

Rules of the High Court (Amendment) Rules 2008

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

Order 62A – COSTS OFFER AND PAYMENTS INTO COURT

Remarks

Rule 124
Rec 132

I. PRELIMINARY

1. Interpretation and application (O. 62A, r. 1)

(1) In this Order –

“costs offer” (訟費提議) means an offer to settle –

- (a) a party’s entitlement to costs that are the subject of a taxation; and
- (b) the costs of the taxation;

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

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

“paying party” (支付方) means the party liable to pay costs;

“receiving party” (收取方), in relation to a paying party, means the party who is entitled to payment of costs from that paying party;

“relevant date” (有關日期), in relation to a taxation, means –

- (a) the date on which the bill of costs is taxed under Order 62, rule 21B(1); or
- (b) the date set down under Order 62, rule 21C(1) for hearing the taxation;

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

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

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

(2) This Order does not apply to or in relation to a party who is or has been an aided person in the relevant proceedings.

2. Offer to settle with specified consequences (O. 62A, r. 2)

(1) Any party to a taxation may make a costs offer in accordance with this Order.

(2) An offer made under paragraph (1) has the consequences specified in rules 18, 19 and 20 (as may be applicable).

(3) Nothing in this Order prevents a party from making a costs offer in whatever way he chooses, but if that costs offer is not made in accordance with this Order, it does not have the consequences specified in this Order, unless the Court so orders.

II. MANNER OF MAKING SANCTIONED
OFFER OR SANCTIONED PAYMENT

3. Paying party's costs offer requires sanctioned payment (O. 62A, r. 3)

(1) A costs offer by a paying party does not have the consequences specified in this Order unless it is made by way of a sanctioned payment.

(2) A sanctioned payment may be made at any time before the relevant date.

4. Receiving party's costs offer requires sanctioned offer (O. 62A, r. 4)

A costs offer by a receiving party does not have the consequences specified in this Order unless it is made by way of a sanctioned offer.

5. Form and content of sanctioned offer (O. 62A, r. 5)

(1) A sanctioned offer must be in writing.

(2) A sanctioned offer may relate to the whole or part of the costs.

(3) A sanctioned offer must state whether it relates to the whole or part of the costs, and if it relates to part of the costs, to which part does it relate.

(4) A sanctioned offer may be made at any time before the relevant date.

(5) A sanctioned offer must provide that after the expiry of 14 days from the date the sanctioned offer is made, the offeree may only accept it if –

- (a) the parties agree on the liability for and quantum of costs of taxation incurred after the period; or
- (b) the Court grants leave to accept it.

6. Service of sanctioned offer (O. 62A, r. 6)

A receiving party who makes a sanctioned offer shall serve the sanctioned offer on the paying party.

7. Withdrawal or diminution of sanctioned offer (O. 62A, r. 7)

(1) A sanctioned offer may not be withdrawn or diminished before the expiry of 14 days from the date the sanctioned offer is made unless the Court grants leave to withdraw or diminish it.

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

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

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

8. Notice of sanctioned payment (O. 62A, r.8)

(1) A sanctioned payment may relate to the whole or part of the costs.

(2) A paying party who makes a sanctioned payment shall file with the Court a notice in Form No. 93 in Appendix A, that –

- (a) states the amount of the payment;
- (b) states whether the payment relates to the whole or part of the costs, and if it relates to part of the costs, to which part it relates;
- (c) if an interim payment of costs has been made, states that the paying party has taken into account the interim payment;
- (d) if it is expressed not to be inclusive of interest, states –
 - (i) whether interest is offered; and
 - (ii) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered; and
- (e) if a sum of money has been paid into court as security for the costs of the action, cause or matter, states whether the sanctioned payment has taken into account that sum of money.

9. Service of sanctioned payment (O. 62A, r. 9)

A paying party who makes a sanctioned payment shall –

- (a) serve the sanctioned payment notice on the receiving party; and
- (b) file with the Court a certificate of service of the notice.

10. Withdrawal or diminution of sanctioned payment (O. 62A, r. 10)

(1) A sanctioned payment may not be withdrawn or diminished before the expiry of 14 days from the date the sanctioned payment is made unless the Court grants leave to withdraw or diminish it.

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

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

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

11. Time when sanctioned offer or sanctioned payment is made and accepted (O. 62A, r. 11)

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

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

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

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

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

12. Clarification of sanctioned offer or sanctioned payment notice (O. 62A, r. 12)

(1) The offeree may, within 7 days of a sanctioned offer or sanctioned payment being made, request the offeror to clarify the offer or payment

notice.

(2) If the offeror does not give the clarification requested under paragraph (1) within 7 days of service of the request, the offeree may, before the relevant date, apply for an order that he does so.

(3) If the Court makes an order pursuant to an application made under paragraph (2), it shall specify the date when the sanctioned offer or sanctioned payment is to be treated as having been made.

III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT

13. Time for acceptance of paying party's sanctioned payment (O. 62A, r. 13)

(1) Subject to rule 10(2) and paragraph (2), a receiving party may accept a sanctioned payment at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the paying party a written notice of acceptance not later than 14 days after the payment was made.

(2) If the receiving party does not accept a paying party's sanctioned payment within the 14-day period specified in paragraph (1), then the receiving party may –

- (a) if the parties agree on the liability for and quantum of costs of taxation incurred after the expiry of the period, accept the payment without the leave of the Court; and
- (b) if the parties do not agree on the liability for and quantum of costs of taxation incurred after the expiry of the period, only accept the payment with the leave of the Court.

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

(4) A notice of acceptance of a sanctioned payment must be in Form No. 93A in Appendix A.

14. Time for acceptance of receiving party's sanctioned offer (O. 62A, r. 14)

(1) Subject to rule 7(2) and paragraph (2), a paying party may accept a sanctioned offer at any time before the relevant date without requiring the leave of the Court if he files with the Court and serves on the receiving party a written notice of acceptance not later than 14 days after the offer was made.

(2) If the paying party does not accept a receiving party's sanctioned offer

within the 14-day period specified in paragraph (1), then the paying party may

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- (a) if the parties agree on the liability for and quantum of costs of taxation incurred after the expiry of the period, accept the offer without the leave of the Court; and
- (b) if the parties do not agree on the liability for and quantum of costs of taxation incurred after the expiry of the period, only accept the offer with the leave of the Court.

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

15. Payment out of a sum in court on acceptance of sanctioned payment (O. 62A, r. 15)

Subject to rule 16(4), where a sanctioned payment is accepted, the receiving party may obtain payment out of the sum in court by making a request for payment in Form No. 93B in Appendix A.

16. Acceptance of sanctioned payment made by one or more, but not all, paying parties (O. 62A, r. 16)

(1) This rule applies where the receiving party wishes to accept a sanctioned payment made by one or more, but not all, of a number of paying parties.

(2) If the paying parties are jointly and severally liable to pay costs, the receiving party may accept the payment in accordance with rule 13 if –

- (a) he discontinues the proceedings for taxation against those paying parties who have not made the payment; and
- (b) those paying parties give written consent to the acceptance of the payment.

(3) If the paying parties are not jointly, but severally liable to pay costs, the receiving party may –

- (a) accept the payment in accordance with rule 13; and
- (b) continue with his proceedings for taxation against the other paying parties.

(4) In all other cases the receiving party shall apply to the Court for –

- (a) an order permitting a payment out to him of any sum in court; and
- (b) such order as to costs relating to the taxation as the Court considers appropriate.

17. Cases where court order is required to enable acceptance of sanctioned offer or sanctioned payment (O. 62A, r. 17)

Where a sanctioned offer or a sanctioned payment is made in proceedings to which Order 80, rule 10 (Compromise, etc., by person under disability) applies –

- (a) the offer or payment may be accepted only with the leave of the Court; and
- (b) no payment out of any sum in court may be made without a court order.

IV. CONSEQUENCES OF SANCTIONED OFFER
OR SANCTIONED PAYMENT

18. Consequences of acceptance of sanctioned offer or sanctioned payment (O. 62A, r. 18)

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

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

- (a) the stay is upon the terms of the offer; and
- (b) either party may apply to enforce those terms without the need to commence new proceedings.

(3) If a sanctioned offer or a sanctioned payment which relates to part only of the costs is accepted, the taxation is stayed as to that part.

(4) If the approval of the Court is required before a settlement as to costs can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment takes effect only when that approval has been given.

(5) Any stay arising under this rule does not affect the power of the Court –

- (a) to enforce the terms of a sanctioned offer;
- (b) to deal with any question of costs (including interest on costs) relating to the taxation; or
- (c) to order payment out of court of any sum paid into court.

(6) Where –

- (a) a sanctioned offer has been accepted; and
- (b) a party alleges that –
 - (i) the other party has not honoured the terms of the offer; and
 - (ii) he is therefore entitled to a remedy for breach of contract,

the party may claim the remedy by applying to the Court without the need to commence new proceedings unless the Court orders otherwise.

19. Costs consequences where receiving party fails to better sanctioned payment (O. 62A, r. 19)

(1) This rule applies where upon taxation a receiving party fails to better a sanctioned payment.

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

(3) The taxing master may also –

(a) order the receiving party to pay the costs of the taxation on the indemnity basis after the date on which the payment was made; and

(b) order that the paying party is entitled to interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

(a) the terms of the sanctioned payment;

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

(c) the information available to the parties at the time when the sanctioned payment was made; and

(d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the payment to be made or evaluated.

(6) The power of the taxing master under this rule is in addition to any other power he may have to award or disallow interest.

20. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer (O. 62A, r.20)

(1) This rule applies where upon taxation a paying party is held liable for more than the proposals contained in a receiving party's sanctioned offer.

(2) The taxing master may order interest on the whole or part of the amount of the costs allowed to the receiving party at a rate not exceeding 10% above judgment rate for some or all of the period after the date on which the sanctioned offer was served on the paying party.

(3) The taxing master may also order that the receiving party is entitled to –
(a) his costs on the indemnity basis after the date on which the sanctioned offer was served on the paying party; and
(b) interest on those costs at a rate not exceeding 10% above judgment rate.

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

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

- (a) the terms of the sanctioned offer;
- (b) the stage in the proceedings at which the sanctioned offer was made;
- (c) the information available to the parties at the time when the sanctioned offer was made; and
- (d) the conduct of the parties with regard to the giving or refusing to give information for the purposes of enabling the offer to be made or evaluated.

(6) The power of the taxing master under this rule is in addition to any other power he may have to award interest.

V. MISCELLANEOUS

21. Restriction on disclosure of sanctioned offer or sanctioned payment (O. 62A, r. 21)

(1) A sanctioned offer is treated as “without prejudice save as to costs”.

(2) The fact that a sanctioned payment has been made must not be communicated to the taxing master until the amount of the costs to be allowed have been decided.

(3) Paragraph (2) does not apply –

- (a) where the taxation has been stayed under rule 18 following acceptance of a sanctioned payment; and
- (b) where the fact that there has or has not been a sanctioned payment may be relevant to the question of the costs of the issue of liability.

22. Interest (O. 62A, r. 22)

(1) Unless –

- (a) a receiving party’s sanctioned offer; or

(b) a sanctioned payment notice, indicates to the contrary, any such offer or payment is to be treated as inclusive of all interest until the last date on which it could be accepted without requiring the leave of the Court.

(2) Where a receiving party's sanctioned offer or a sanctioned payment notice is expressed not to be inclusive of interest, the offer or notice must state

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(a) whether interest is offered; and

(b) if so, the amount offered, the rate or rates offered and the period or periods for which it is offered.