitor shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.~~

~~(7) — If, on the taxation of costs to be paid out of a fund other than funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap. 91), one sixth or more of the amount of the bill for those costs is taxed off, the solicitor whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.~~

~~(8) — In any proceeding in which the party by whom the fees prescribed by any enactment relating to court fees are payable is represented by a solicitor, if the fees or any part of the fees payable under the said enactment are not paid as therein prescribed, the Court may, on the application of the Official Solicitor by summons,~~

~~order the solicitor personally to pay that amount in the manner so prescribed and to pay the costs of the Official Solicitor of the application. (L.N. 375 of 1991)~~

8. Personal liability of legal representative for costs – wasted costs order (O. 62, r. 8)

Rule 190
Rec 94-97

(1) The Court may make a wasted costs order against a legal representative, only if –

- (a) the legal representative, whether personally or through his employee or agent, has caused a party to incur wasted costs as defined in section 52A(6) of the Ordinance; and**
- (b) it is just in all the circumstances to order the legal representative to compensate the party for the whole or part of those costs.**

(2) A wasted costs order may –

- (a) disallow the costs as between the legal representative and his client; and**
- (b) direct the legal representative to –**
 - (i) repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or**
 - (ii) indemnify other parties against costs incurred by them.**

(3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make the order.

(4) When the Court makes a wasted costs order, it shall –

- (a) specify the amount to be disallowed or paid; or**
- (b) direct a master to decide the amount of costs to be disallowed or paid.**

(5) The Court may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.

(6) The Court may direct that notice must be given to the legal representative's client, in such manner as the Court may direct –

- (a) of any proceedings under this rule; or**
- (b) of any order made under this rule against his legal representative.**

(7) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.

(8) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.

(9) The Court may, if it thinks fit, direct or authorize the Official Solicitor to attend and take part in any proceedings or inquiry under this rule, and may make such order as it thinks fit as to the payment of his costs.

Remarks

Rule 190
Rec 94-97

8A. Court may make wasted costs order on its own motion or on application (O. 62, r. 8A)

(1) The Court may make a wasted costs order against a legal representative on its own motion.

(2) A party may apply for a wasted costs order –

(a) orally in the course of a hearing; or

(b) by making an interlocutory application by summons.

(3) Where a party applies for a wasted costs order by making an interlocutory application by summons, the party shall serve the summons on –

(a) the legal representative concerned;

(b) any party represented by that legal representative; and

(c) any other person as may be directed by the Court,

not less than 2 clear days before the day specified in the summons for its hearing.

(4) An application for a wasted costs order shall not be made or dealt with until the conclusion of the proceedings to which the order relates, unless the Court is satisfied that there is reasonable cause for the application to be made or dealt with before the conclusion of the proceedings.

(5) Unless there are exceptional circumstances making it inappropriate to do so, an application for a wasted costs order shall be heard by the judge or master who conducted the proceedings to which the order relates.

8B. Stages of considering whether to make a wasted costs order (O. 62, r. 8B)

Rule 190
Rec 94-97

(1) The Court shall consider whether to make a wasted costs order in 2 stages –

(a) in the first stage, the Court must be satisfied that –

(i) it has before it evidence or other material which, if unanswered, would be likely to lead to a wasted costs order being made; and

(ii) the wasted costs proceedings are justified notwithstanding the likely costs involved; and

(b) in the second stage (even if the Court is satisfied under subparagraph (a)), the Court shall consider, after giving the legal representative an opportunity to give reasons why the Court should not make a wasted costs order, whether it is appropriate to make the order in accordance with rule 8.

(2) On an application for a wasted costs order, the Court may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if it is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the Court should not make a wasted costs order. In other cases the Court shall adjourn the hearing before

proceeding to the second stage.

(3) On an application for a wasted costs order, any evidence in support must identify –

- (a) what the legal representative is alleged to have done or failed to do; and
- (b) the costs that he may be ordered to pay or which are sought against him.

8C. Application for wasted costs order not to be used as means of intimidation (O. 62, r. 8C)

Rule 190
Rec 94-97

(1) A party shall not by himself or by another person on his behalf threaten another party or any of that party's legal representatives with an application for a wasted costs order with a view to coercing or intimidating either of them to do or refrain from doing anything.

(2) A party shall not indicate to another party or any of that party's legal representatives that he intends to apply for a wasted costs order unless he is satisfied that he is able to –

- (a) particularize the behaviour of the legal representative from which the wasted costs concerned are alleged to result; and
- (b) identify the evidence or other materials on which he relies in support of the allegation.

8D. Personal liability of legal representative for costs – supplementary provisions (O. 62, r. 8D)

Rule 190
Rec 94-97

(1) Where in any proceedings before a taxing master, the legal representative representing any party is guilty of neglect or delay or puts any other party to any unnecessary expense in relation to those proceedings, the taxing master may direct the legal representative personally to pay costs to any of the parties to those proceedings.

(2) Where any legal representative fails to file a bill of costs (with the documents required by this Order) for taxation within the time fixed by or under this Order or otherwise delays or impedes the taxation, then, unless the taxing master otherwise directs, the legal representative shall not be allowed the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation.

(3) If, on the taxation of costs to be paid out of a fund other than funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap. 91), one-sixth or more of the amount of the bill for those costs is taxed off, the legal representative whose bill it is shall not be allowed the fees to which he would otherwise be entitled for drawing the bill and for attending the taxation.

(4) In any proceedings in which the party by whom the fees prescribed by any enactment relating to court fees are payable is represented by a legal representative, if the fees or any part of the fees payable under that enactment are not paid as prescribed, the Court may, on the application of the Official Solicitor by summons, order the legal representative personally to –

- (a) pay that amount in the manner so prescribed; and
- (b) pay the costs of the Official Solicitor of the application.

(5) A legal representative shall not be directed or ordered under this rule to pay any costs or fees, nor shall he be disallowed under this rule any fees, unless he has been given a reasonable opportunity to give reasons why –

- (a) the direction or order should not be made; or
- (b) he should not be disallowed the fees.

(6) When a taxing master makes a direction under paragraph (1), he –

- (a) shall specify the amount to be paid; and
- (b) may give directions about the procedure that should be followed in each case in order to ensure that the issues are dealt with in a way that is fair and is as simple and summary as the circumstances permit.

(7) The Court or a taxing master may direct that notice must be given to the legal representative's client, in such manner as the Court or the taxing master may direct, of any direction or order made under this rule against his legal representative.

8E. Stages of considering whether to make a direction under rule 8D(1) (O. 62, r. 8E)

Rule 190
Rec 94-97

(1) The taxing master shall consider whether to make a direction under rule 8D(1) in 2 stages –

- (a) in the first stage, the taxing master must be satisfied that –
 - (i) he has before him evidence or other material which, if unanswered, would be likely to lead to a direction under rule 8D(1) being made; and
 - (ii) the direction is justified notwithstanding the likely costs involved; and
- (b) in the second stage (even if the taxing master is satisfied under sub-paragraph (a)), the taxing master shall consider, after giving the legal representative an opportunity to give reasons why the taxing master should not make the direction, whether it is appropriate to make the direction.

(2) On an application for a direction under rule 8D(1), the taxing master may proceed to the second stage described in paragraph (1)(b) without first adjourning the hearing if he is satisfied that the legal representative has already had a reasonable opportunity to give reasons why the taxing master should not make the direction. In other cases the taxing master shall adjourn the hearing before proceeding to the second stage.

(3) On an application for a direction under rule 8D(1), any evidence in support must identify –

(a) what the legal representative is alleged to have done or failed to do; and

(b) the costs that he may be directed to pay or which are sought against him.

9. Fractional or gross sums in place of taxed costs Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications

(O. 62, r. 9)

Rule 186
Logical
Extension

(1) Subject to this order, where by or under these rules or any order or direction of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.

(2) Paragraph (1) shall not apply to costs which by or under any order or direction of the Court –

(a) are to be paid to a receiver appointed by the Court of First Instance under section 21L of the Ordinance in respect of his remuneration, disbursements or expenses; or (25 of 1998 s. 2)

(b) are to be assessed or settled by a taxing master, but rules 28, 28A, 31 and 32 shall apply in relation to the assessment or settlement by a taxing master of costs which are to be assessed or settled as aforesaid as they apply in relation to the taxation of costs by a taxing master.

(3) Where a writ in an action is endorsed in accordance with Order 6, rule 2(1)(b), and judgment is entered on failure to give notice of intention to defend or in default of defence for the amount claimed for costs (whether alone or together with any other amount claimed), paragraph (1) of this rule shall not apply to those costs, but if the amount claimed for costs as aforesaid is paid in accordance with the indorsement (or is accepted by the plaintiff as if so paid) the defendant shall nevertheless be entitled to have those costs taxed.

(4) The Court in awarding costs to any person may direct that, instead of taxed costs, that person shall be entitled –

(a) to a proportion specified in the direction of the taxed costs or to the taxed costs from or up to a stage of the proceedings so specified; or

~~(b) to a gross sum so specified in lieu of taxed costs, but where the person entitled to such a gross sum is a litigant in person, rule 28A shall apply with the necessary modifications to the assessment of the gross sum as it applies to the taxation of the costs of a litigant in person.~~

(b) to a sum of money summarily assessed in lieu of taxed costs.

Rule 186
Logical
Extension

(5) This rule does not apply to costs of an interlocutory application.

9A. ~~Interim payment of costs (O. 62, r. 9A)~~

~~(1) If a party makes or resists an application at any stage of proceedings before the Court, the Court may~~

- ~~(a) if the Court considers the application or resistance to the application, as the case may be, to be frivolous or vexatious; or~~
- ~~(b) for any other reason that the Court in the circumstances of the case considers just,~~

~~when ordering costs against that party in respect of the application, order that party to pay forthwith to any other party to the application an amount which in the opinion of the Court approximates the costs that would be allowed on taxation.~~

~~(2) Upon taxation~~

- ~~(a) if the taxed costs in respect of the application equal the amount paid pursuant to an order made under paragraph (1), the taxing master shall direct that no further amount is payable in respect of the taxed costs;~~
- ~~(b) if the taxed costs in respect of the application exceed the amount paid pursuant to an order made under paragraph (1), the taxing master may
 - ~~(i) direct the party against whom the order was made to pay the shortfall; or~~
 - ~~(ii) set off the shortfall against any other costs to which the party against whom the order was made is entitled and direct payment of any balance;~~~~
- ~~(c) if the amount paid pursuant to an order made under paragraph (1) exceeds the taxed costs in respect of the application, the taxing master may
 - ~~(i) direct the party in whose favour the order was made to pay the difference; or~~
 - ~~(ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.~~~~

(L.N. 129 of 2000)

9A. Summary assessment of costs of interlocutory application (O. 62, r. 9A)

(1) Where the Court has determined an interlocutory application at any stage of proceedings and orders a party to pay costs in respect of the interlocutory application to any other party, it may, if it considers it appropriate to do so but subject to rule 9C –

- (a) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs;**
- (b) make a summary assessment of the costs by ordering payment of a sum of money to that other party in lieu of taxed costs but subject to the right of either party to have the costs taxed pursuant to paragraph (2); or**
- (c) order that the costs be taxed in accordance with this Order.**

(2) Where the Court has made an order under paragraph (1)(b), either party to the interlocutory application is entitled to have the costs in respect of

the interlocutory application taxed in accordance with this Order.

(3) Upon taxation pursuant to paragraph (2) –

- (a) if the amount of the taxed costs in respect of the interlocutory application equals the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall direct that no further amount is payable in respect of the taxed costs;
- (b) if the amount of the taxed costs in respect of the interlocutory application exceeds the amount paid pursuant to an order made under paragraph (1)(b), the taxing master may –
 - (i) direct the party against whom the order was made to pay the shortfall; or
 - (ii) set off the shortfall against any other costs to which the party against whom the order was made is entitled and direct payment of any balance; and
- (c) if the amount paid pursuant to an order made under paragraph (1)(b) exceeds the amount of the taxed costs in respect of the interlocutory application, the taxing master may –
 - (i) direct the party in whose favour the order was made to pay the difference; or
 - (ii) set off the difference against any other costs to which the party in whose favour the order was made is entitled and direct payment of any balance.

(4) Where –

- (a) the amount paid pursuant to an order made under paragraph (1)(b) equals or exceeds the amount of the taxed costs in respect of the interlocutory application; or
- (b) the taxed costs in respect of the interlocutory application do not materially exceed the amount paid pursuant to an order made under paragraph (1)(b),

the taxing master may make such order as to the costs of the taxation or such other order as he considers appropriate.

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to –

- (a) the amount by which the taxed costs exceed the amount paid pursuant to the order made under paragraph (1)(b); and
- (b) whether the exceeded amount is disproportionate to the costs of the taxation.

9B. Time for complying with direction or order for summary assessment (O. 62, r. 9B)

Rule 187
Rec 88-89, 92

(1) A party shall comply with a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) for payment of a sum of money –

- (a) within 14 days of the date of the direction or order; or
- (b) by such date as the Court may specify.

(2) Paragraph (1) does not apply if the party is an aided person.

9C. When summary assessment not allowed (O. 62, r. 9C)

Rule 187
Rec 88-89, 92

(1) No direction or order may be made under rule 9(4)(b) or 9A(1)(a) or (b) for the payment of a sum of money if –

- (a) the paying party shows substantial grounds for disputing the sum claimed for costs that cannot be dealt with summarily;
- (b) the receiving party is an aided person, and the legal representative acting for the receiving party has not waived the right to any further sum of money in respect of the costs of the interlocutory application; or
- (c) the receiving party is a person under disability as defined in Order 80, rule 1, and the legal representative (or the next friend or guardian and litem) acting for the person under disability has not waived the right to any further sum of money in respect of the costs of the interlocutory application.

(2) In this rule –

“paying party” (支付方) means the party against whom a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) is made;

“receiving party” (收取方) means the party in whose favour a direction or order under rule 9(4)(b) or 9A(1)(a) or (b) is made.

9D. When to tax costs (O. 62, r. 9D)

Rule 187
Rec 88-89, 92

(1) Subject to paragraphs (2) and (4), the costs of any proceedings shall not be taxed until the conclusion of the action.

(2) If it appears to the Court when making a costs order that all or any part of the costs ought to be taxed at an earlier stage it may order accordingly.

(3) No order may be made under paragraph (2) in a case where the person against whom the costs order is made is an aided person.

(4) Where it appears to a taxing master that there is no likelihood of any further order being made in a cause or matter, he may order the person entitled to payment of the costs of any interlocutory proceedings which have taken place to commence taxation proceedings in accordance with rule 21.

10. When a party may sign judgment for costs without an order

(O. 62, r. 10)

(1) Where a plaintiff by notice in writing and without leave either wholly discontinues his action against any defendant or withdraws any particular claim made or question raised by him therein as against any defendant, the defendant may tax his costs of the action or his costs occasioned by the matter withdrawn, as the case may be, and, if the taxed costs are not paid within 4 days after taxation, may sign judgment for them. (See App. A, Form No. 50)

~~(2) — Where a plaintiff by notice in writing in accordance with Order 22, rule 3(1), accepts money paid into court in satisfaction of the cause of action or of all the causes of action in respect of which he claims, or accepts money paid in satisfaction of one or more specified causes of action and gives notice that he abandons the others, he shall be entitled to his costs of the action incurred up to the time of giving notice of acceptance. (L.N. 403 of 1992)~~

Rule 117
Consequential
Amendment

~~(3) — Where a plaintiff in an action for libel or slander against several defendants sued jointly accepts money paid into court by one of the defendants, he may, subject to paragraph (4), tax his costs and sign judgment for them against that defendant in accordance with paragraph (2). (See App. A, Form No. 51)~~

~~(4) — Where money paid into court in an action is accepted by the plaintiff after the trial or hearing has begun, the plaintiff shall not be entitled to tax his costs under paragraph (2) or (3).~~

(5) ~~In each of the circumstances mentioned in this rule~~ **in this rule, Order 22, rules 20 and 21 and Order 25, rule 1C(6)** an order for costs shall be deemed to have been made to the effect ~~respectively~~ described and, for the purposes of section 49 of the Ordinance, the order shall be deemed to have been entered up on the date on which the event which gave rise to the entitlement to costs occurred. (L.N. 403 of 1992)

11. When order for taxation of costs not required (O. 62, r. 11)

(1) Where an action, petition or summons is dismissed with costs, or a motion is refused with costs, or an order of the Court directs the payment of any costs, or any party is entitled under rule 10 to tax his costs, no order directing the taxation of those costs need be made.

(2) Where a summons is taken out to set aside with costs any proceeding on the ground of irregularity and the summons is dismissed but no direction is given as to costs, the summons is to be taken as having been dismissed with costs.

Remarks

11A. Commencement of costs-only proceedings (O. 62, r. 11A)

Rule 9
Rec 9

(1) Proceedings under section 52B(2) of the Ordinance may be commenced by originating summons in Form No. 10 in Appendix A.

(2) The originating summons must be accompanied by –

- (a) an affidavit exhibiting the agreement referred to in section 52B(1) of the Ordinance; and**
- (b) the plaintiff's bill of costs or statement of costs.**

(3) An acknowledgment of service of the originating summons must be in Form No. 15A in Appendix A.

(4) A master may make a summary assessment of or an order for taxation of the costs that are the subject matter of the proceedings commenced in accordance with paragraph (1).

(5) Orders 13A, 22 and 27 and Order 28, rules 1A, 4(3) to (5) and 7 to 9 do not apply in relation to the proceedings commenced in accordance with paragraph (1) unless otherwise directed by the Court.

POWERS OF TAXING OFFICERS

12. Powers of taxing masters to tax costs (O. 62, r. 12)

(1) A taxing master shall have power to tax –

- (a) the ~~costs of or arising out of any cause or matter~~ **costs of or incidental to any proceedings** in the High Court; (25 of 1998 s. 2)
 - (aa) the costs that are the subject matter of the proceedings commenced in accordance with rule 11A(1);**
- (b) the costs directed by an award made on a reference to arbitration under any enactment or pursuant to an arbitration agreement to be paid; and
- (c) any other costs the taxation of which is directed by an order of the Court.

Rule 10
Rec 9

13. Powers of certain judicial clerks to tax costs (O. 62, r. 13)

(HK)(1) A Chief Judicial Clerk shall have power to transact all such business and exercise all such authority as under ~~paragraph (4) of rule 21~~ **rule 21B** of this Order may be transacted and exercised by the ~~Registrar~~ **taxing master** and to issue a certificate for any costs taxed by him.

Rule 226
Steering
Committee's
Recommendation

(1A) Paragraph (1) only applies if the amount of the bill of costs does not exceed the sum of \$200,000.

(2) Paragraph (1) shall not be taken as empowering a Chief Judicial Clerk to tax any costs ~~in respect of which an appointment to tax has been given~~ **the taxation of**

which is set down for hearing under rule 21B(4) or 21C(1).

(3) In exercising the powers conferred on him by this Order, a Chief Judicial Clerk shall comply with any directions given to him by a taxing master.

(L.N. 343 of 1989)

13A. Taxing master may give directions (O. 62, r. 13A)

Rule 229
Rec 135-136

(1) A taxing master may give directions –

- (a) for the just and expeditious disposal of the taxation of a bill of costs; and**
- (b) for saving the costs of taxation.**

(2) Without limiting the generality of paragraph (1), a taxing master may give directions as to –

- (a) the form and contents of a bill of costs;**
- (b) the filing of papers and vouchers;**
- (c) the manner in which –**
 - (i) any objections to a bill of costs may be raised; and**
 - (ii) any reply to those objections may be made; and**
- (d) the steps to be taken or things to be done at any stage of the taxation proceedings.**

14. Supplementary powers of taxing masters (O. 62, r. 14)

A taxing master may, in the discharge of his functions with respect to the taxation of costs –

- (a) take an account of any dealing in money made in connection with the payment of the costs being taxed, if the Court so directs;
- (b) require any party represented jointly with any other party in any proceedings before him to be separately represented;
- (c) examine any witness in those proceedings;
- (d) direct the production of any document which may be relevant in connection with those proceedings;
- (e) correct any clerical mistake in any certificate or order, or any error arising therein from any accidental slip or omission.

15. Disposal of business by one taxing master for another (O. 62, r. 15)

(1) If, apart from this paragraph, a taxing master has power to tax any costs, the taxation of which has been assigned to some other taxing master, he may tax those costs and if, apart from this paragraph, he has power to issue a certificate for the taxed costs he shall issue a certificate for them.

(2) Any taxing master may assist any other taxing master in the taxation of any costs the taxation of which has been assigned to that other officer.

(3) On an application in that behalf made by a party to any cause or matter, a

taxing master may, and if the circumstances require it shall, hear and dispose of any application in the cause or matter on behalf of the taxing master by whom the application would otherwise be heard.

16. Extension etc., of time (O. 62, r. 16)

- (1) A taxing master may –
 - (a) extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceedings before that master;
 - (b) extend the period provided by rule 33(2) beyond the signing of the taxing officer's certificate by setting the certificate aside;
 - (c) where no period is specified by or under this Order or by the Court for the doing of anything in or in connection with such proceedings, specify the period within which the thing is to be done.
- (2) Where an order of the Court specifies a period within which anything is to be done by or before a taxing master, then unless the Court otherwise directs, the taxing master may from time to time extend the period so specified on such terms (if any) as he thinks just.
- (3) A taxing master may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

17. Interim certificates (O. 62, r. 17)

- (1) A taxing master may from time to time in the course of the taxation of any costs by him issue an interim certificate for any part of those costs which has been taxed.
- (2) If, in the course of the taxation of a solicitor's bill to his own client, it appears to the taxing master that in any event the solicitor will be liable in connection with that bill to pay money to the client, he may from time to time issue an interim certificate specifying an amount which in his opinion is payable by the solicitor to his client.
- (3) On the filing of a certificate issued under paragraph (2), the Court may order the amount specified therein to be paid forthwith to the client or into court.

17A. Final certificate (O. 62, r. 17A)

Rule 240
Clarification

(1) A taxing master shall, after the conclusion of taxation proceedings before him, issue a final certificate specifying the amount of taxed costs and the amount of money payable under rule 32B.

(2) A taxing master shall not issue a final certificate unless the period within

which an application for review of his decision may be made under rule 33(2) has expired.

(3) A taxing master may set aside a final certificate for good reasons and on such terms as he thinks fit.

17B. Taxing master may set aside his own decision (O. 62, r. 17B)

Rule 240
Clarification

If a party entitled to be heard on taxation fails to raise any objection to a bill of costs or to appear at a hearing set down under rule 21B(4) or 21C(1), a decision of a taxing master made against that party may be set aside or varied by the taxing master for good reasons and on such terms as he thinks fit.

18. Power of taxing master where party liable to be paid and to pay costs (O. 62, r. 18)

Where a party entitled to be paid costs is also liable to pay costs, the taxing master may –

- (a) tax the costs which that party is liable to pay and set off the amount allowed against the amount he is entitled to be paid and direct payment of any balance, or
- (b) delay the issue of a certificate for the costs he is entitled to be paid until he has paid or tendered the amount he is liable to pay.

19. Taxation of bill of costs comprised in account (O. 62, r. 19)

(1) Where the Court directs an account to be taken and the account consists in part of a bill of costs, the Court may direct a taxing master to tax those costs and the taxing master shall tax the costs in accordance with the direction and shall return the bill of costs, after taxation thereof, together with his report thereon to the Court.

(2) A taxing master taxing a bill of costs in accordance with a direction under this rule shall have the same powers, and the same fees shall be payable in connection with the taxation, as if an order for taxation of the costs had been made by the Court.

PROCEDURE ON TAXATION

~~21. Mode of beginning proceedings for taxation (O. 62, r. 21)~~

Rule 227
Rec 135

~~(HK)(1) A party entitled to require any costs to be taxed shall file in the Court his bill of costs and shall obtain from the taxing master an appointment to tax.~~

~~(HK)(2) Not less than 7 days' notice of such appointment to tax together with a~~

~~copy of the bill of costs shall be served by such person on every person entitled to be heard on taxation.~~

~~(HK)(3) Except where an order for the taxation of the bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap. 159) at the instance of the solicitor, it shall not be necessary for a copy of the bill of costs or of the notice of appointment to tax to be sent to any party who has not acknowledged service in the proceedings which gave rise to the taxation.~~

~~(HK)(4) In proceedings for the taxation of costs of, or arising out of, a cause or matter in which the amount of the bill of costs does not exceed the sum of \$100,000, the taxing master may by notice inform the party commencing the proceedings for taxation the amount which the taxing master proposes to allow in respect of the costs to be taxed and further the taxing master shall not give any notice under paragraph (2) unless, within 14 days after serving notice of the amount he proposes to allow, any person entitled to be heard on taxation applies to the taxing master for an appointment to tax. (L.N. 343 of 1989; L.N. 275 of 1998)~~

~~(HK)(5) A party must, when he files his bill of costs, deposit with the Court an amount equivalent to the taxing fee which would be payable if the bill were to be allowed in full. When the taxing master signs a certificate, the balance of the sum so deposited, if any, after deducting the prescribed taxing fee, shall be repaid to the party who deposited such amount.~~

~~(HK)(6) If a bill of costs is withdrawn less than 7 days before the appointment for taxation, a fee shall be payable by the party who withdraws the bill. (L.N. 343 of 1989)~~

~~(HK)(7) The fee payable under paragraph (6) shall be deducted by the Court from the amount deposited under paragraph (5). (L.N. 343 of 1989)~~

21. Mode of commencing proceedings for taxation (O. 62, r. 21)

(1) A party entitled to payment of the costs of any action to be taxed may commence proceedings for the taxation of those costs by filing in the Court –

- (a) a notice of commencement of taxation; and**
- (b) his bill of costs.**

(2) The party shall serve a copy of the notice of commencement of taxation and of the bill of costs on every other party entitled to be heard on taxation within 7 days after the notice and the bill of costs were filed in the Court.

(3) The Court may give directions as to the service of a copy of the notice of commencement of taxation and of the bill of costs on any other person who may have a financial interest in the outcome of the taxation.

(4) It is not necessary for a copy of the notice of commencement of taxation or of the bill of costs to be served on any party who has not acknowledged service in the proceedings which gave rise to the taxation, except where –

- (a) an order for the taxation of the bill of costs of a solicitor is made under section 67 of the Legal Practitioners Ordinance (Cap. 159) at the instance of the solicitor; or
- (b) the Court otherwise orders.

(5) A party shall, when he files a notice of commencement of taxation, pay to the Court a prescribed taxing fee.

(6) A person who has been served with a copy of the notice of commencement of taxation and of the bill of costs pursuant to paragraph (3) shall, within 7 days of the service, give notice in writing to the taxing master and all other parties entitled to be heard on taxation, stating –

- (a) his financial interest in the outcome of the taxation; and
- (b) whether he intends to take part in the taxation proceedings.

(7) A person who fails to comply with paragraph (6) is not entitled to –

- (a) receive from the Registrar or from any other party entitled to be heard on taxation any notice, application or other document relating to the taxation; and
- (b) take part in the taxation proceedings.

21A. Application for taxation to be set down (O. 62, r. 21A)

Rule 227
Rec 134

(1) Upon compliance with the directions given by a taxing master under rule 13A relating to the steps to be taken or things to be done before the taxation is set down, the party who has commenced taxation proceedings under rule 21 may apply to the taxing master for setting down the taxation.

(2) The party shall, within 7 days after making an application under paragraph (1), serve a copy of the application on every other party entitled to be heard on taxation.

(3) A taxing master may refuse to proceed with taxation if he is of the opinion that any direction referred to in paragraph (1) has not been complied with.

21B. Provisional taxation (O. 62, r. 21B)

Rule 227
Rec 134

(1) Unless the taxation is set down for hearing under rule 21C(1), the taxing master may –

- (a) tax the bill of costs without a hearing; and
- (b) make an order nisi as to –
 - (i) the amount which he allows in respect of the whole or part of the bill of costs; and
 - (ii) the costs of the taxation.

(2) Where the taxing master has taxed the bill of costs without a hearing and made an order nisi under paragraph (1), the party who has applied for

setting down the taxation under rule 21A(1) shall serve a copy of the order nisi on every other party entitled to be heard on taxation.

(3) The order nisi becomes absolute 14 days after it is made unless a party entitled to be heard on taxation applies to the taxing master within the 14-day period for a hearing.

(4) The taxing master shall set down the taxation for hearing upon application made by a party under paragraph (3) and that party shall serve a notice of the hearing on every other party entitled to be heard on taxation.

(5) The taxing master may order that party to pay any costs of the hearing if the taxed costs do not materially exceed the amount allowed under paragraph (1)(b)(i).

(6) In determining whether the taxed costs materially exceed the amount allowed under paragraph (1)(b)(i), the taxing master shall, in addition to any other matter that he may consider relevant, have regard to –

- (a) the amount by which the costs taxed at the hearing exceed the amount allowed under paragraph (1)(b)(i); and
- (b) whether the exceeded amount is disproportionate to the costs of the hearing.

21C. Taxation with a hearing (O. 62, r. 21C)

Rule 227
Rec 134

(1) Where the taxing master is satisfied that there is a good reason to do so, he may, either of his own motion or on application by a party entitled to be heard on taxation, set down for hearing the taxation of the whole or part of the bill of costs.

(2) Upon notification by the taxing master of the date of hearing, the party who applied for setting down shall serve a notice of the hearing on every other party entitled to be heard on taxation within 7 days after the notification.

21D. Withdrawal of bill of costs (O. 62, r. 21D)

Rule 227
Steering
Committee's
Recommendation

(1) A party who has filed a bill of costs shall pay the prescribed fee to the Court if he withdraws the bill of costs within 7 days after his application to the taxing master for setting down the taxation under rule 21A(1) is made.

(2) The Court shall deduct the fee payable under paragraph (1) from the amount paid under rule 21(5) and refund the balance to that party.

(3) The party is not entitled to any refund of the balance of the amount paid under rule 21(5) except –

- (a) under paragraph (2); or
- (b) where the Court otherwise directs.

Remarks

Rule 238
Steering
Committee's
Recommendation

22. — Delay in filing of bill of costs (O. 62, r. 22)

~~(HK)(1) If, within one month after an order of the Court requiring the payment of any costs to be taxed, the person entitled to payment thereof has neither agreed the amount of such costs with the person liable to pay the same nor served upon such person a notice of appointment to tax in accordance with rule 21, the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment thereof, may order that the person entitled to payment of the costs shall proceed to taxation in accordance with rule 21 within such period as the taxing master may order.~~

~~(2) — If within the period ordered by the taxing master or any extension thereof granted by a taxing master, notice of appointment to tax has not been served in accordance with rule 21 and the amount due has not been agreed between the parties, the order of the Court requiring payment of the costs shall thereupon be wholly discharged.~~

~~(3) — On any order in accordance with paragraph (1) and on the taxation of a bill of costs, whether or not an order has been made under paragraph (1), the taxing master, if he is satisfied that there has been undue delay in the filing of the bill of costs or in the service of the notice of appointment to tax, may make such order as he shall consider appropriate as to the costs of any application or of any order or as to the costs of the taxation and may disallow any item contained in the bill of costs.~~

22. Delay in service of notice of commencement of taxation or in proceeding with taxation (O. 62, r. 22)

(1) If, within 3 months after the completion date, the person entitled to payment of costs has neither –

(a) agreed the amount of those costs with the person liable to pay them; nor

(b) served upon such person a copy of a notice of commencement of taxation in accordance with rule 21(2),

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(2) If, after the proceedings for the taxation of a bill of costs have commenced in accordance with rule 21(1), the person entitled to payment of costs has neither –

(a) agreed the amount of those costs with the person liable to pay them; nor

(b) proceeded with the taxation,

the taxing master, on the application of the person liable to pay such costs and on not less than 7 days' notice to the person entitled to payment of those costs, may make an order under paragraph (3).

(3) The taxing master –

(a) may order that the person entitled to payment of the costs must

commence taxation proceedings in accordance with rule 21 or proceed with the taxation, within such period as may be specified in the order; and

- (b) may further order that the person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless the person does commence those taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master

(4) The taxing master may make an order under paragraph (3) subject to such conditions as he thinks fit, including a condition that the person liable to pay the costs to be taxed shall pay a sum of money into court.

(5) On the taxation of a bill of costs, whether or not an order has been made under paragraph (3), the taxing master, if he is satisfied that there has been undue delay in commencing taxation proceedings or in proceeding with the taxation –

- (a) may make such order as he thinks fit as to the costs of any application or as to the costs of the taxation;
(b) may disallow any part of the costs to be taxed pursuant to the costs order; and
(c) may, in relation to the taxed costs or any part of those costs, disallow interest or reduce the period for which interest is payable or the rate at which interest is payable.

(6) Where a party entitled to payment of costs fails to proceed with taxation after filing the notice of commencement of taxation under rule 21(1), the taxing master in order to prevent any other parties being prejudiced by that failure, may –

- (a) allow the party so entitled a nominal or other sum for costs; or
(b) certify the failure and the costs of the other parties.

(7) A party is not entitled to commence taxation proceedings under rule 21 –

- (a) after the expiry of 2 years from the completion date; or
(b) where the Court has extended the period specified in sub-paragraph (a), after the expiry of the period as extended,

whichever is the later.

(8) Where the completion date is before the commencement of this rule, paragraph (7)(a) has effect as if for the words “completion date”, there were substituted the words “commencement of this rule”.

(9) In this rule, “completion date” (完結日期) means –

- (a) in relation to a costs order made by the Court of First Instance –
(i) the date of the judgment or order of the Court of First Instance which disposes of the action;
(ii) the date on which the Court of First Instance makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
(iii) the date on which the taxing master orders under rule 9D(4)

- the person entitled to payment of the costs of any interlocutory proceedings in the Court of First Instance to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of First Instance directing the taxation of them, the date on which he becomes entitled to tax those costs, whichever is the later; and
- (b) in relation to a costs order made by Court of Appeal –
- (i) the date of the judgment or order of the Court of Appeal which disposes of the appeal;
- (ii) the date on which the Court of Appeal makes the costs order, or if the order is an order nisi, the date on which the order is made absolute or varied (as the case may be);
- (iii) the date on which the taxing master orders under rule 9D(4) the person entitled to payment of the costs of any interlocutory proceedings in the Court of Appeal to commence taxation proceedings; or
- (iv) where the person entitled to payment of costs is entitled to tax those costs without an order of the Court of Appeal directing the taxation of them, the date on which he becomes entitled to tax those costs, whichever is the later.

23.—Deposit of papers and vouchers (O. 62, r. 23)

Rule 230
Rec 135

(1) — Not less than 2 days before the date appointed for taxation, the person who filed the bill of costs in accordance with rule 21 shall deposit with the taxing master all papers and vouchers relating to the items contained in the bill of costs.

(2) — If by reason of the failure of such person to deposit such papers and vouchers the taxation is adjourned, the taxing master may make such order as to costs thrown away by such adjournment as he may consider appropriate.

24.—Notice of taxation (O. 62, r. 24)

Rule 228
Consequential
Amendment

(1) — If, at the date and time of an appointment to tax, a person entitled to be heard upon such taxation does not appear before the taxing master in person or by his solicitor, the taxing master, on being satisfied that notice of the appointment to tax and a copy of the bill of costs were duly served on such person in accordance with rule 21, may proceed to taxation of the bill of costs in the absence of such person or of his representative.

(2) — If notice of the appointment to tax and the copy of the bill of costs were not served upon such person, the taxing master shall adjourn the taxation for such period as he may consider necessary to enable service of the notice of the adjourned appointment to tax and of the bill of costs to be effected on such person and may make such order as he may consider appropriate in relation to costs thrown away

~~by such adjournment.~~

24. Taxation (O.62, r.24)

(1) The taxing master may proceed to taxation of a bill of costs under rule 21B(1) notwithstanding that a party entitled to be heard on taxation has failed to comply with any direction given by him relating to the steps to be taken or things to be done before the taxation proceeds under rule 21B, if the taxing master is satisfied that a copy of the notice of commencement of taxation and of the bill of costs were duly served in accordance with rule 21(2) on the party.

(2) If, at the date and time of a hearing under rule 21B(4) or 21C(2), a party entitled to be heard on taxation does not appear before the taxing master in person or by his representative, the taxing master may proceed to taxation of the bill of costs in the absence of the party or of his representative, if the taxing master is satisfied that the party has been served with a notice of the hearing in accordance with rule 21B(4) or 21C(2), or has been otherwise informed of the hearing.

(3) If the taxing master is not so satisfied, he –

(a) must adjourn the hearing for such period as he may consider necessary to enable service of the notice of the adjourned hearing or of the bill of costs or both to be effected on the party; and

(b) may make such order as he may consider appropriate in relation to costs thrown away by the adjournment.

~~25. Provisions as to bills of costs (O. 62, r. 25)~~

Rule 231
Rec 135

~~(1) In any solicitor's bill of costs the professional charges and the disbursements must be entered in separate columns and every column must be cast before the bill is left for taxation.~~

~~(2) Before a solicitor's bill of costs is left for taxation it must be indorsed with the name or firm and business address of the solicitor whose bill it is.~~

26. Power to adjourn (O. 62, r. 26)

~~(1)~~ **(1)** The taxing master by whom any taxation proceedings are being conducted may, if he thinks it necessary to do so, adjourn those proceedings from time to time.

Rule 232
Rec 135

(2) If the taxation proceedings are adjourned because a party has failed to comply with any directions given under rule 13A, the taxing master may make such order as he may consider appropriate in relation to costs thrown away by the adjournment.

27. Powers of taxing master taxing costs payable out of fund (O. 62, r. 27)

(1) Where any costs are to be paid out of a fund the taxing master may give directions as to the parties who are entitled to attend on the taxation of those costs and may disallow the costs of attendance of any party not entitled to attend by virtue of the directions and whose attendance he considers unnecessary.

(2) Where the Court has directed that a bill of costs be taxed for the purpose of being paid out of a fund the taxing master by whom the bill is being taxed may, if he thinks fit, adjourn the taxation for a reasonable period and direct the party whose bill it is to send to any person having an interest in the fund a copy of the bill, or of any part thereof, free of charge together with a letter containing the following information, that is to say – (L.N. 126 of 1995)

- (a) that the bill of costs, a copy of which or of part of which is sent with the letter, has been referred to a taxing master for taxation;
- (b) the name of the taxing master and the address of the office at which the taxation is proceeding;
- (c) the time appointed by the taxing master at which the taxation will be continued; and
- (d) such other information, if any, as the taxing master may direct.

~~ASSESSMENT OF COSTS~~

Rule 241
Tidying up

BASES AND SCALES FOR TAXATION AND ASSESSMENT OF COSTS

28. Costs payable to one party by another or out of a fund (O. 62, r. 28)

(1) This rule applies to costs which by or under these rules or any order or direction of the Court are to be paid to a party to any proceedings either by another party to those proceedings or out of any fund (other than a fund which the party to whom the costs are to be paid holds as trustee or personal representative).

(2) Subject to the following provisions of this rule, costs to which this rule applies shall be taxed on the party and party basis, and on a taxation on that basis there shall be allowed all such costs as were necessary or proper for the attainment of justice or for enforcing or defending the rights of the party whose costs are being taxed.

(3) The Court in awarding costs to which this rule applies may in any case in which it thinks fit to do so order or direct that the costs shall be taxed on the common fund basis or on the indemnity basis. (L.N. 125 of 1991)

(4) On a taxation on the common fund basis, being a more generous basis than that provided for by paragraph (2), there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and paragraph (2) shall not apply; and accordingly in all cases where costs are to be taxed on the common fund basis the ordinary rules applicable on a taxation as between solicitor and client where the costs are to be paid out of a common fund in which the client and others are

interested shall be applied, whether or not the costs are in fact to be so paid.

(4A) On a taxation on the indemnity basis all costs shall be allowed except insofar as they are of an unreasonable amount or have been unreasonably incurred and any doubts which the taxing master may have as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party; and in these rules the term “the indemnity basis” (彌償基準) in relation to the taxation of costs shall be construed accordingly. (L.N. 125 of 1991)

(5) The Court in awarding costs to which this rule applies to any person may if it thinks fit and if –

(a) the costs are to be paid out of a fund, or

(b) the person to whom the costs are to be paid is or was a party to the proceedings in the capacity of trustee or personal representative,

order or direct that the costs shall be taxed as if that person were a trustee of the fund or as if the costs were to be paid out of a fund held by that person, as the case may be, and where the Court so orders or directs rule 31(2) shall have effect in relation to the taxation in substitution for paragraph (2) of this rule.

(6) The foregoing provisions of this rule shall be without prejudice to the powers of the Court under section ~~43~~ 44A of the District Court Ordinance (Cap. 336). ~~(which empowers the Court in relation to an action begun in the Court which could have been begun in the District Court to make an order in certain circumstances allowing the costs on such one of the District Court scales and under such one of the columns in the scale as the order may direct).~~

Rule 242
Tidying up

28A. Costs of a litigant in person (O. 62, r. 28A)

(1) On a taxation of the costs of a litigant in person there may, subject to the provisions of this rule, be allowed such costs as would have been allowed if the work and disbursements to which the costs relate had been done or made by a solicitor on the litigant’s behalf.

(2) The amount allowed in respect of any item shall be such sum as the taxing master thinks fit not exceeding, except in the case of a disbursement, two-thirds of the sum which in the opinion of the taxing master would have been allowed in respect of that item if the litigant had been represented by a solicitor.

(3) Where in the opinion of the taxing master the litigant has not suffered any pecuniary loss in doing any work to which the costs relate, he shall not be allowed in respect of the time reasonably spent by him on the work more than \$200 an hour.

(4) A litigant who is allowed costs in respect of attending court to conduct his own case shall not be entitled to a witness allowance in addition.

(5) Nothing in Order 6, rule 2(1)(b), or rule 32(4) of this Order or the Second Schedule to this Order shall, unless otherwise specified therein, apply to the costs of a litigant in person.

Rule 243
Tidying up

(6) For the purposes of this rule a litigant in person does not include a litigant who is a practising solicitor **but includes a company or other corporation which is acting without a legal representative.**

(7) This rule applies, with the necessary modifications, to a summary assessment under rules 9(4)(b), 9A(1)(a) and (b) and 11A(4), as it applies to the taxation of the costs of a litigant in person, if the party entitled to the sum is a litigant in person.

29. Costs payable to a solicitor by his own client (O. 62, r. 29)

(1) On the taxation of a solicitor's bill to his own client (except a bill to be paid out of funds provided by the Legislative Council pursuant to section 27 of the Legal Aid Ordinance (Cap. 91), or a bill with respect to non-contentious business) all costs shall be allowed except in so far as they are of an unreasonable amount or have been unreasonably incurred.

(2) For the purposes of paragraph (1), all costs incurred with the express or implied approval of the client shall, subject to paragraph (3), be conclusively presumed to have been reasonably incurred and, where the amount thereof has been expressly or impliedly approved by the client, to have been reasonable in amount.

(3) For the purposes of paragraph (1), any costs which in the circumstances of the case are of an unusual nature and such that they would not be allowed on a taxation of costs in a case to which rule 28(2) applies, shall, unless the solicitor expressly informed his client before they were incurred that they might not be so allowed, be presumed, until the contrary is shown, to have been unreasonably incurred.

(4) In paragraphs (2) and (3), the references to the client shall be construed –
(a) if the client was at the material time a mentally disordered person within the meaning of the Mental Health Ordinance (Cap. 136) and represented by a person acting as guardian ad litem or next friend, as references to that person acting, where necessary, with the authority of the Court;
(b) if the client was at the material time a minor and represented by a person acting as guardian ad litem or next friend, as references to that person.

30. Costs payable to solicitor where money recovered by or on behalf of infant, etc. (O. 62, r. 30)

(1) This rule applies to –
(a) any proceedings in which money is claimed or recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap. 136) or in

which money paid into court is accepted by or on behalf of such a person; and

- (b) any proceedings under the Fatal Accidents Ordinance (Cap. 22), in which money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, the widow of the person whose death gave rise to the proceedings in satisfaction of a claim under the said Ordinance or in which money paid into court is accepted by her or on her behalf in satisfaction of such a claim, if the proceedings were for the benefit also of a person who, when the money is recovered, or adjudged or ordered or agreed to be paid, or accepted, is a minor; and
- (c) any proceedings in the Court of Appeal on an application or appeal made in connection with any such proceedings to which this rule applies by virtue of the foregoing provisions of this paragraph.

(2) Unless the Court otherwise directs the costs payable to his solicitor by any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b), being the costs of those proceedings or incident to the claim therein or consequent thereon, shall be taxed under rule 29; and no costs shall be payable to the solicitor of any plaintiff in respect of those proceedings, except such amount of costs as may be certified in accordance with this rule on the taxation under rule 29 of the solicitor's bill to that plaintiff.

(3) On the taxation under rule 29 of a solicitor's bill to any plaintiff in any proceedings to which this rule applies by virtue of paragraph (1)(a) or (b) who is his own client, the taxing master shall also tax any costs payable to that plaintiff in those proceedings and shall certify –

- (a) the amount allowed on the taxation under rule 29, the amount allowed on that taxation of any costs payable to the plaintiff in those proceedings and the amount (if any), by which the first-mentioned amount exceeds the other, and
- (b) where necessary, the proportion of the amount of the excess payable respectively by, or out of money belonging to, any party to the proceedings who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap. 136) or the widow of the man whose death gave rise to the proceedings and any other party.

(4) Paragraphs (2) and (3) shall apply in relation to any proceedings to which this rule applies by virtue of paragraph (1)(c) as if for references to a plaintiff there were substituted references to the party, whether appellant or respondent, who was the plaintiff in the proceedings which gave rise to the first-mentioned proceedings.

(5) Nothing in the foregoing provisions of this rule shall prejudice a solicitor's lien for costs.

(6) Where in any proceedings to which this rule applies directions given by the Court under Order 80, rule 12 provide for the transfer or payment of money to or into a District Court and for the payment to the solicitor of any plaintiff in the proceedings of an amount in respect of costs out of the money so transferred or paid, the taxing master by whom those costs are taxed shall send a copy of his

certificate to the registrar of the District Court.

- (7) The foregoing provisions of this rule shall apply in relation to –
- (a) a counterclaim by or on behalf of a person who is a minor or a mentally disordered person within the meaning of the Mental Health Ordinance (Cap. 136) and a counterclaim consisting of or including a claim under the Fatal Accidents Ordinance (Cap. 22) by or on behalf of the widow of the man whose death gave rise to the claim; and
 - (b) a claim made by or on behalf of a person who is a minor or a mentally disordered person as aforesaid in an action by any other person for relief under section 504 of the Merchant Shipping Act, 1894 (1894 c. 60 U.K.)[#], and a claim consisting of or including a claim under the Fatal Accidents Ordinance (Cap. 22) made by or on behalf of that widow in such an action,

as if for references to a plaintiff there were substituted references to a defendant.

31. Costs payable to a trustee out of the trust funds, etc. (O. 62, r. 31)

(1) This rule applies to every taxation of the costs which a person who is or has been a party to any proceedings in the capacity of trustee or personal representative is entitled to be paid out of any fund which he holds in that capacity.

(2) On any taxation to which this rule applies, no costs shall be disallowed except in so far as those costs or any part of their amount should not, in accordance with the duty of the trustee or personal representative as such, have been incurred or paid, and should for that reason be borne by him personally.

32. Scales of costs (O. 62, r. 32)

(1) Subject to the foregoing rules and the following provisions of this rule, the scale of costs contained in the First Schedule of this Order, together with the notes and general provisions contained in that Schedule, shall apply to the taxation of all costs incurred in relation to contentious business done after the commencement of these rules.

(2) On a taxation in relation to which rule 29 or rule 31(2) has effect and in other special cases costs may at the discretion of the taxing master be allowed –

- (a) in relation to items not mentioned in the said scale; or
- (b) of an amount higher than that prescribed by the said scale.

(3) Where the amount of a solicitor's remuneration in respect of non-contentious business connected with sales, purchases, leases, mortgages and other matters of conveyancing or in respect of any other non-contentious business is regulated ~~in the absence of agreement to the contrary~~ **(in the absence of agreement to the contrary)** by any rules for the time being in force under the Legal Practitioners Ordinance (Cap. 159), the amount of the costs to be allowed on taxation in respect of the like contentious business shall be the same, notwithstanding anything in the scale contained in the First Schedule.

Rule 239
Tidying up

(4) Notwithstanding paragraph (1), costs shall, unless the Court otherwise orders, be allowed in the cases to which the Second Schedule to this Order applies in accordance with the provisions of that Schedule.

32A. Liability for costs of taxation (O. 62, r. 32A)

Rule 233
Rec 136

(1) A party entitled to payment of any costs to be taxed is also entitled to his costs of the taxation except where –

- (a) any Ordinance, any of these rules or any relevant practice direction provides otherwise; or**
- (b) the Court makes some other order in relation to all or part of the costs of the taxation.**

(2) In deciding whether to make some other order, the Court shall have regard to the underlying objectives set out in Order 1A, rule 1 and all the circumstances, including –

- (a) the conduct of all the parties in relation to the taxation;**
- (b) the amount, if any, by which the bill of costs has been reduced; and**
- (c) whether it was reasonable for a party to claim the costs of a particular item or to dispute that item.**

32B. Reimbursement for taxing fees (O. 62, r. 32B)

Rule 244
Clarification

Upon the issue of a final certificate under rule 17A, the party liable to pay costs shall pay to the party entitled to payment of the costs an amount of money equivalent to the prescribed taxing fee calculated on the basis of the amount of costs allowed.

32C. Court's powers in relation to misconduct (O. 62, r. 32C)

Rule 234
Rec 136

(1) The Court may make an order under this rule where –

- (a) a party or his legal representative, in connection with a summary assessment or taxation of costs, fails to comply with a rule, practice direction or an order of the Court; or**
- (b) it appears to the Court that the conduct of a party or his legal representative, before or during the proceedings which gave rise to the summary assessment or taxation, was unreasonable or improper.**

(2) For the purpose of paragraph (1), the conduct of a party or his legal representative does not include any conduct before the commencement of the action.

(3) Where paragraph (1) applies, the Court may –

- (a) by order disallow all or part of the costs being summarily assessed or taxed; or**

(b) order the party at fault or his legal representative, to pay costs that he has caused any other party to incur.

(4) Where –

(a) the Court makes an order under paragraph (3) against a legally represented party; and

(b) the party is not present when the order is made, the party’s solicitor shall notify his client in writing of the order not later than 7 days after the solicitor receives notice of the order and shall inform the Court in writing that he has done so.

(5) In this rule, “client” (當事人) includes a person on whose behalf the solicitor acts and any other person who has instructed the solicitor to act or who is liable to pay the solicitor’s costs.

REVIEW

33. Application to taxing master for review (O. 62, r. 33)

(1) Any party to any taxation proceedings who is dissatisfied with the allowance or disallowance in whole or in part of any item by a taxing master, or with the amount allowed by a taxing master ~~in respect of any item, may apply to the taxing master to review his decision in respect of that item~~ in respect of any item –

(a) may apply to the taxing master to review his decision in respect of that item; and

(b) may not apply to a judge for an order to review the decision until after its review by the taxing master.

(2) An application under this rule for review of a taxing master’s decision may be made at any time within ~~14 days after that decision~~ 14 days after the conclusion of the taxation in which that decision was made or such shorter period as may be fixed by the taxing master:

Provided that no application under this rule for review of a decision in respect of any item may be made after the signing of the taxing master’s ~~certificate dealing finally~~ final certificate dealing with that item.

(3) Every applicant for review under this rule must at the time of making his application deliver to the taxing master objections in writing specifying by a list the items or parts of items the allowance or disallowance of which or the amount allowed in respect of which, is objected to and stating concisely the nature and grounds of the objection in each case, and must deliver a copy of the objections to each other party (if any) who attended on the taxation of those items or to whom the taxing master directs that a copy of the objections shall be delivered.

(3A) If an applicant fails to comply with paragraph (3), the taxing master may dismiss the application.

Rule 245
Clarification

Rule 245
Clarification

(4) Any party to whom a copy of the objections is delivered under this rule may, within 14 days after delivery of the copy to him or such shorter period as may be fixed by the taxing master, deliver to the taxing master answers in writing to the objections stating concisely the grounds on which he will oppose the objections, and shall at the same time deliver a copy of the answers to the party applying for review and to each other party (if any) to whom a copy of the objections has been delivered or to whom the taxing master directs that a copy of the answers shall be delivered.

(5) An application under this rule for review of the taxing master's decision in respect of any item shall not prejudice the power of the taxing master under rule 17 to issue an interim certificate in respect of items his decision as to which is not objected to.

34. Review by taxing master (O. 62, r. 34)

(HK)(1) A review under rule 33 shall be carried out by the taxing master to whom the taxation was originally assigned.

(2) On reviewing any decision in respect of any item, a taxing master may receive further evidence and may exercise all the powers which he might exercise on an original taxation in respect of that item, including the power to award costs of and incidental to the proceedings before him; and any costs awarded by him to any party may be taxed by him and may be added to or deducted from any other sum payable to or by that party in respect of costs.

(3) On a hearing of a review under rule 33 a party to whom a copy of objections was delivered under paragraph (4) of that rule shall be entitled to be heard in respect of any item to which the objections relate notwithstanding that he did not deliver written answers to the objections under that paragraph.

(4) A taxing master who has reviewed a decision in respect of any item shall issue his certificate accordingly and, if requested to do so by any party to the proceedings before him, shall state in his certificate or otherwise in writing by reference to the objections to that decision the reasons for his decision on the review, and any special facts or circumstances relevant to it. A request under this paragraph must be made within 14 days after the review or such shorter period as may be fixed by the taxing master.

35. Review of taxing master's certificate by a judge (O. 62, r. 35)

(1) Any party who is dissatisfied with the decision of a taxing master to allow or to disallow any item in whole or in part on review under rule ~~33 or~~ 34, or with the amount allowed in respect of any item by a taxing master on any such review, may apply to a judge for an order to review the taxation as to that item or part of an item if, but only if, one of the parties to the proceedings before the taxing master requested that officer in accordance with rule 34(4) to state the reasons for his decision in respect of that item or part on the review.

Rule 246
Consequential
Amendment

(2) An application under this rule for review of a taxing master's decision in respect of any item may be made at any time within 14 days after the taxing master's certificate in respect of that item is signed, or such longer time as the taxing master at the time when he signs the certificate, or the Court at any time, may allow.

(3) An application under this rule shall be made by summons and shall, except where the judge thinks fit to adjourn into court, be heard in chambers.

(4) Unless the judge otherwise directs, no further evidence shall be received on the hearing of an application under this rule, and no ground of objection shall be raised which was not raised on the review by the taxing master but, save as aforesaid, on the hearing of any such application the judge may exercise all such powers and discretion as are vested in the taxing master in relation to the subject-matter of the application.

(5) If the judge thinks fit to exercise in relation to an application under this rule the power of the Court to appoint assessors under section 53 of the Ordinance, the judge shall appoint not less than 2 assessors, of whom one shall be a taxing master.

(6) On an application under this rule the judge may make such order as the circumstances require, and in particular may order the taxing master's certificate to be amended or, except where the dispute as to the item under review is as to amount only, order the item to be remitted to the same or another taxing master for taxation.

(7) In this rule "Judge" (法官) means a judge in person.

TRANSITIONAL

Rule 191
Transitional

36. Transitional provision relating to Part 16 of Amendment Rules 2008 (O. 62, r. 36)

Rules 8, 8A, 8B, 8C, 8D and 8E do not apply in relation to any costs incurred before the commencement of the Amendment Rules 2008, and rule 8 as in force immediately before the commencement continues to apply in relation to those costs as if Part 16 had not been made.

37. Transitional provisions relating to Part 23 of Amendment Rules 2008 (O. 62, r. 37)

Rule 249

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement of the Amendment Rules 2008, nothing in Part 23 of the Amendment Rules 2008 applies in relation to the taxation, and Order 62 as in force immediately before the commencement applies in relation to the taxation as if it had not been amended by that Part.

(2) Where –

(a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but

(b) any item of work to which the costs or charges specified in the First Schedule or Part III of the Second Schedule of this Order relate was undertaken before the commencement,

then the First Schedule or Part III of the Second Schedule of this Order as in force immediately before the commencement applies in relation to that item of work as if it had not been amended by Part 23 of the Amendment Rules 2008.

(3) Where –

(a) a party entitled to require any costs to be taxed files his bill of costs after the commencement of the Amendment Rules 2008; but

(b) the writ of summons was issued before the commencement, then Part I and Part II of the Second Schedule of this Order as in force immediately before the commencement applies in relation to the writ of summons issued before the commencement as if they had not been amended by Part 23 of the Amendment Rules 2008.

(4) No costs for work undertaken before the commencement of the Amendment Rules 2008 are to be disallowed if those costs would have been allowed under this Order as in force immediately before the commencement.

FIRST SCHEDULE [rule 32]

PART I
SCALE OF COSTS

Item	Particulars	Charges
1.	Mechanical preparation of documents-	
	(a) for the top copy, per page-	
	(i) quarto size or above	\$50
	(ii) less than quarto size	\$30
	(b) for additional copies, either by photographic means, printing, carbon or any other method, per page of whatever size	\$3

Rule 247
Steering
Committee's
Recommendation

1. Preparation of a bundle of copies of documents, including the costs of copying and collating the documents and compiling (including indexing and pagination) the bundle, per page of whatever size..... \$4 per page in respect of the first bundle, and \$1 per page in respect of each subsequent bundle

1A. Copying of documents, per page of whatever size..... \$1

2. Attendance suitable for unqualified staff, such as for filing of documents, delivery or collection of pages and to make appointments, whether such attendance are made by qualified or unqualified persons, for each attendance. \$100
\$110

3. Attendance for necessary search and inquires-such fee as the Registrar thinks proper but not less than ~~\$100~~ \$50 for each attendance.

4. Service of any documents – such fee as the Registrar thinks proper but not less than \$50 in each case.

5. The Registrar may allow such fee as he thinks proper in respect of every other matter or thing not hereinbefore specially mentioned.

Note to item 5: This item is intended to cover –

(a) the doing of any work not otherwise provided for and which was properly done in preparing for a trial, hearing or appeal, or before a settlement of the matters in dispute, including –

- (i) The client: taking instructions to sue, defend, counter-claim, appeal or oppose etc.; attending upon and corresponding with client;
- (ii) Witnesses: interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including issue of subpoena;

Remarks

- (iii) Expert evidence: obtaining and considering reports or advice from experts and plans, photographs and models; where appropriate arranging their attendance at Court, including issue of subpoena;
 - (iv) Inspections: inspecting any property or place material to the proceedings;
 - (v) Searches and Inquiries: making searches in Government Registries and elsewhere for relevant documents;
 - (vi) Special damages: obtaining details of special damages and making or obtaining any relevant calculations;
 - (vii) Other parties: attending upon and corresponding with other parties or their solicitors;
 - (viii) Discovery: perusing, considering or collating documents for affidavit or list of documents; attending to inspect or produce for inspection any documents required to be produced or inspected by order of the Court or by virtue of Order 24;
 - (ix) Documents: drafting, perusing, considering and collating any relevant documents (including pleadings, affidavits, cases and instructions to and advice from counsel, orders and judgments) and any law involved;
 - (x) Negotiations: work done in connection with negotiations with a view to settlement;
 - (xi) Attendances: attendances at Court (whether in Court or chambers) for the hearing of any summons or other application, on examination of any witness, on the trial or hearing of a cause or matter, on any appeal and on delivery of any judgment; attendances on counsel in conference, and any other necessary attendances;
 - (xii) Interest: where relevant the calculation of interest on damages; and
 - (xiii) Notices: preparation and service of miscellaneous notices, including notices to witnesses to attend court; and
- (b) the general care and conduct of the proceedings.

PART II

GENERAL

Discretionary costs

1. ~~(1) Where in the foregoing provisions of this Schedule there is entered in the third column against any item specified in the second column an upper and a lower sum of money, the amount of costs to be allowed in respect of that item shall (subject to any order of the Court fixing the costs to be allowed) be in the discretion of the taxing master, within the limits of the sums so entered.~~

Rule 247
Tidying up

(2) In exercising his discretion under this paragraph or under rule 32(2) in relation to any item, the taxing master shall have regard to all relevant circumstances, and in particular to –

- (a) the complexity of the item or of the cause or matter in which it arises and the difficulty or novelty of the questions involved;
- (b) the skill, specialized knowledge and responsibility required of, and the time and labour expended by, the solicitor or counsel;
- (c) the number and importance of the documents (however brief) prepared or perused;
- (d) the place and circumstances in which the business involved is transacted;
- (e) the importance of the cause or matter to the client;
- (f) where money or property is involved, its amount or value;
- (g) any other fees and allowances payable to the solicitor or counsel in respect of other items in the same cause or matter, but only where work done in relation to those items has reduced the work which would otherwise have been necessary in relation to the item in question.

Fees to counsel

2. (1) Except in the case of taxation under the Legal Aid Ordinance (Cap. 91) and taxations of fees payable by the Crown, no fee to counsel shall be allowed unless –

- (a) before taxation its amount has been agreed by the solicitor instructing counsel; and
- (b) before the taxing master issues his certificate a receipt for the fees signed by counsel is produced to him.

(2) No retaining fee to counsel shall be allowed on any taxation of costs in relation to which rule 28(2) has effect.

(3) No costs shall be allowed in respect of counsel appearing before a master in chambers, or of more counsel than one appearing before a ~~judge in chambers,~~ master in open court or a judge or the Court of Appeal, unless the master or judge as the case may be, has certified the attendance as being proper in the circumstances of the case.

Rule 247
Steering
Committee's
recommendation

(4) A refresher fee, the amount of which shall be in the discretion of the taxing master, shall be allowed to counsel, either for each period of five hours (or part thereof), after the first, during which a trial or hearing is proceeding or, at the discretion of the taxing master, in respect of any day, after the first day, on which the attendance of counsel at the place of trial is necessary.

~~(HK)(5) Every fee paid to counsel shall be allowed in full on taxation, unless the taxing master is satisfied that the same is excessive and unreasonable, in which event the taxing master shall exercise his discretion having regard to all the relevant circumstances and in particular to the matters set out in paragraph 1(2).~~

Rule 223
Rec 131

(5) The amount of fees to be allowed to counsel is in the discretion of the taxing master who shall, in exercising his discretion, have regard to all relevant circumstances and in particular to the matters set out in paragraph 1(2).

Items to be authorized, certified etc.

4. (1) In an action arising out of an accident on land due to a collision or apprehended collision, the costs of preparing a plan (other than a sketch plan) of the place where the accident happened shall not be allowed unless –

- (a) before the trial the Court authorized the preparation of the plan, or
- (b) notwithstanding the absence of an authorization under sub-paragraph (a) the taxing officer is satisfied that it was reasonable to prepare the plan for use at the trial.

(2) The costs of calling an expert witness with regard to any question as to which a court expert is appointed under Order 40 (or a scientific adviser is appointed under Order 103 rule 27) shall not be allowed on a taxation of costs in relation to which rule 28(2) or (3) has effect unless the Court at the trial has certified that the calling of the witness was reasonable.

(3) If any action or claim for a declaration under section 8(1) of the Registration of Patents Ordinance (Cap. 42) proceeds to trial, no costs shall be allowed to the parties delivering any particulars of breaches or particulars of objection in respect of any issues raised in those particulars and relating to that patent except in so far as those issues or particulars have been certified by the Court to have been proven or to have been reasonable and proper.

Attendances in Chambers – equity jurisdiction

5. (1) The following provisions of this paragraph apply in relation to every hearing in chambers in the equity jurisdiction of the Court.

(3) Where on any such hearing as aforesaid the Court certifies that the speedy and satisfactory disposal of the proceedings required and received from the solicitor engaged in them exceptional skill and labour in the preparation for the hearing, the taxing master in taxing the costs to be allowed for instructions in relation to the

summons or application shall take the certificate into account.

Copies of documents

7. (1) There shall be allowed for printing copies of any document the amount properly paid to the printer; and where any part of a document is properly printed in a foreign language or as a facsimile or in any unusual or special manner, or where any alteration becomes necessary after the first proof of the document, there shall be allowed such an amount as the taxing master thinks reasonable, such amount to include any attendances on the printer.

(2) The solicitor for a party entitled to take printed copies of any documents shall be allowed the amount he pays for such number of copies as he necessarily or properly takes.

(3) The allowance for printed copies of documents under item 1 of Part I of this Schedule shall be made in addition to the allowances under the foregoing provisions of this paragraph and shall, subject to sub-paragraph (4), be made for such printed copies as may be necessary or proper –

- (a) of any pleading, for service on the opposite party;
- (b) of any special case, for filing;
- (c) of any pleading or special case, for the use of the Court;
- (d) of any affidavit, for attestation in print;
- (e) of any pleading, special case or evidence for the use of counsel in court; or
- (f) of any other document necessarily and properly copied and not otherwise provided for.

(4) The allowance under item 1 of Part I shall not be made in relation to printed copies of documents for the use of the Court or of counsel where written copies have been made before printing, and shall not be made more than once in the same cause or matter.

SECOND SCHEDULE [rule 32]
~~FIXED COSTS~~

Rule 248
Tidying up

~~For the purposes of this Schedule there shall be five Scales, namely–~~

Scale Applicable	Sum of Money
Scale I	Exceeding \$50 but not exceeding \$200
Scale II	Exceeding \$200 but not exceeding \$500
Scale III	Exceeding \$500 but not exceeding \$2,000
Scale IV	Exceeding \$2,000 but not exceeding \$5,000
Scale V	Exceeding \$5,000

~~The Scale of Costs in garnishee proceedings shall be determined-~~

- ~~(a) as regards the costs of the judgment creditor, by the amount recovered against the garnishee; and~~
- ~~(b) as regards the costs of the garnishee or the judgment debtor, by the amount claimed by the judgment creditor in the garnishee proceedings.~~

PART I

COSTS ON JUDGMENT WITHOUT TRIAL FOR A LIQUIDATED SUM
OR UNDER ORDER 13A

Rule 248
Steering
Committee's
Recommendation

1. The scale of costs set out in Part II of this Schedule (which includes the scale prescribed pursuant to section 72 of the District Court Ordinance (Cap. 336) shall apply in relation to the following cases if the writ of summons therein was issued after ~~1 January 1966~~ the commencement of the Amendment Rules 2008, and was indorsed with a claim for a debt or liquidated demand only, that is to say –

- (a) cases in which the defendant pays the amount claimed within the time and in the manner required by the indorsement of the writ;
- (b) cases in which the plaintiff obtains judgment on failure to give notice of intention to defend under Order 13, rule 1, or judgment in default of defence under Order 19, rule 2;
- ~~(c) cases in which the plaintiff obtains judgment under Order 14, rule 3, either unconditionally or unless that sum is paid into court or to the plaintiff's solicitors.~~

1A. The scale of costs set out in Part II of this Schedule applies in relation to cases in which the plaintiff obtains judgment under Order 13A without a hearing.

2. Notwithstanding anything in paragraph 1 or 1A of this Schedule or in the said scale, no costs shall be allowed in any case to which the said paragraph 1 or 1A applies unless –

- (a) the Court orders costs to be allowed; or
- (b) in a case to which sub-paragraph (b) of paragraph 1 applies, judgment or an order for judgment, as the case may be, is obtained within 28 days after the service of the writ or within such further time as the Court may allow.

3. In every case to which the said scale applies there shall be added to the basic costs set out in the said scale the fee which would have been payable on the issue of a writ for the amount recovered.

Remarks

PART II

SCALE OF COSTS

Item	Scale	
Basic Costs	\$	
To be allowed in cases under –		
sub-paragraph (a) of paragraph 1	400.00	
sub-paragraph (b) of paragraph 1	505.00	
sub-paragraph (c) of paragraph 1	650.00	
<u>sub-paragraph (a) of paragraph 1</u>	<u>9,000 if the plaintiff is legally represented and 500 if the plaintiff is not legally represented</u>	Rule 248 Steering Committee's Recommendation
<u>sub-paragraph (b) of paragraph 1</u>	<u>10,000 if the plaintiff is legally represented and 600 if the plaintiff is not legally represented</u>	
<u>paragraph 1A</u>	<u>10,000 if the plaintiff is legally represented and 600 if plaintiff is not legally represented</u>	
Additional Costs		
1. For each additional defendant after the first	65.00 <u>500</u>	
2. Where substituted service is ordered and effected, for each defendant served	500.00 <u>1,000</u>	
3. Where service out of the jurisdiction is ordered and effected	225.00	
4. In the case of judgment in default of defence or judgment under Order 14, rule 3, where notice of intention to defend is given after the time limited therefor and the plaintiff makes an affidavit of service for the purpose of a judgment on failure to give notice of intention to defend (the allowance to include the search fee)	120.00	

Remarks

5. In the case of judgment under Order 14, rule 3, where an affidavit of service of summons is required	120.00	
6. In the case of judgment under Order 14, rule 3, for each adjournment of the summons	50.00	
7. In the case of judgment on failure to give notice of intention to defend on all application by notice under Order 83A, rule 4, (which applies to moneylenders' actions)-		
(a) where judgment is given for interest at a rate exceeding 48 per cent per annum on production of an affidavit justifying the rate	120.00	
(b) in any other case	60.00	
(c) for each additional defendant after the first	30.00	

PART III
MISCELLANEOUS

Item	Scale	
	\$	
1. Where a plaintiff or defendant signs judgment for costs under rule 11 rule 10 , there shall be allowed – cost of the judgment	120.00 1,000	Rule 248
2. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 49 against a garnishee attaching debts owing or accruing from him to the debtor, the following costs shall be allowed –		
(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant –		
(i) if no affidavit used	50.00 100	
(ii) if affidavit used	100.00 300	

Remarks

(b) to the applicant, to be retained unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order-	150.00
basic costs	
additional costs where the garnishee fails to attend the hearing of the application and an affidavit of service is required	50.00
3. Where a charging order is made-	575.00
(a) in respect of any stock, funds, annuities or shares, or any dividends or interest thereon or produce thereof, under Order 50; or	50.00
(b) in respect of any partnership property or profits, under section 25 of the Partnership Ordinance (Cap. 38);	
there shall be allowed-	
basic costs	
additional costs where an affidavit of service is required	
4. Where a writ of execution within the meaning of Order 46, rule 1 is issued against any party, there shall be allowed -	\$ 170.00 <u>600</u>
cost of issuing execution	

(Enacted 1988)

Note:

Please also see following-

- (a) in relation to the Merchant Shipping Act 1894, Part 3 of Schedule 5 to Cap. 415 and s. 1 of Schedule 2 to Cap. 508;**
- (b) in relation to the Merchant Shipping Acts 1894 to 1979, s. 117 of Cap. 281, s. 103 of Cap. 415 and s. 142 of Cap. 478.**