

Rules of the High Court (Amendment) Rules 2008

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

Order 77 – PROCEEDINGS BY AND AGAINST THE CROWN

Remarks

1. Application and interpretation (O. 77, r. 1)

(1) These rules apply to civil proceedings to which the Crown is a party subject to the following rules of this Order.

(2) In this Order –

“civil proceedings by the Crown” (由官方提出的民事法律程序) and “civil proceedings against the Crown” (針對官方提出的民事法律程序) have the same respective meanings as in Part III of the Crown Proceedings Ordinance (Cap. 300), and do not include any of the proceedings specified in section 19(3) of that Ordinance;

“civil proceedings to which the Crown is a party” (以官方作為一方的民事法律程序) has the same meaning as it has for the purposes of Part V of the Crown Proceedings Ordinance (Cap. 300), by virtue of section 2(4) of that Ordinance;

“order against the Crown” (針對官方的命令) means any order (including an order for costs) made in any civil proceedings by or against the Crown, or in connection with any arbitration to which the Crown is a party, in favour of any person against the Crown or against a government department or against an officer of the Crown as such;

“order” (命令) includes a judgment, decree, rule, award or declaration.

3. Particulars to be included in indorsement of claim (O. 77, r. 3)

(1) In the case of a writ which begins proceedings against the Crown the indorsement of claim required by Order 6, rule 2, shall include a statement of the circumstances in which the Crown’s liability is alleged to have arisen and as to the government department and officers of the Crown concerned.

(2) If in civil proceedings against the Crown a defendant considers that the writ does not contain a sufficient statement as required by this rule, he may, before the expiration of the time limited for acknowledging service of the writ, apply to the plaintiff by notice for a further and better statement containing such information as may be specified in the notice.

(3) Where a defendant gives a notice under this rule, the time limited for acknowledging service of the writ shall not expire until 4 days after the defendant has notified the plaintiff in writing that the defendant is satisfied with the statement supplied in compliance with the notice, or 4 days after the Court has, on the application of the plaintiff by summons served on the defendant not less than 7

days before the return day, decided that no further information as to the matters referred to in paragraph (1) is reasonably required.

4. Service on the Crown (O. 77, r. 4)

(1) Order 10, Order 11 and any other provision of these rules relating to service out of the jurisdiction shall not apply in relation to the service of any process by which civil proceedings against the Crown are begun.

(HK)(2) Personal service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings is not requisite; but where the proceedings are by or against the Crown service on the Crown must be effected by service on the Secretary for Justice. (L.N. 362 of 1997)

(3) In relation to the service of any document required to be served on the Crown for the purpose of or in connection with any civil proceedings by or against the Crown, Order 65, rules 5 and 9, shall not apply, and Order 65, rule 7, shall apply as if the reference therein to rules 2 and 5(1)(a) of that Order were a reference to paragraph (2) of this rule.

6. Counterclaim and set-off (O. 77, r. 6)

(1) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, a person may not in any proceedings by the Crown make any counterclaim or plead a set-off if the proceedings are for the recovery of, or the counterclaim or set-off arises out of a right or claim to repayment in respect of, any taxes, duties or penalties.

(2) Notwithstanding Order 15, rule 2, and Order 18, rules 17 and 18, no counterclaim may be made, or set-off pleaded, without the leave of the Court, by the Crown in proceedings against the Crown, or by any person in proceedings by the Crown –

- (a) if the Crown is sued or sues in the name of a government department and the subject-matter of the counterclaim or set-off does not relate to that department; or
- (b) if the Crown is sued or sues in the name of the Secretary for Justice. (L.N. 362 of 1997)

(3) Any application for leave under this rule must be made by summons.

7. Summary judgment (O. 77, r. 7)

(1) No application shall be made against the Crown –

- (a) under Order 14, rule 1, or Order 86, rule 1, in any proceedings against the Crown;
- (b) under Order 14, rule 5, in any proceedings by the Crown; or
- (c) under Order 14A, rule 1, in any proceedings by or against the Crown. (L.N. 165 of 1992)

(2) Where an application is made by the Crown under Order 14, rule 1, Order 14, rule 5, or Order 86, rule 1, the affidavit required in support of the application must be made by –

- (a) the solicitor acting for the Crown, or
- (b) an officer duly authorized by the solicitor so acting or by the department concerned;

and the affidavit shall be sufficient if it states that in the deponent's belief the applicant is entitled to the relief claimed and there is no defence to the claim or part of a claim to which the application relates or no defence except as to the amount of any damages claimed.

9. Judgment in default (O. 77, r. 9)

(1) Except with the leave of the Court, no judgment in default of notice of intention to defend or of pleading shall be entered against the Crown in civil proceedings against the Crown or in third party proceedings against the Crown.

(2) Except with the leave of the Court, Order 16, rule 5(1)(a), shall not apply in the case of third party proceedings against the Crown.

(3) An application for leave under this rule may be made by summons ~~or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or, as the case may be, notice of the motion~~ and the summons must be served not less than 7 days before the return day.

Rule 57
Rec 14

10. Third party notices (O. 77, r. 10)

(1) Notwithstanding anything in Order 16, a third party notice (including a notice issuable by virtue of Order 16, rule 9) for service on the Crown shall not be issued without the leave of the Court, and the application for the grant of such leave must be made by summons, and the summons must be served on the plaintiff and the Crown.

(2) Leave to issue such a notice for service on the Crown shall not be granted unless the Court is satisfied that the Crown is in possession of all such information as it reasonably requires as to the circumstances in which it is alleged that the liability of the Crown has arisen and as to the departments and officers of the Crown concerned.

11. Interpleader: application for order against Crown (O. 77, r. 11)

No order shall be made against the Crown under Order 17, rule 5(3), except upon an application by summons served not less than 7 days before the return day.

12. Discovery and interrogatories (O. 77, r. 12)

- (1) Order 24, rules 1 and 2, shall not apply in civil proceedings to which the Crown is a party.
- (2) In any civil proceedings to which the Crown is a party any order of the Court made under the power conferred by section 24(1) of the Crown Proceedings Ordinance (Cap. 300), shall be construed as not requiring the disclosure of the existence of any document the existence of which it would, in the opinion of the Chief Secretary for Administration, be injurious to the public interest to disclose. (L.N. 362 of 1997)
- (3) Where in any such proceedings an order of the Court directs that a list of documents made in answer to an order for discovery against the Crown shall be verified by affidavit, the affidavit shall be made by such officer of the Crown as the Court may direct.
- (4) Where in any such proceedings an order is made under the said section 24 for interrogatories to be answered by the Crown, the Court shall direct by what officer of the Crown the interrogatories are to be answered.
- (5) (Repealed L.N. 404 of 1991)

14. Evidence (O. 77, r. 14)

- (1) Civil proceedings against the Crown may be instituted under Order 39, rule 15, in any case in which the Crown is alleged to have an interest or estate in the honour, title, dignity or office or property in question.
- (2) For the avoidance of doubt it is hereby declared that any powers exercisable by the Court in regard to the taking of evidence are exercisable in proceedings between subjects.

15. Execution and satisfaction of orders (O. 77, r. 15)

- (1) Nothing in Orders 45 to 52 shall apply in respect of any order against the Crown. (See App. A, Form 96) <* Note - Exp. X-Ref.: Orders 45, 46, 47, 48, 49, 49B, 50, 51, 52*>
- (2) An application under the proviso to subsection (1) of section 21 of the Crown Proceedings Ordinance (Cap. 300), for a direction that a separate certificate shall be issued under that subsection with respect to the costs (if any) ordered to be paid to the applicant, may be made to the Court ex parte without summons.
- (3) Any such certificate must be in Form No. 95 or 96 in Appendix A, whichever is appropriate.

16. Attachment of debts, etc. (O. 77, r. 16)

(1) No order –
 (a) for the attachment of debts under Order 49, or
 (b) for the appointment of a sequestrator under Order 45, or
 (c) for the appointment of a receiver under Order 30 or 51,
shall be made or have effect in respect of any money due or accruing due, or alleged to be due or accruing due, from the Crown.

(1A) No application shall be made under paragraph (2) unless the order of the Court to be enforced is for a sum of money amounting in value to at least \$5,000.

(2) Every application to the Court for an order under section 23(1) of the Crown Proceedings Ordinance (Cap. 300), restraining any person from receiving money payable to him by the Crown and directing payment of the money to the applicant or some other person must be made by summons and, unless the Court otherwise directs, served –

- (a) on the Crown at least 15 days before the return day, and
- (b) on the person to be restrained or his solicitor at least 7 days after the summons has been served on the Crown and at least 7 days before the return day.

(2A) An application under paragraph (2) must be supported by an affidavit –

- (a) setting out the facts giving rise to the application;
- (b) stating the name and last known address of the person to be restrained;
- (c) identifying the order to be enforced and stating the amount of such order and the amount remaining unpaid under it at the time of the application, and
- (d) identifying the particular debt from the Crown in respect of which the application is made.

(3) Order 49, rules 5 and 6, shall apply in relation to such an application as is mentioned in paragraph (2) for an order restraining a person from receiving money payable to him by the Crown as those rules apply to an application under Order 49, rule 1, for an order for the attachment of a debt owing to any person from a garnishee, except that the Court shall not have power to order execution to issue against the Crown.

17. Proceedings relating to postal packets (O. 77, r. 17)

(1) An application by any person under section 7(3) of the Crown Proceedings Ordinance (Cap. 300), for leave to bring proceedings in the name of the sender or addressee of a postal packet or his personal representatives must be made by originating summons.

(2) The Crown and the person in whose name the applicant seeks to bring proceedings must be made defendants to a summons under this rule.

Remarks

(3) A summons under this rule shall be in Form No. 10 in Appendix A.

18. Applications under section 25 of Crown Proceedings Ordinance
(O. 77, r. 18)

(2) An application such as is referred to in section 25(2) of the Crown Proceedings Ordinance (Cap. 300) may be made to the Court at any time before trial by ~~motion or~~ summons, or may be made at the trial of the proceedings.
(Enacted 1988)

Rule 58
Rec 14