Annex A

The Rules of the High Court (Cap. 4A) highlighted with the major changes since the last consultation

Note

Changes to the previous draft Rules of the High Court since the last consultation are highlighted in red. Details as follows–

(a) **New additions** are in red, bold-typed and underlined, e.g. "**new additions**";

(b) **New deletions** are struck through in red, e.g. "~~new deletions~~";

(c) **Reinstatement** of previous deletions are in red, e.g. "reinstatement of previous deletions";

(d) **Removal** of previous additions are in bold-typed and struck through in red, e.g. "~~**previous additions**~~";

(e) Previous additions remain as bold-typed and underlined, e.g. "**previous additions**";

(f) Previous deletions remain as struck through, e.g. "~~previous deletions~~"; and

(g) The remarks column indicates -
- the Recommendation(s) ("Rec") in the Final Report to which the amendments relate, where relevant; and / or
- a brief description on the changes made.

Rules of the High Court (Amendment) Rules 2007

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

Order 11 - SERVICE OF PROCESS, ETC., OUT OF THE JURISDICTION

Remarks

1. Principal cases in which service of writ out of jurisdiction is permissible (O. 11, r. 1)

(1) Provided that the writ is not a writ to which paragraph (2) of this rule applies, service of a writ out of the jurisdiction is permissible with the leave of the Court if in the action begun by the writ- (L.N. 363 of 1990)

(a) relief is sought against a person domiciled or ordinarily resident within the jurisdiction;

(b) an injunction is sought ordering the defendant to do or refrain from doing anything within the jurisdiction (whether or not damages are also claimed in respect of a failure to do or the doing of that thing);

(c) the claim is brought against a person duly served within or out of the jurisdiction and a person out of the jurisdiction is a necessary or proper party thereto;

(d) the claim is brought to enforce, rescind, dissolve, annul or otherwise affect a contract, or to recover damages or obtain other relief in respect of the breach of a contract, being (in either case) a contract which-

(i) was made within the jurisdiction, or

(ii) was made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction, or

(iii) is by its terms, or by implication, governed by Hong Kong law, or

(iv) contains a term to the effect that the Court of First Instance shall have jurisdiction to hear and determine any action in respect of the contract; (25 of 1998 s. 2)

(e) the claim is brought in respect of a breach committed within the jurisdiction of a contract made within or out of the jurisdiction, and irrespective of the fact, if such be the case, that the breach was preceded or accompanied by a breach committed out of the jurisdiction that rendered impossible the performance of so much of the contract as ought to have been performed within the jurisdiction;

(f) the claim is founded on a tort and the damage was sustained, or resulted from an act committed, within the jurisdiction;

(g) the whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits) or the perpetuation of testimony relating to land so situate;

(h) the claim is brought to construe, rectify, set aside or enforce an act, deed, will, contract, obligation or liability affecting land situate

Remarks

within the jurisdiction;

(i) the claim is made for a debt secured on immovable property or is made to assert, declare or determine proprietary or possessory rights, or rights of security, in or over movable property, or to obtain authority to dispose of movable property, situate within the jurisdiction;

(j) the claim is brought to execute the trusts of a written instrument being trusts that ought to be executed according to Hong Kong law and of which the person to be served with the writ is a trustee, or for any relief or remedy which might be obtained in any such action;

(k) the claim is made for the administration of the estate of a person who died domiciled within the jurisdiction or for any relief or remedy which might be obtained in any such action;

(l) the claim is brought in a probate action within the meaning of Order 76;

(m) the claim is brought to enforce any judgment or arbitral award;

(n) the claim is brought under the Carriage by Air Ordinance (Cap 500). (13 of 1997 s. 20)

(o) (Repealed L.N. 296 of 1996)

(oa) the claim is made under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525); (87 of 1997 s. 36)

(ob) the claim is for an order ~~that the Court exercises its power~~ for the costs of and incidental to a dispute under section ~~52B~~ 52B(2) of the Ordinance ~~to make a costs order against another person~~; Rec 9

(oc) the claim is for interim relief or appointment of a receiver under section 21M(1) of the Ordinance; Rec 49

(od) the claim is for a costs order under section 52A(2) of the Ordinance against a person who is not a party to the relevant proceedings;

(p) the claim is brought for money had and received or for an account or other relief against the defendant as constructive trustee, and the defendant's alleged liability arises out of acts committed, whether by him or otherwise, within the jurisdiction. (L.N. 404 of 1991)

(2) Service of a writ out of the jurisdiction is permissible without the leave of the Court provided that each claim made by the writ is-

(b) a claim which by virtue of any written law the Court of First Instance has power to hear and determine notwithstanding that the person against whom the claim is made is not within the jurisdiction of the Court or that the wrongful act, neglect or default giving rise to the claim did not take place within its jurisdiction. (25 of 1998 s. 2)

(3) Where a writ is to be served out of the jurisdiction under paragraph (2), the time to be inserted in the writ within which the defendant served therewith must acknowledge service shall-

(c) be limited in accordance with the practice adopted under rule 4(4).

(HK)(4) This rule shall not apply to a writ-

(a) to enforce a claim for damage, loss of life or personal injury arising out of-

(i) a collision between ships;

(ii) the carrying out of or omission to carry out a manoeuvre in the case of one or more of 2 or more ships; or

(iii) non-compliance, on the part of one or more of 2 or more ships, with the regulations made under section 93, 100 or 107 of the Merchant Shipping (Safety) Ordinance (Cap 369);

(b) for the limitation of liability in a limitation action as defined in Order 75, rule 1(2); or

(c) to enforce a claim under section 1 of the Merchant Shipping (Oil Pollution) Act 1971 (1971 c. 59 U.K.) or section 4 of the Merchant Shipping Act 1974 (1974 c. 43 U.K.)⊕. (L.N. 363 of 1990)

4. Application for, and grant of, leave to serve writ out of jurisdiction (O. 11, r. 4)

(1) An application for the grant of leave under rule 1(l) must be supported by an affidavit stating-

(a) the grounds on which the application is made;

(b) that in the deponent's belief the plaintiff has a good cause of action;

(c) in what place the defendant is, or probably may be found; and

(d) where the application is made under rule 1(1)(c), the grounds for the deponent's belief that there is between the plaintiff and the person on whom a writ has been served a real issue which the plaintiff may reasonably ask the Court to try.

(2) No such leave shall be granted unless it shall be made sufficiently to appear to the Court that the case is a proper one for service out of the jurisdiction under this Order.

(4) An order granting under rule 1 leave to serve a writ out of the jurisdiction must limit a time within which the defendant to be served must acknowledge service.

5. Service of writ out of jurisdiction: general (O. 11, r. 5)

(1) Subject to the following provisions of this rule, Order 10, rule 1(l), (4) and (5) and (6) and Order 65, rule 4, shall apply in relation to the service of a writ notwithstanding that the writ is to be served out of the jurisdiction, save that the accompanying form of acknowledgment of service shall be modified in such manner as may be appropriate.

(2) Nothing in this rule, rule 5A or any order or direction of the Court made by virtue of it shall authorize or require the doing of anything in a country or place in which service is to be effected which is contrary to the law of that country or place. (L.N. 39 of 1999)

(3) A writ which is to be served out of the jurisdiction-

(a) need not be served personally on the person required to be served so long as it is served on him in accordance with the law of the country or place in which service is effected; and

(b) need not be served by the plaintiff or his agent if it is served by a method provided for by rule 5A, rule 6 or rule 7. (L.N. 39 of 1999)

(5) An official certificate stating that a writ as regards which rule 5A or rule 6 has been complied with, has been served on a person personally, or in accordance with the law of the country or place in which service was effected, on a specified date, being a certificate-

(a) by a British consular authority in that country or place, or

(b) by the government or judicial authorities of that country or place, or

(c) by any other authority designated in respect of that country or place under the Hague Convention,

shall be evidence of the facts so stated. (L.N. 39 of 1999)

(6) An official certificate by the Chief Secretary for Administration stating that a writ has been duly served on a specified date in accordance with a request made under rule 7 shall be evidence of that fact. (L.N. 362 of 1997)

(7) A document purporting to be such a certificate as is mentioned in paragraph (5) or (6) shall, until the contrary is proved, be deemed to be such a certificate.

(8) In this rule and rule 6 "the Hague Convention" means the Convention on the service abroad of judicial or extra-judicial documents in civil or commercial matters signed at The Hague on 15 November 1965.

5A. Service of writ in the Mainland of China through judicial authorities (O. 11, r. 5A)

(1) Where in accordance with these rules, a writ is to be served on a person to be served in the Mainland of China, the writ shall be served through the judicial authorities of the Mainland of China.

(2) A person who wishes to serve a writ under paragraph (1) must lodge in the Registry a request for such service, together with 2 copies of the writ and 2 additional copies thereof for the person to be served.

(3) The request lodged under paragraph (2) must contain-

(a) the full name and address of the person to be served;

(b) a description of the nature of proceedings; and

(c) if a particular method of service by the judicial authorities of the

Mainland of China is desired by the person making the request, an indication of that particular method.

(4) Every copy of a writ lodged under paragraph (2) must be in Chinese or accompanied by a Chinese translation.

(5) Every translation lodged under paragraph (4) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualifications for making the translation.

(6) Documents duly lodged under paragraph (2) shall be sent by the Registrar to the judicial authorities of the Mainland of China with a request that they arrange for the writ to be served or, where a particular method of service is indicated under paragraph (3)(c), to be served by that method.

(L.N. 39 of 1999)

6. Service of writ abroad through foreign governments, judicial authorities and British consuls (O. 11, r. 6)

(1) Save where a writ is to be served pursuant to paragraph (2A) this rule does not apply to service in-

(HK)(a) The United Kingdom of Great Britain, Northern Ireland, the Channel Islands and the Isle of Man;

(b) any independent Commonwealth country;

(HK)(c) any British protectorate;

(HK)(d) any British colony;

(e) the Republic of Ireland.

(2) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there subsists a Civil Procedure Convention (other than the Hague Convention) providing for service in that country of process of the Court, the writ may be served-

(a) through the judicial authorities of that country; or

(b) through a British consular authority in that country (subject to any provision of the convention as to the nationality of persons who may be so served).

(2A) Where in accordance with these rules, a writ is to be served on a defendant in any country which is a party to the Hague Convention, the writ may be served-

(a) through the authority designated under the Convention in respect of that country; or

(b) if the law of that country permits-

(i) through the judicial authorities of that country, or

(ii) through a British consular authority in that country.

(3) Where in accordance with these rules a writ is to be served on a defendant in any country with respect to which there does not subsist a Civil Procedure

Convention providing for service in that country of process of the Court of First Instance, the writ may be served- (25 of 1998 s. 2)

(a) through the government of that country, where that government is willing to effect service; or

(b) through a British consular authority in that country, except where service through such an authority is contrary to the law of that country.

(4) A person who wishes to serve a writ by a method specified in paragraph (2), (2A) or (3) must lodge in the Registry a request for service of the writ by that method, together with a copy of the writ and an additional copy thereof for each person to be served.

(5) Every copy of a writ lodged under paragraph (4) must be accompanied by a translation of the writ in the official language of the country in which service is to be effected or, if there is more than one official language of that country, in any one of those languages which is appropriate to the place in that country where service is to be effected:

Provided that this paragraph shall not apply in relation to a copy of a writ which is to be served in a country the official language of which is, or the official languages of which include, English, or is to be served in any country by a British consular authority on a British subject, unless the service is to be effected under paragraph (2) and the Civil Procedure Convention with respect to that country expressly requires the copy to be accompanied by a translation.

(6) Every translation lodged under paragraph (5) must be certified by the person making it to be a correct translation; and the certificate must contain a statement of that person's full name, of his address and of his qualification for making the translation.

(7) Documents duly lodged under paragraph (4) shall be sent by the Registrar to the Chief Secretary for Administration with a request that he arrange for the writ to be served by the method indicated in the request lodged under paragraph (4) or, where alternative methods are so indicated, by such one of those methods as is most convenient. (L.N. 362 of 1997)

7. Service of process on a foreign State (O. 11, r. 7)

(1) Subject to paragraph (4) where a person to whom leave has been granted under rule 1 to serve a writ on a State, as defined in section 14 of the State Immunity Act 1978 (1978 c. 33 U.K.), wishes to have the writ served on that State, he must lodge in the Registry-

(a) a request for service to be arranged by the Chief Secretary for Administration; and (L.N. 362 of 1997)

(b) a copy of the writ; and

(c) except where the official language of the State is, or the official languages of that party include, English, a translation of the writ in

the official language or one of the official languages of the State.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the State or the government in question, as the case may be. (L.N. 362 of 1997)

(4) Where section 12(6) of the State Immunity Act 1978 (1978 c. 33 U.K.) applies and the State has agreed to a method of service other than that provided by the preceding paragraphs, the writ may be served either by the method agreed or in accordance with the preceding paragraphs of this rule.

7A. Service of writ in certain actions under Carriage by Air Ordinance (O. 11, r. 7A)

(HK)(1) Where a person to whom leave has been granted under rule 1 to serve a writ on a High Contracting Party certified under section 4 of Carriage by Air Ordinance (Cap 500), being a writ beginning an action to enforce a claim in respect of carriage undertaken by that Party, wishes to have the writ served on that Party, he must lodge in the Registry- (13 of 1997 s. 20)

(a) a request for service to be arranged by the Chief Secretary for Administration; and
(b) a copy of the writ; and
(c) except where the official language of the High Contracting Party is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of the High Contracting Party.

(2) Rule 6(6) shall apply in relation to a translation lodged under paragraph (1) of this rule as it applies in relation to a translation lodged under paragraph (5) of that rule.

(3) Documents duly lodged under this rule shall be sent by the Registrar to the Chief Secretary for Administration with a request that the Chief Secretary for Administration arrange for the writ to be served on the High Contracting Party. (L.N. 362 of 1997)

8. Undertaking to pay expenses of service by the Chief Secretary for Administration (O. 11, r. 8)

Every request lodged under rule 6(4), rule 7 or rule 7A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Chief Secretary for Administration in respect of the service requested and, on receiving due notification of the amount of those

expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 362 of 1997)

8A. Undertaking to pay expenses of service by the Registrar (O. 11, r. 8A)

Every request lodged under rule 5A must contain an undertaking by the person making the request to be responsible personally for all expenses incurred by the Registrar in respect of the service requested and, on receiving due notification of the amount of those expenses, to pay that amount to the Treasury and to produce a receipt for the payment to the Registrar.

(L.N. 39 of 1999)

9. Service of originating summons, petition, notice of motion, etc. (O. 11, r. 9)

(1) Subject to Order 73, rule 7, rule 1 of this Order shall apply to the service out of the jurisdiction of an originating summons, notice of motion or petition as it applies to service of a writ.

(4) Subject to Order 73, rule 7, service out of the jurisdiction of any summons, notice or order issued, given or made in any proceedings is permissible with the leave of the Court, but leave shall not be required for such service in any proceedings in which the writ, originating summons, motion or petition may by these rules or under any written law be served out of the jurisdiction without leave.

(5) Rule 4(1), (2) and (3) shall, so far as applicable, apply in relation to an application for the grant of leave under this rule as they apply in relation to an application for the grant of leave under rule 1.

(6) An order granting under this rule leave to serve out of the jurisdiction an originating summons must limit a time within which the defendant to be served with the summons must acknowledge service.

(7) Rules 5, 5A, 6, 8 and 8A shall apply in relation to any document for the service of which out of the jurisdiction leave has been granted under this rule as they apply in relation to a writ. (L.N. 39 of 1999)

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

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

~~Order 22 - PAYMENT INTO AND OUT OF COURT~~

~~Remarks:~~
~~Adaptation amendments retroactively made - see 25 of 1998 s. 2~~

Remarks

~~1. Payment into court~~ ~~(O. 22, r. 1)~~

~~(1) In any action for a debt or damages any defendant may at any time pay into court a sum or sums of money in satisfaction of the cause of action in respect of which the plaintiff claims or, where two or more causes of action are joined in the action, a sum or sums of money in satisfaction of any or all of those causes of action.~~

~~(2) On making any payment into court under this rule, and on increasing any such payment already made, the defendant must give notice thereof in Form No. 23 in Appendix A to the plaintiff and every other defendant (if any); and within 3 days after receiving the notice the plaintiff must send the defendant a written acknowledgment of its receipt.~~

~~(3) A defendant may, without leave, give notice of an increase in a payment made under this rule but, subject to that and without prejudice to paragraph (5), a notice of payment may not be withdrawn or amended without the leave of the Court which may be granted on such terms as may be just.~~

~~(4) Where two or more causes of action are joined in the action and money is paid into court under this rule in respect of all, or some only of, those causes of action, the notice of payment -~~

~~(a) must state that the money is paid in respect of all those causes of action or, as the case may be, must specify the cause or causes of action in respect of which payment is made, and~~

~~(b) where the defendant makes separate payments in respect of each, or any two or more, of those causes of action, must specify the sum paid in respect of that cause or, as the case may be, those causes of action.~~

~~(5) Where a single sum of money is paid into court under this rule in respect of two or more causes of action, then, if it appears to the Court that the plaintiff is embarrassed by the payment, the Court may, subject to paragraph (6), order the defendant to amend the notice of payment so as to specify the sum paid in respect of each cause of action.~~

~~(6) Where a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under sections 20 to 25 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) are joined in an action, with or without any~~

~~other cause of action, the causes of action under the said Ordinances shall, for the purpose of paragraph (5), be treated as one cause of action.~~

~~(8) For the purposes of this rule, the plaintiff's cause of action in respect of a debt or damages shall be construed as a cause of action in respect, also, of such interest as might be included in the judgment, whether under section 48 of the Ordinance or otherwise, if judgment were given at the date of the payment into court.~~

~~2. Payment in by defendant who has counterclaimed~~ ~~(O. 22, r. 2)~~

~~Where a defendant, who makes by counterclaim a claim against the plaintiff for a debt or damages, pays a sum or sums of money into court under rule 1, the notice of payment must state if it be the case, that in making the payment the defendant has taken into account and intends to satisfy~~

~~(a) the cause of action in respect of which he claims, or~~

~~(b) where two or more causes of action are joined in the counterclaim, all those causes of action or, if not all, which of them. (See App. A, Form 23)~~

~~3. Acceptance of money paid into court~~ ~~(O. 22, r. 3)~~

~~(1) Where money is paid into court under rule 1, then, subject to paragraph (2), within 14 days after receipt of the notice of payment or, where more than one payment has been made or the notice has been amended, within 14 days after receipt of the notice of the last payment or the amended notice but, in any case, before the trial or hearing of the action begins, the plaintiff may~~

~~(a) where the money was paid in respect of the cause of action or all the causes of action in respect of which he claims, accept the money in satisfaction of that cause of action or those causes of action, as the case may be, or~~

~~(b) where the money was paid in respect of some only of the causes of action in respect of which he claims, accept in satisfaction of any such cause or causes of action the sum specified in respect of that cause or those causes of action in the notice of payment,~~

~~by giving notice in Form No. 24 in Appendix A to every defendant to the action.~~

~~(2) Where after the trial or hearing of an action has begun~~

~~(a) money is paid into court under rule 1, or~~

~~(b) money in court is increased by a further payment into court under that rule,~~

~~the plaintiff may accept the money in accordance with paragraph (1) within 2 days after receipt of the notice of payment or notice of the further payment, as the case may be, but, in any case, before the judge begins to deliver judgment or, if the trial is with a jury, before the judge begins his summing up.~~

~~(3) Rule 1(5) shall not apply in relation to money paid into court in an action~~

after the trial or hearing of the action has begun.

(4) On the plaintiff accepting any money paid into court all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance relates, both against the defendant making the payment and against any other defendant sued jointly with or in the alternative to him, shall be stayed.

(5) Where money is paid into court by a defendant who made a counterclaim and the notice of payment stated, in relation to any sum so paid, that in making the payment the defendant had taken into account and satisfied the cause or causes of action, or the specified cause or specified causes of action, in respect of which he claimed, then, on the plaintiff accepting that sum, all further proceedings on the counterclaim or in respect of the specified cause or causes of action, as the case may be, against the plaintiff shall be stayed.

(6) A plaintiff who has accepted any sum paid into court shall, subject to rules 4 and 10 and Order 80, rule 12, be entitled to receive payment of that sum in satisfaction of the cause or causes of action to which the acceptance relates.

4. Order for payment out of money accepted required in certain cases
(O. 22, r. 4)

(1) Where a plaintiff accepts any sum paid into court and that sum was paid into court-

(a) by some but not all of the defendants sued jointly or in the alternative by him, or

(b) with a defence of tender before action, or

(c) in an action to which Order 80, rule 12, applies, or

(d) in satisfaction either of causes of action arising under the Fatal Accidents Ordinance (Cap. 22) and sections 20 to 25 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) or of a cause of action arising under the first mentioned Ordinance where more than one person is entitled to the money,

the money in court shall not be paid out except under paragraph (2) or in pursuance of an order of the Court, and the order shall deal with the whole costs of the action or of the cause of action to which the payment relates, as the case may be.

(2) Where an order of the Court is required under paragraph (1) by reason only of paragraph (1)(a) then if, either before or after accepting the money paid into court by some only of the defendants sued jointly or in the alternative by him, the plaintiff discontinues the action against all the other defendants and those defendants consent in writing to the payment out of that sum, it may be paid out without an order of the Court.

(3) Where after the trial or hearing of an action has begun a plaintiff accepts any money paid into court and all further proceedings in the action or in respect of the specified cause or causes of action, as the case may be, to which the acceptance

relates are stayed by virtue of rule 3(4), then, notwithstanding anything in paragraph (2), the money shall not be paid out except in pursuance of an order of the Court, and the order shall deal with the whole costs of the action.

5. Money remaining in court (O. 22, r. 5)

If any money paid into court in an action is not accepted in accordance with rule 3, the money remaining in court shall not be paid out except in pursuance of an order of the Court which may be made at any time before, at or after the trial or hearing of the action; and where such an order is made before the trial or hearing the money shall not be paid out except in satisfaction of the cause or causes of action in respect of which it was paid in.

6. Counterclaim (O. 22, r. 6)

A plaintiff against whom a counterclaim is made and any other defendant to the counterclaim may pay money into court in accordance with rule 1, and that rule and rules 3 (except paragraph (5)), 4 and 5 shall apply accordingly with the necessary modifications.

7. Non-disclosure of payment into court (O. 22, r. 7)

(1) Except in an action to which a defence of tender before action is pleaded, and except in an action all further proceedings in which are stayed by virtue of rule 3(4) after the trial or hearing has begun and subject to paragraph (2), the fact that money has been paid into court under the foregoing provisions of this Order shall not be pleaded and no communication of that fact shall be made to the Court at the trial or hearing of the action or counterclaim or of any question or issue as to the debt or damages until all questions of liability and of the amount of the debt or damages have been decided.

(2) Where the question of the costs of the issue of liability falls to be decided, that issue having been tried and an issue or question concerning the amount of the debt or damages remaining to be tried separately, any party may bring to the attention of the Court the fact that a payment into court has or has not been made and the date (but not the amount) of such payment or of the first payment if more than one.

8. Money paid into court under order (O. 22, r. 8)

(1) On making any payment into Court under an order of the Court or a certificate of a master, a party must give notice thereof to every other party to the proceedings. (L.N. 363 of 1990)

(2) Subject to paragraph (3), money paid into court under an order of the Court

or a certificate of a master shall not be paid out except in pursuance of an order of the Court. (L.N. 404 of 1991)

(3) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under Order 14

(a) may by notice to the other party appropriate the whole or any part of the money and any additional payment, if necessary, to any particular claim made in the writ or counterclaim, as the case may be, and specified in the notice, or

(b) if he pleads a tender, may by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to have been tendered;

and money appropriate in accordance with this rule shall be deemed to be money paid into court in accordance with rule 1 or money paid into court with a plea of tender, as the case may be, and this Order shall apply accordingly.

(L.N. 363 of 1990)

10. Person to whom payment to be made (O. 22, r. 10)

(1) Where the party entitled to money in court is a person in respect of whom a certificate is or has been in force entitling him to legal aid under the Legal Aid Ordinance (Cap. 91), payment shall be made only to the Director of Legal Aid without the need for any authority from the party.

(2) Subject to paragraph (1), payment shall be made to the party entitled or to his solicitor.

(3) This rule applies whether the money in court has been paid into court under rule 1 or under an order of the Court or a certificate of the Registrar.

11. Payment out: small intestate estates (O. 22, r. 11)

Where a person entitled to a fund in court, or a share of such fund, dies intestate and the Court is satisfied that no grant of administration of his estate has been made and that the assets of his estate, including the fund or share, do not exceed $20,000 in value, it may order that the fund or share shall be paid, transferred or delivered to the person who, being a widower, widow, child, father, mother, brother or sister of the deceased, would have the prior right to a grant of administration of the estate of the deceased.

12. Payment of hospital expenses (O. 22, r. 12)

(1) This rule applies in relation to an action or counterclaim for bodily injury arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access in which the claim for damages includes a sum for hospital expenses.

Remarks

~~(2) Where the party against whom the claim is made, or an authorized insurer within the meaning of section 2 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272) pays the amount for which that party or insurer, as the case may be, is or may be liable under section 8 of that Ordinance in respect of whom the claim is made, the party against whom the claim is made must, within 7 days after the payment is made, give notice of the payment to all the other parties to the action.~~

~~**13. Investment of money in court** (O. 22, r. 13)~~

~~Cash under the control of or subject to the order of the Court may be invested in any manner specified in the High Court Suitors' Funds Rules (Cap. 4 sub. leg.) and the Trustee Ordinance (Cap. 29).~~
~~(25 of 1998 s. 2)~~

~~**14. Written offers "without prejudice save as to costs"** (O. 22, r. 14)~~

~~(1) A party to proceedings may at any time make a written offer to any other party to those proceedings which is expressed to be "without prejudice save as to costs" and which relates to any issue in the proceedings.~~

~~(2) Where an offer is made under paragraph (1), the fact that such an offer has been made shall not be communicated to the Court until the question of costs falls to be decided: (L.N. 404 of 1991)~~
~~Provided that the Court shall not take such 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 O. 22.~~

~~(Enacted 1988)~~

Order 22 - OFFERS TO SETTLE AND PAYMENTS INTO COURT

I. PRELIMINARY

Rec 38-43

1. Interpretation (O. 22, r. 1)

In this Order –

"claim" ( ) includes, where the context so permits or requires, a counterclaim;

"counterclaim" ( ) includes, where the context so permits or requires, a claim;

Remarks

"defendant" ( ) includes, where the context so permits or requires, a defendant to a counterclaim;

"offeree" ( ) means the party to whom an offer is made;

"offeror" ( ) means the party who makes an offer;

"plaintiff" ( ) includes, where the context so permits or requires, a counterclaiming defendant;

"sanctioned offer" ( ) means an offer made (otherwise than by way of a payment into court) in accordance with this Order;

"sanctioned payment" ( ) means an offer made by way of a payment into court in accordance with this Order;

"sanctioned payment notice" ( ) means the notice referred to in rule 9(2).

2. Offer to settle with specified consequences (O. 22, r. 2)

(1) Any party to a claim (whether a money claim or a non-money claim) may make an offer to settle the claim in accordance with this Order.

(2) An offer made under paragraph (1) may take into account any counterclaim or set-off in the action.

(3) An offer made under paragraph (1) will have the consequences specified in rules 18, 19, 20, 21 and 22 (as may be applicable).

(4) Nothing in this Order prevents a party from making an offer to settle in whatever way he chooses, but if that offer is not made in accordance with this Order, it will ~~only~~ not have the consequences specified in this Order ~~if~~ unless the Court so orders.

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

3. Offer to settle money claim by sanctioned payment (O. 22, r. 3)

(1) Where an offer by a defendant to settle a plaintiff's money claim involves a payment of money by the defendant to the plaintiff, the offer will not have the consequences set out in this Order unless it is made by way of a sanctioned payment.

Remarks

(2) A sanctioned payment may only be made after the proceedings have commenced.

4. Offer to settle money claim by sanctioned offer (O. 22, r. 4)

An offer by a plaintiff to settle his money claim will not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

5. Offer to settle non-money claim by sanctioned offer (O. 22, r. 5)

An offer to settle a non-money claim will not have the consequences set out in this Order unless it is made by way of a sanctioned offer.

6. Offer to settle the whole of a claim which includes both a money claim and a non-money claim (O. 22, r. 6)

(1) This rule applies where a party to a claim which includes both a money claim and a non-money claim wishes to make an offer to settle the whole claim which will have the consequences set out in this Order.

(2) The party shall –

~~**(a) where his offer involves a payment of money by him to the other party, make a sanctioned payment in relation to the payment; and**~~

~~**(b) make a sanctioned offer in relation to the balance of the offer.**~~

(a) where he is a defendant, make a sanctioned payment in relation to the money claim and a sanctioned offer in relation to the non-money claim; and

(b) where he is a plaintiff, make a sanctioned offer in relation to the money claim and another sanctioned offer in relation to the non-money claim.

Previous r.6(2)(a)&(b) modified

(3) The sanctioned payment notice must –

(a) identify the document which sets out the terms of the sanctioned offer; and

(b) state that if the other party gives notice of acceptance of the sanctioned payment he will be treated as also accepting the sanctioned offer.

(4) If the other party gives notice of acceptance of the sanctioned payment, he shall also be taken as giving notice of acceptance of the sanctioned offer in relation to the non-money claim.

Remarks

7. Form and content of a sanctioned offer (O. 22, r. 7)

(1) A sanctioned offer must be in writing.

(2) A sanctioned offer may relate to the whole claim or to part of it or to any issue that arises in it.

(3) A sanctioned offer must –

- **(a) state whether it relates to the whole of the claim or to part of it or to an issue that arises in it and if so to which part or issue;**
- **(b) state whether it takes into account any counterclaim or set-off; and**
- **(c) if it is expressed not to be inclusive of interest, give the details relating to interest set out in rule 24(2).**

(4) A defendant may make a sanctioned offer limited to accepting liability up to a specified proportion.

(5) A sanctioned offer may be made by reference to an interim payment.

(6) A sanctioned offer must be served –

- **(a) on the offeree; and**
- **(b) where the offeree is an aided person, on the Director of Legal Aid.**

~~(6)~~(7) A sanctioned offer made not less than 28 days before the commencement of the trial –

- **(a) may not be withdrawn or reduced before the expiry of 28 days from the date the sanctioned offer is made unless the Court gives leave to withdraw or reduce it; and**
- **(b) must provide that after the expiry of the 28-day period, the offeree may only accept it if –**
  - **(i) the parties agree on the liability for costs; or**
  - **(ii) the Court gives leave to accept it.**

~~(7)~~(8) A sanctioned offer made less than 28 days before the commencement of the trial must provide that the offeree may only accept it if –

- **(a) the parties agree on the liability for costs; or**
- **(b) the Court gives leave to accept it.**

(9) A sanctioned offer made less than 28 days before the commencement of the trial may be withdrawn or reduced if the Court gives leave to withdraw or reduce it.

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

(11) If the Court dismisses an application to withdraw or reduce a sanctioned offer, it may by order specify the period within which the sanctioned offer may be accepted.

Remarks

~~(8)~~(12) If a sanctioned offer is withdrawn, it will not have the consequences set out in this Order.

8. Sanctioned offer to be made after commencement of proceedings (O. 22, r. 8)

(1) Subject to paragraph (2), a sanctioned offer may be made at any time after the commencement of the proceedings but may not be made before such commencement.

(2) If a pre-action protocol in relation to a specialist list so provides, an offer to settle a claim may be made before the commencement of the relevant proceedings specified in the specialist list.

(3) An offer to settle made before the commencement of proceedings in accordance with a pre-action protocol shall be treated as a sanctioned offer and the provisions of this Order apply accordingly.

(4) Paragraph (3) takes effect subject to the provisions of the pre-action protocol.

9. Notice of a sanctioned payment (O. 22, r. 9)

(1) A sanctioned payment may relate to the whole claim or part of it or to an issue that arises in it.

(2) A defendant who makes a sanctioned payment shall file with the Court a notice in Form No. 23 in Appendix A, that –

- **(a) states the amount of the payment;**
- **(b) states whether the payment relates to the whole claim or to part of it or to any issue that arises in it and if so to which part or issue;**
- **(c) states whether it takes into account any counterclaim or set-off;**
- **(d) if an interim payment has been made, states that the interim payment has been taken into account;**
- **(e) if it is expressed not to be inclusive of interest, gives the details relating to interest set out in rule 24(2); and**
- **~~(f) if a sum of money has been paid into court as security for the action, cause or matter (other than security for costs), states whether the paying party has taken into account that sum of money.~~**

- **(f) if a sum of money has been paid into court (other than as security for costs), states whether the sanctioned payment has taken into account that sum of money.**

Previous r.9(2)(f) modified

Remarks

(3) The defendant shall –

~~(a)~~ serve the sanctioned payment notice –

~~(i)~~(a) on the plaintiff; and

~~(ii)~~(b) where the plaintiff is an aided person ~~within the meaning of the Legal Aid Ordinance (Cap. 91)~~, on the Director of Legal Aid. ~~; and~~

~~(b) file a certificate of service of the notice.~~

(4) A sanctioned payment may not be withdrawn or reduced before the expiry of 28 days from the date the sanctioned payment is made unless the Court gives leave to withdraw or reduce it.

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

(6) If the Court dismisses an application to withdraw or reduce a sanctioned payment, it may by order specify the period within which the sanctioned payment may be accepted.

(7) If a sanctioned payment is withdrawn, it will not have the consequences set out in this Order.

10. Offer to settle a claim for provisional damages (O. 22, r. 10)

(1) A defendant may make a sanctioned payment in respect of a claim that includes a claim for provisional damages.

(2) Where he does so, the sanctioned payment notice must specify whether or not the defendant is offering to agree to the making of an award of provisional damages.

(3) Where the defendant is offering to agree to the making of an award of provisional damages, the sanctioned payment notice must also state –

(a) that the sum paid into court is in satisfaction of the claim for damages on the assumption that the injured person will not develop the disease or suffer the type of deterioration specified in the notice;

(b) that the offer is subject to the condition that the plaintiff shall make any claim for further damages within a limited period; and

(c) what that period is.

(4) Where a sanctioned payment is –

(a) made in accordance with paragraph (3); and

(b) accepted within the relevant period specified in rule 13,

the sanctioned payment will have the consequences set out in rule 18, unless the Court orders otherwise.

Remarks

(5) If the plaintiff accepts the sanctioned payment he must, within 7 days of doing so, apply to the Court for an order for an award of provisional damages under Order 37, rule 8.

(6) The money in court may not be paid out until the Court has disposed of the application made in accordance with paragraph (5).

(7) In this rule, "provisional damages" ( ) means damages for personal injuries that are to be assessed on the assumption that the injured person will not develop the disease or suffer the deterioration referred to in section 56A of the Ordinance.

11. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 22, r. 11)

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

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

(3) An ~~improvement~~ amendment to a sanctioned offer will be effective when its details are ~~received by~~ served on the offeree.

(4) An ~~increase in~~ amendment to a sanctioned payment will be effective when notice of the ~~increase~~ amendment is served on the offeree.

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

12. Clarification of a sanctioned offer or a sanctioned payment notice (O. 22, r. 12)

(1) The offeree may, within 7 days of a sanctioned offer or 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 receiving the request, the offeree may, unless the trial has commenced, apply for an order that he does so.

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

(4) Where a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) are joined in an action, with or without any other cause of action, the plaintiff is not entitled under paragraph

(1) to request the defendant to make an apportionment of the sanctioned payment between the causes of action under those Ordinances.

III. ACCEPTANCE OF SANCTIONED OFFER OR SANCTIONED PAYMENT

13. Time for acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 13)

(1) Subject to rules 7(10) and 9(5), a ~~A~~ plaintiff may accept a sanctioned offer or a sanctioned payment made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he gives the defendant written notice of acceptance not later than 28 days after the offer or payment was made.

(2) If –

- **(a) a defendant's sanctioned offer or sanctioned payment is made less than 28 days before the commencement of the trial; or**
- **(b) the plaintiff does not accept it within the period specified in paragraph (1),**

then the plaintiff may -

- **(i) if the parties agree on the liability for costs, accept the offer or payment without leave of the Court; or**
- **(ii) if the parties do not agree on the liability for costs, only accept the offer or payment with leave of the Court.**

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

(4) A notice of acceptance of a sanctioned payment must be in Form No. 24 in Appendix A.

14. Time for acceptance of a plaintiff's sanctioned offer (O. 22, r. 14)

(1) Subject to rule 7(10), a ~~A~~ defendant may accept a sanctioned offer made not less than 28 days before the commencement of the trial without requiring the leave of the Court if he gives the plaintiff written notice of acceptance not later than 28 days after the offer was made.

(2) If –

- **(a) a plaintiff's sanctioned offer is made less than 28 days before the commencement of the trial; or**
- **(b) the defendant does not accept it within the period specified in paragraph (1),**

then the defendant may –

- **(i) if the parties agree on the liability for costs, accept the offer without leave of the Court; and**

(ii) if the parties do not agree on the liability for costs, only accept the offer with leave of the Court.

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

15. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 22, r. 15)

Subject to rules 16(4) and 17 and Order 22A, rule 2, ~~W~~ where a sanctioned payment is accepted, the plaintiff may obtain payment out of the sum in court by making a request for payment in Form No. 25 in Appendix A.

16. Acceptance of a sanctioned offer or a sanctioned payment made by one or more, but not all, defendants (O. 22, r. 16)

(1) This rule applies where the plaintiff wishes to accept a sanctioned offer or a sanctioned payment made by one or more, but not all, of a number of defendants.

(2) If the defendants are sued jointly or in the alternative, the plaintiff may accept the offer or payment without requiring the leave of the Court in accordance with rule 13(1) if –

(a) he discontinues his claim against those defendants who have not made the offer or payment; and

(b) those defendants give written consent to the acceptance of the offer or payment~~,~~ or the Court is of the opinion that such consent is not necessary.

(3) If the plaintiff alleges that the defendants have a several liability to him, the plaintiff may –

(a) accept the offer or payment in accordance with rule 13(1); and

(b) continue with his claims against the other defendants.

(4) In all other cases the plaintiff 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 as the Court considers appropriate.

17. Other cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 17)

(1) 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

Remarks

~~(b) no payment out of any sum in court shall be made without a court order.~~

(b) the money in court shall not be paid out except in pursuance of an order of the Court.

Previous r.17(1)(b) modified

(2) Where the Court gives leave to a plaintiff to accept a sanctioned offer or sanctioned payment after the trial has commenced –

~~(a) any money in court may be paid out only with a court order; and~~

(a) the money in court shall not be paid out except in pursuance of an order of the Court; and

Previous r.17(2)(a) modified

(b) the Court shall, in the order, deal with the whole costs of the proceedings.

(3) Where a plaintiff accepts a sanctioned payment after a defence of tender before action has been put forward by the defendant, the money in court ~~may be paid out only after an order of the Court.~~ shall not be paid out except in pursuance of an order of the Court.

(4) Where a plaintiff accepts a sanctioned payment made in satisfaction of –

(a) a cause of action under the Fatal Accidents Ordinance (Cap. 22) and a cause of action under Part IV or IVA of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23); or

(b) a cause of action under the Fatal Accidents Ordinance (Cap. 22) where more than one person is entitled to the money,

the money in court shall not be paid out except in pursuance of an order of the Court.

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

18. Costs consequences of acceptance of a defendant's sanctioned offer or sanctioned payment (O. 22, r. 18)

(1) Where a defendant's sanctioned offer or ~~a~~ sanctioned payment to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff will be entitled to his costs of the proceedings up to the date of serving notice of acceptance~~.~~ unless the Court otherwise orders.

(2) Where –

(a) a sanctioned offer or a sanctioned payment relating to a part or issue of the claim is accepted; and

(b) at the time of serving notice of acceptance the plaintiff abandons the other parts or issues of the claim,

the plaintiff will be entitled to his costs of the proceedings up to the date of serving notice of acceptance, unless the Court orders otherwise.

Remarks

(3) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer or the sanctioned payment notice states that it takes into account the counterclaim or set-off.

19. Costs consequences of acceptance of a plaintiff's sanctioned offer (O. 22, r. 19)

(1) Where a plaintiff's sanctioned offer to settle the whole claim is accepted without requiring the leave of the Court, the plaintiff will be entitled to his costs of the proceedings up to the date upon which the defendant serves notice of acceptance~~,~~ unless the Court otherwise orders.

(2) The plaintiff's costs include any costs attributable to the defendant's counterclaim or set-off if the sanctioned offer states that it takes into account the counterclaim or set-off.

20. Other consequences of acceptance of a sanctioned offer or a sanctioned payment (O. 22, r. 20)

(1) If a sanctioned offer or sanctioned payment relates to the whole claim and is accepted, the claim will be stayed.

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

- **(a) the stay will be upon the terms of the offer; and**
- **(b) either party may apply to enforce those terms without the need for a new claim.**

(3) If a sanctioned offer or a sanctioned payment which only relates to a part or issue of the claim is accepted –

- **(a) the claim will be stayed as to that part or issue; and**
- **(b) unless the parties have agreed on costs, the liability for costs shall be decided by the Court.**

(4) If the approval of the Court is required before a settlement can be binding, any stay which would otherwise arise on the acceptance of a sanctioned offer or a sanctioned payment will take 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 proceedings; 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 start a new claim unless the Court orders otherwise.

21. Costs consequences where plaintiff fails to do better than a sanctioned offer or a sanctioned payment (O. 22, r. 21)

(1) This rules applies where at trial a plaintiff –

(a) fails to better a sanctioned payment; or

(b) fails to obtain a judgment which is more advantageous than ~~an offeror's~~ a defendant's sanctioned offer.

(2) ~~Unless it considers it unjust to do so, t~~ The Court ~~shall~~ may order the plaintiff to pay any costs incurred by the defendant after the latest date on which the payment or offer could have been accepted without requiring the leave of the Court.

(3) The Court may also order that the defendant is entitled to –

(a) his costs on the indemnity basis from the latest date when the plaintiff could have accepted the payment or offer without requiring the leave of the Court; and

(b) interest on those costs at a rate not exceeding 10% above judgment rate.

(4) Where this rule applies, the Court shall make the orders referred to in paragraphs (2) and (3) unless it 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 Court shall take into account all the circumstances of the case including –

(a) the terms of any sanctioned payment or sanctioned offer;

(b) the stage in the proceedings when any sanctioned payment or sanctioned offer was made;

(c) the information available to the parties at the time when the sanctioned payment or 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 payment or offer to be made or evaluated.

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

Remarks

22. Costs and other consequences where plaintiff does better than he proposed in his sanctioned offer (O. 22, r. 22)

(1) This rule applies where at trial –

(a) a defendant is held liable for more than the proposals contained in ~~an~~ a plaintiff's sanctioned offer; or

(b) the judgment against a defendant is more advantageous to the plaintiff than the proposals contained in a plaintiff's sanctioned offer.

(2) The Court may order interest on the whole or part of any sum of money (excluding interest) awarded to the plaintiff at a rate not exceeding 10% above ~~prime~~ judgment rate for some or all of the period starting with the latest date on which the defendant could have accepted the offer without requiring the leave of the Court.

(3) The Court may also order that the plaintiff is entitled to –

(a) his costs on the indemnity basis from the latest date when the defendant could have accepted the offer without requiring the leave of the Court; and

(b) interest on those costs at a rate not exceeding 10% above ~~prime~~ judgment rate.

(4) Where this rule applies, the Court shall make the orders referred to in paragraphs (2) and (3) unless it 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 Court shall take into account all the circumstances of the case including –

(a) the terms of any sanctioned offer;

(b) the stage in the proceedings when any 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 Court under this rule is in addition to any other power it may have to award interest.

V. MISCELLANEOUS

23. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 22, r. 23)

(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 trial judge ~~until all questions of liability and the amount of money to be awarded have been decided.~~ or the master hearing or determining the action or counterclaim or any question or issue as to the debt or damages until all questions of liability and the amount of money to be awarded have been decided.

(3) Paragraph (2) does not apply –

(a) where the defence of tender before action has been raised;

(b) where the proceedings have been stayed under rule 20 following acceptance of a sanctioned offer or a sanctioned payment; or

(c) where –

(i) the issue of liability has been determined before any assessment of the money claimed; and

(ii) 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.

24. Interest (O. 22, r. 24)

(1) Unless –

(a) a plaintiff's sanctioned offer which offers to accept a sum of money; or

(b) a sanctioned payment notice,

indicates to the contrary, any such offer or payment will 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 plaintiff's sanctioned offer or a sanctioned payment notice is expressed not to be inclusive of interest, the offer or notice must state –

(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.

25. Money paid into court under order (O. 22, r. 25)

(1) On making any payment into court under an order of the Court or a certificate of a master, a party shall give notice of the payment in Form No. 25A in Appendix A to every other party to the proceedings.

(2) Unless the Court otherwise orders, a defendant who has paid money into court in pursuance of an order made under Order 14 may –

(a) by notice to the plaintiff, appropriate the whole or any part of the money and any additional payment, if necessary, in satisfaction of any particular claim made by the plaintiff and specified in the notice; or

(b) if he pleads a tender, by his pleading appropriate the whole or any part of the money as payment into court of the money alleged to

Remarks

have been tendered.

(3) Any money appropriated in accordance with paragraph (2) is deemed to be a sanctioned payment or money paid into court with a plea of tender, as the case may be, and this Order is to apply accordingly.

~~25.~~ 26. Transitional provision relating to ~~rule 79~~ Part 7 of the Rules of the High Court (Amendment) Rules 2007 (O. 22, r. ~~25~~ 26)

Where –

(a) a payment into court has been made in accordance with Order 22 ("the repealed Order") repealed by rule 79 ("the repealing rule") of the Amendment Rules 2007; and

(b) the disposal of the payment is pending immediately before the commencement of the repealing rule,

~~then nothing in this Order is to apply in relation to that payment, and the repealed Order is to continue to apply in relation to that payment as if the repealing rule had not been made.~~

then nothing in Division 1 of Part 7 of the Amendment Rules is to apply in relation to that payment, and the repealed Order and all the other provisions amended or repealed by that Division, as in force immediately before the commencement, are to continue to apply in relation to that payment as if that Division had not been made.

Previous r.26 modified

Rules of the High Court (Amendment) Rules 2007

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

Order 24 - DISCOVERY AND INSPECTION OF DOCUMENTS

Remarks

1. Mutual discovery of documents (O. 24, r. 1)

(1) After the close of pleadings in an action begun by writ there shall, subject to and in accordance with the provisions of this Order, be discovery by the parties to the action of the documents which are or have been in their possession, custody or power relating to matters in question in the action.

(2) Nothing in this Order shall be taken as preventing the parties to an action agreeing to dispense with or limit the discovery of documents which they would otherwise be required to make to each other.

2. Discovery by parties without order (O. 24, r. 2)

(1) Subject to the provisions of this rule and of rule 4, the parties to an action between whom pleadings are closed must make discovery by exchanging lists of documents and, accordingly, each party must, within 14 days after the pleadings in the action are deemed to be closed as between him and any other party, make and serve on that other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question between them in the action. (L.N. 157 of 2003 and L.N. 199 of 2003)
Without prejudice to any directions given by the Court under Order 16, rule 4, this paragraph shall not apply in third party proceedings, including proceedings under that Order involving fourth or subsequent parties.

(2) Unless the Court otherwise orders, a defendant to an action arising out of an accident on land due to a collision or apprehended collision involving a vehicle shall not make discovery of any documents to the plaintiff under paragraph (1).

(3) Paragraph (1) shall not be taken as requiring a defendant to an action for the recovery of any penalty recoverable by virtue of any written law to make discovery of any documents.

(4) Paragraphs (2) and (3) shall apply in relation to a counterclaim as they apply in relation to an action but with the substitution, for the reference in paragraph (2) to the plaintiff, of a reference to the party making the counterclaim.

(5) On the application of any party required by this rule to make discovery of documents, the Court may-

(a) order that the parties to the action or any of them shall make discovery

Remarks

under paragraph (1) of such documents or classes of documents only, or as to such only of the matters in question, as may be specified in the order, or

(b) if satisfied that discovery by all or any of the parties is not necessary, or not necessary at that stage of the action, order that there shall be no discovery of documents by any or all of the parties either at all or at that stage;

and the Court shall make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the action or for saving costs.

(6) An application for an order under paragraph (5) must be by summons, and the summons must be taken out before the expiration of the period within which by virtue of this rule discovery of documents in the action is required to be made.

(7) Any party to whom discovery of documents is required to be made under this rule may, at any time before the ~~summons for directions~~ **case management summons** in the action is taken out, serve on the party required to make such discovery a notice requiring him to make an affidavit verifying the list he is required to make under paragraph (1), and the party on whom such a notice is served must, within 14 days after service of the notice, make and file an affidavit in compliance with the notice and serve a copy of the affidavit on the party by whom the notice was served.

Consequential Amendment

3. Order for discovery (O. 24, r. 3)

(1) Subject to the provisions of this rule and of rules 4 and 8, the Court may order any party to a cause or matter (whether begun by writ, originating summons or otherwise) to make and serve on any other party a list of the documents which are or have been in his possession, custody or power relating to any matter in question in the cause or matter, and may at the same time or subsequently also order him to make and file an affidavit verifying such a list and to serve a copy thereof on the other party. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) Where a party who is required by rule 2 to make discovery of documents fails to comply with any provision of that rule, the Court, on the application of any party to whom the discovery was required to be made, may make an order against the first-mentioned party under paragraph (1) of this rule or, as the case may be, may order him to make and file an affidavit verifying the list of documents he is required to make under rule 2 and to serve a copy thereof on the applicant.

(3) An order under this rule may be limited to such documents or classes of document only, or to such only of the matters in question in the cause or matter, as may be specified in the order.

Remarks

4. Order for determination of issue, etc., before discovery (O. 24, r. 4)

(1) Where on an application for an order under rule 2 or 3 it appears to the Court that any issue or question in the cause or matter should be determined before any discovery of documents is made by the parties, the Court may order that that issue or question be determined first.

(2) Where in an action begun by writ an order is made under this rule for the determination of an issue or question, Order 25, rules 2 to 7, shall, with the omission of so much of rule 7(1) as requires parties to serve a notice specifying the orders and directions which they desire and with any other necessary modifications, apply as if the application on which the order was made were a ~~summons for directions~~ **case management summons**.

Consequential Amendment

5. Form of list and affidavit (O. 24, r. 5)

(1) A list of documents made in compliance with rule 2 or with an order under rule 3 must be in Form No. 26 in Appendix A, and must enumerate the documents in a convenient order and as shortly as possible but describing each of them or, in the case of bundles of documents of the same nature, each bundle, sufficiently to enable it to be identified.

(2) If it is desired to claim that any documents are privileged from production, the claim must be made in the list of documents with a sufficient statement of the grounds of the privilege.

(3) An affidavit made as aforesaid verifying a list of documents must be in Form No. 27 in Appendix A.

6. Defendant entitled to copy of co-defendant's list (O. 24, r. 6)

(1) A defendant who has pleaded in an action shall be entitled to have a copy of any list of documents served under any of the foregoing rules of this Order on the plaintiff by any other defendant to the action; and a plaintiff against whom a counterclaim is made in an action begun by writ shall be entitled to have a copy of any list of documents served under any of those rules on the party making the counterclaim by any other defendant to the counterclaim.

(2) A party required by virtue of paragraph (1) to supply a copy of a list of documents must supply it free of charge on a request made by the party entitled to it.

(3) Where in an action begun by originating summons the Court makes an order under rule 3 requiring a defendant to the action to serve a list of documents on the plaintiff, it may also order him to supply any other defendant to the action with a copy of that list.

Remarks

(4) In this rule "list of documents"（文件清單）includes an affidavit verifying a list of documents.

7. Order for discovery of particular documents (O. 24, r. 7)

(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) An order may be made against a party under this rule notwithstanding that he may already have made or been required to make a list of documents or affidavit under rule 2 or rule 3.

(3) An application for an order under this rule must be supported by an affidavit stating the belief of the deponent that the party from whom discovery is sought under this rule has, or at some time had, in his possession, custody or power the document, or class of document, specified or described in the application and that it relates to one or more of the matters in question in the cause or matter.

7A. Application under section 41, ~~41A~~ or 42(1) of the Ordinance (O. 24, r. 7A)

Proposed addition repealed

(1) An application for an order under section 41 ~~**or 41A**~~ of the Ordinance for the disclosure of documents before the commencement of proceedings shall be made by originating summons (in Form No. 10 in Appendix A) and the person against whom the order is sought shall be made defendant to the summons. (L.N. 404 of 1991)

(2) An application after the commencement of proceedings for an order under section 42(1) of the Ordinance for the disclosure of documents by a person who is not a party to the proceedings shall be made by summons, which must be served on that person personally and on every party to the proceedings other than the applicant.

(3) A summons under paragraph (1) or (2) shall be supported by an affidavit which must-

(a) in the case of a summons under paragraph (1), state the grounds on which it is alleged that the applicant and the person against whom the order is sought are likely to be parties to subsequent proceedings in the Court of First Instance ~~in which a claim for personal injuries~~ **a relevant claim** ~~is likely to be made~~; (25 of 1998 s. 2)

Rec 76 & 79

(b) in any case, specify or describe the documents in respect of which the order is sought and show, if practicable by reference to any pleading

served or intended to be served in the proceedings, that the documents are relevant to an issue arising or likely to arise ~~out of a claim for personal injuries made or likely to be made~~ in the proceedings and that the person against whom the order is sought is likely to have or have had them in his possession, custody or power.

(3A) ~~Where~~ In the case of a summons under paragraph (1) ~~relates to an application for an order under section 41A of the Ordinance~~, paragraph (3)(b) shall be construed as if for the word "relevant" there were substituted the words "directly relevant (within the meaning of section 41~~A~~ of the Ordinance)".

Rec 76 &79

(4) A copy of the supporting affidavit shall be served with the summons on every person on whom the summons is required to be served.

(5) An order under section 41~~, 41A~~ or 42(1) for the disclosure of documents may be made conditional on the applicant's giving security for the costs of the person against whom it is made or on such other terms, if any, as the Court thinks just, and shall require the person against whom the order is made to make an affidavit stating whether any documents specified or described in the order are, or at any time have been, in his possession, custody or power and, if not then in his possession, custody or power, when he parted with them and what has become of them.

(6) No person shall be compelled by virtue of such an order to produce any documents which he could not be compelled to produce-

(a) in the case of a summons under paragraph (1), if the subsequent proceedings had already been begun; or

(b) in the case of a summons under paragraph (2), if he had been served with a writ of subpoena duces tecum to produce the documents at the trial.

~~(7) In this rule "a claim for personal injuries" (就人身傷害而提出的申索) means a claim in respect of personal injuries to a person or in respect of a person's death.~~

~~**(7) In paragraph (3), "a relevant claim" ( ) means –**~~

~~**(a) if the summons relates to an application for an order under section 41 of the Ordinance, a claim in respect of personal injuries to a person or in respect of a person's death;**~~

~~**(b) if the summons relates to an application for an order under section 41A of the Ordinance, a claim that is neither in respect of personal injuries to a person nor in respect of a person's death; and**~~

~~**(c) if the summons relates to an application for an order under section 42 of the Ordinance, any claim.**~~

Proposed substitution of r.7A(7) removed

(8) For the purposes of rules 10 and 11 an application for an order under section 41~~, 41A~~ or 42(1) shall be treated as a cause or matter between the applicant and the person against whom the order is sought.

Remarks

8. Discovery to be ordered only if necessary (O. 24, r. 8)

(1) On the hearing of an application for an order under rule ~~3, 7 or 7A~~ **3 or 7** ~~**an order specified in paragraph (2)**~~ the Court, if satisfied that discovery is not necessary, or not necessary at that stage of the cause or matter, may dismiss or, as the case may be, adjourn the application and shall in any case refuse to make such an order if and so far as it is of opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

Rec 76 and 79

~~**(2) The order referred to in paragraph (1) is –**~~

~~**(a) an order under rule 3 or 7; or**~~

~~**(b) an order under section 41 of the Ordinance; or**~~

~~**(c) an order under section 42 of the Ordinance in relation to a claim in respect of personal injuries or in respect of a person's death.**~~

Proposed addition of r.8(2) removed

~~**(3) No order for the disclosure of documents shall be made under –**~~

~~**(a) section 41A of the Ordinance; or**~~

~~**(b) section 42 of the Ordinance in relation to a claim that is neither in respect of personal injuries nor in respect of a person's death,**~~ ~~**unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.**~~

Proposed r.8(3) modified and re-numbered as r.8(2)

(2) No order for the disclosure of documents shall be made under section 41 or 42 of the Ordinance, unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

9. Inspection of documents referred to in list (O. 24, r. 9)

A party who has served a list of documents on any other party, whether in compliance with rule 2 or with an order under rule 3, must allow the other party to inspect the documents referred to in the list (other than any which he objects to produce) and to take copies thereof and, accordingly, he must when he serves the list on the other party also serve on him a notice stating a time within 7 days after the service thereof at which the said documents may be inspected at a place specified in the notice.

10. Inspection of documents referred to in pleadings and affidavits (O. 24, r. 10)

(1) Any party to a cause or matter shall be entitled at any time to serve a notice on any other party in whose pleadings, affidavits or witness statements served under Order 38, rule 2A, or experts' reports, reference is made to any document requiring him to produce that document for the inspection of the party giving the notice and to permit him to take copies thereof. (L.N. 223 of 1995; L.N. 383 of 1996)

(2) The party on whom a notice is served under paragraph (1) must, within 4 days after service of the notice, serve on the party giving the notice a notice stating a time within 7 days after the service thereof at which the documents, or such of them as he does not object to produce, may be inspected at a place specified in the notice, and stating which (if any) of the documents he objects to produce and on what grounds.

11. Order for production for inspection (O. 24, r. 11)

(1) If a party who is required by rule 9 to serve such a notice as is therein mentioned or who is served with a notice under rule 10(1)-

(a) fails to serve a notice under rule 9 or, as the case may be, rule 10(2), or

(b) objects to produce any document for inspection, or

(c) offers inspection at a time or place such that, in the opinion of the Court, it is unreasonable to offer inspection then or, as the case may be, there,

then, subject to rule 13(1), the Court may, on the application of the party entitled to inspection, make an order for production of the documents in question for inspection at such time and place, and in such manner, as it thinks fit.

(2) Without prejudice to paragraph (1), but subject to rule 13(1), the Court may, on the application of any party to a cause or matter, order any other party to permit the party applying to inspect any documents in the possession, custody or power of that other party relating to any matter in question in the cause or matter.

(3) An application for an order under paragraph (2) must be supported by an affidavit specifying or describing the documents of which inspection is sought and stating the belief of the deponent that they are in the possession, custody or power of the other party and that they relate to a matter in question in the cause or matter.

11A. Provision of copies of documents (O. 24, r. 11A)

(1) Any party who is entitled to inspect any documents under any provision of this Order or any order made thereunder may at or before the time when inspection takes place serve on the party who is required to produce such documents for inspection a notice (which shall contain an undertaking to pay the reasonable charges) requiring him to supply a true copy of any such document as is capable of being copied by photographic or similar process.

(2) The party on whom such a notice is served must within 7 days after receipt thereof supply the copy requested together with an account of the reasonable charges.

(3) Where a party fails to supply to another party a copy of any document under paragraph (2), the Court may, on the application of either party, make such order as to the supply of that document as it thinks fit.

11B. (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

12. Order for production to Court (O. 24, r. 12)

(1) At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter and the Court may deal with the document when produced in such manner as it thinks fit. (L.N. 157 of 2003 and L.N. 199 of 2003)

(2) (Added L.N. 157 of 2003 and repealed L.N. 199 of 2003)

13. Production to be ordered only if necessary, etc. (O. 24, r. 13)

(1) No order for the production of any documents for inspection or to the Court or for the supply of a copy of any document shall be made under any of the foregoing rules unless the Court is of opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs.

(2) Where on an application under this Order for production of any document for inspection or to the Court or for the supply of a copy of any document privilege from such production or supply is claimed or objection is made to such production or supply on any other ground, the Court may inspect the document for the purpose of deciding whether the claim or objection is valid.

14. Production of business books (O. 24, r. 14)

(1) Where production of any business books for inspection is applied for under any of the foregoing rules, the Court may, instead of ordering production of the original books for inspection, order a copy or any entries therein to be supplied and verified by an affidavit of some person who has examined the copy with the original books.

(2) Any such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations.

(3) Notwithstanding that a copy of any entries in any book has been supplied under this rule, the Court may order production of the book from which the copy was made.

14A. Use of documents (O. 24, r. 14A)

Any undertaking, whether express or implied, not to use a document for any purposes other than those of the proceedings in which it is disclosed shall cease to apply to such document after it has been read to or by the Court, or referred to, in

open court, unless the Court for special reasons has otherwise ordered on the application of a party or of the person to whom the document belongs.

15. Document disclosure of which would be injurious to public interest: saving (O. 24, r. 15)

The foregoing provisions of this Order shall be without prejudice to any rule of law which authorizes or requires the withholding of any document on the ground that the disclosure of it would be injurious to the public interest.

15A. Order for limiting discovery (O. 24, r. 15A) Rec 80

For the purpose of managing the case in question and furthering any of the objectives specified in Order 1A, the Court may make any one or more of the following orders –

(a) an order limiting the discovery of documents which the parties to the case would otherwise be required to make to each other under rule 1(1);

(b) an order directing that the discovery of documents required to be made under this Order to any party to the case shall, notwithstanding anything in this Order, be made in the manner specified in the order; and

(c) an order directing that documents which may be inspected under this Order shall, notwithstanding anything in rule 9 or 10, be inspected at a time or times specified in the order.

16. Failure to comply with requirement for discovery, etc. (O. 24, r. 16)

(1) If any party who is required by any of the foregoing rules, or by any order made thereunder, to make discovery of documents or to produce any documents for the purpose of inspection or any other purpose or to supply copies thereof fails to comply with any provision of that rule or with that order, as the case may be, then, without prejudice, in the case of a failure to comply with any such provision, to rules 3(2) and 11(1), the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

(2) If any party against whom an order for discovery or production of documents is made fails to comply with it, then, without prejudice to paragraph (1), he shall be liable to committal.

(3) Service on a party's solicitor of an order for discovery or production of documents made against that party shall be sufficient service to found an application for committal of the party disobeying the order, but the party may show in answer to the application that he had no notice or knowledge of the order.

(4) A solicitor on whom such an order made against his client is served and who fails without reasonable excuse to give notice thereof to his client shall be liable to committal.

17. Revocation and variation of orders (O. 24, r. 17)

Any order made under this Order (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order or direction of the Court made or given at or before the trial of the cause or matter in connection with which the original order was made.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

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

Remarks

~~**Order 25 – SUMMONS FOR DIRECTIONS**~~ **~~CASE MANAGEMENT AND SUMMONS FOR DIRECTIONS~~** Rec 52-60, 62

Order 25 – CASE MANAGEMENT SUMMONS AND CONFERENCE

Remarks:
Adaptation amendments retroactively made - see 25 of 1998 s. 2

1. ~~Summons for directions~~ ~~Case Management and Summons for directions~~ Case Management Summons and Conference (O. 25, r. 1)

~~(1) With a view to providing, in every action to which this rule applies, an occasion for the consideration by the Court of the preparation for the trial of the action, so that~~

~~(a) all matters which must or can be dealt with on interlocutory applications and have not already been dealt with may so far as possible be dealt with, and~~

~~(b) such directions may be given as to the future course of the action as appear best adapted to secure the just, expeditious and economical disposal thereof,~~

~~the plaintiff must, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days.~~

(1) For the purpose of facilitating the giving of directions for the management of a case, each party shall, within ~~14~~ 28 days after the pleadings in an action to which this rule applies are deemed to be closed~~,~~ – Previous r.1(1) modified

(a) complete a questionnaire prescribed in a practice direction issued for that purpose by providing the information requested in the manner specified in the questionnaire~~,~~; and ~~shall thereafter serve it on another party or lodge it with the Court in the manner and within the period specified in it.~~

(b) serve it on all other parties and file it with the Court in the manner specified in the practice direction.

(1A) Where, upon completion of the questionnaire, the parties are able to reach an agreement on –

(a) the directions relating to the management of the case which they wish the Court to make; or

(b) a timetable for the steps to be taken between the giving of those

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directions and the trial,

they shall ~~record the agreement in the questionnaire~~ file with the Court a consent summons to that effect.

(1B) Where there is no agreement on any of the matters specified in paragraph (1A)(a) and (b) –

(a) each party shall in the questionnaire make a proposal on the matter; and

~~(b) the plaintiff shall, within one month after the pleadings in the action are deemed to be closed, take out a summons (in these rules referred to as a summons for directions) returnable in not less than 14 days, so that the Court may give directions relating to the management of the case.~~

Previous r.1 (1B)(b) modified.

(b) the plaintiff shall, within the time specified in the practice direction, take out a summons (in these rules referred to as a case management summons) returnable in not less than 14 days, so that the Court may give directions relating to the management of the case.

(2) This rule applies to all actions begun by writ except-

(a) actions in which the plaintiff or defendant has applied for judgment under Order 14, or in which the plaintiff has applied for judgment under Order 86, and directions have been given under the relevant Order;

(b) actions in which the plaintiff or defendant has applied under Order 18, rule 21, for trial without pleadings or further pleadings and directions have been given under that rule;

(c) actions in which an order has been made under Order 24, rule 4, for the trial of an issue or question before discovery;

(d) actions in which directions have been given under Order 29, rule 7;

(e) actions in which an order for the taking of an account has been made under Order 43, rule 1;

(f) actions in which an application for transfer to the commercial list is pending;

(h) actions for the infringement of a patent; **and**

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(j) actions for personal injuries for which automatic directions are provided by rule 8~~;~~**.** ~~and~~

~~(k) actions in which the parties agree under rule 9 that the only matters to be determined are the mode of trial and time for setting down.~~

~~(3) Where, in the case of any action in which discovery of documents is required to be made by any party under Order 24, rule 2, the period of 14 days referred to in paragraph (1) of that rule is extended, whether by consent or by order of the Court or both by consent and by order, paragraph (1) of this rule **paragraph (1B) of this rule** shall have effect in relation to that action as if for the reference therein to one month after the pleadings in the action are deemed to be closed there were substituted a reference to 14 days after the expiration of the period referred to in paragraph (1) of the said rule 2 as so extended.~~

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~~(4) If the plaintiff does not take out a summons for directions in accordance with the foregoing provisions of this rule, the defendant or any defendant may do so or apply for an order to dismiss the action.~~

(4) If the plaintiff does not file the questionnaire in accordance with paragraph (1)(b) or take out a case management summons in accordance with paragraph (1B)(b), the defendant or any defendant may –

(a) take out a case management summons; or

(b) apply for an order to dismiss the action.

(5) On an application by a defendant to dismiss the action under paragraph (4) the Court may either dismiss the action on such terms as may be just or deal with the application as if it were a ~~summons for directions~~ **case management summons**.

(6) In the case of an action which is proceeding only as respects a counterclaim, references in this rule **and rule 1A(1)~~(d)~~(c)** to the plaintiff and defendant shall be construed respectively as references to the party making the counterclaim and the defendant to the counterclaim.

(7) Notwithstanding anything in paragraph ~~(1)~~ **(1B),** any party to an action to which this rule applies may take out a s~~ummons for directions~~ **case management summons** at any time after the defendant has given notice of intention to defend, or, if there are two or more defendants, at least one of them has given such notice.

1A. Case management timetable (O. 25, r. 1A)

Rec 52-60, 62

(1) Subject to paragraph (4), as soon as practicable after the completed questionnaire has been ~~lodged~~ filed with the Court, the Court shall, having regard to the questionnaire and the needs of the case –

(a) give directions relating to the management of the case~~;~~ and

~~(b)~~ fix the timetable for the steps to be taken between the giving of those directions and the trial;

~~(c)~~(b) fix a case management conference if the Court is of the opinion that it is desirable to do so; ~~and~~ or

~~(d)~~(c) direct the plaintiff to take out a case management summons ~~for directions~~ if he has not already done so under rule 1(1B)(b).

(2) Where the Court has fixed a case management conference, it shall –

(a) give directions relating to the management of the case and fix the timetable ~~fixed under paragraph (1)(b) may only relate to~~ for the steps to be taken between the giving of ~~the~~ those directions and the date of the case management conference; and

(b) ~~the Court shall~~ during the case management conference, fix a timetable for the steps to be taken between the date of the conference and the date of the trial, including –

(i) a date for a pre-trial review; ~~and~~ or

(ii) the trial date or the period in which the trial is to take place.

Remarks

(3) Where the Court has not fixed a case management conference, ~~the~~ any timetable fixed under paragraph (1)~~(b)~~(a) ~~must~~ may include –

(a) a date for a pre-trial review; and

(b) the trial date or the period in which the trial is to take place.

(4) The Court may, without a hearing of the case management summons ~~for directions~~ and having regard to the completed questionnaire, by an order nisi, give directions relating to the management of the case and fix the timetable for the steps to be taken between the giving of those directions and the trial.

(5) The order nisi shall become absolute 14 days after the order is made unless a party has applied to the Court for not making the order absolute.

(6) The Court shall, on an application made under paragraph (5), hear the case management summons ~~for directions~~.

1B. Variation of case management timetable (O. 25, r. 1B)

(1) The Court may, either of its own motion or on the application of a party ~~or of its own motion~~, give further directions relating to the management of the case or vary ~~the~~ any timetable fixed by it under rule 1A.

(2) A party shall apply to the Court if he wishes to vary a milestone date.

(3) A non-milestone date may be varied by filing with the Court a ~~written agreement between the parties~~ consent summons to that effect.

(4) A party shall apply to the Court if he wishes to vary a non-milestone date without the agreement of the other parties.

(5) The Court shall not grant an application under paragraph (4) unless sufficient grounds have been shown to it.

(6) Whether or not sufficient grounds have been shown to it, the Court shall not grant an application under paragraph (4) if the variation would make it necessary to change a trial date or a trial period.

(7) In this rule –

"milestone date" ( ) means –

(a) a date which the Court has fixed for –

(i) a case management conference;

(ii) a pre-trial review; or

(iii) the trial; or

(b) a trial period fixed by the Court;

"non-milestone date" ( ) means a date or period fixed by the Court, other

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than a date or period specified in the definition of "milestone date".

1C. Failure to appear at case management conference or pre-trial review (O. 25, r. 1C)

(1) Where the plaintiff does not appear at the case management conference or pre-trial review, the Court shall provisionally strike out the action.

~~**(2) The Court shall prior to the case management conference or pre-trial review inform the plaintiff of the consequence set out in paragraph (1) for not appearing at the case management conference or pre-trial review.**~~

Previous addition of r.1C (2) removed.

~~(3)~~(2) Where the Court has provisionally struck out an action under paragraph (1), the plaintiff may before the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be, apply to the Court for restoration of the action.

~~(4)~~(3) The Court may restore the action subject to such conditions as it thinks fit or refuse to restore the action.

~~(5)~~(4) The Court shall not restore the action unless good reasons have been shown to the satisfaction of the Court.

~~(6)~~(5) If the plaintiff does not apply under paragraph ~~(3)~~(2) or his application under that paragraph is refused –

- **(a) the action shall stand dismissed upon the expiry of 3 months from the date of the case management conference or pre-trial review, as the case may be; and**
- **(b) the defendant shall be entitled to his costs of the action.**

~~(7)~~(6) If the plaintiff does not apply for restoration of the action under paragraph ~~(3)~~(2) or his application under that paragraph is refused, and the defendant has made a counterclaim in the action, the defendant may, before the expiry of 3 months from the latest date on which the plaintiff may apply for restoration of the action, apply for restoration of his counterclaim.

~~(8)~~(7) If the defendant does not apply for restoration of his counterclaim under paragraph ~~(7)~~(6) or his application under that paragraph is refused, the defendant's counterclaim shall stand dismissed with no order as to costs.

2. Duty to consider all matters (O. 25, r. 2)

(1) When the ~~summons for directions first comes to be heard~~ **case management summons first comes to be determined**, the Court shall consider whether-

- (a) it is possible to deal then with all the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons for directions~~ **at the case management summons**, or

(b) it is expedient to adjourn the consideration of all or any of those matters until a later stage.

(2) If when the ~~summons for directions first comes to be heard~~ **case management summons first comes to be determined** the Court considers that it is possible to deal then with all the said matters, it shall deal with them forthwith and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are also then dealt with.

(3) If, when the ~~summons for directions first comes to be heard~~ **case management summons first comes to be determined**, the Court considers that it is expedient to adjourn the consideration of all or any of the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons~~ **at the case management summons**, the Court shall deal forthwith with such of those matters as it considers can conveniently be dealt with forthwith and adjourn the consideration of the remaining matters and shall endeavour to secure that all other matters which must or can be dealt with on interlocutory applications and have not already been dealt with are dealt with either then or at ~~a resumed hearing of the summons for directions~~ **at such time as the Court may specify**.

(4) Subject to paragraph (5), and except where the parties agree to the making of an order under Order 33 as to the place or mode of trial before all the matters which, by the ~~subsequent~~ rules of this Order, are required to be considered ~~on the hearing of the summons for directions~~ **at the case management summons** have been dealt with, no such order shall be made until all those matters have been dealt with.

(5) If, ~~on the summons for directions~~ **at the case management summons**, an action is ordered to be transferred to the District Court or some other court, paragraph (4) shall not apply and nothing in this Order shall be construed as requiring the Court to make any further order ~~on the summons~~ **at the case management summons**.

(7) If the ~~hearing of the summons for directions~~ **determination of the case management summons** is adjourned without a day being fixed for ~~the resumed hearing thereof~~ **its resumption**, any party may restore ~~it~~ **the summons** to the list on 2 days' notice to the other parties.

3. Particular matters for consideration (O. 25, r. 3)

~~On the hearing of the summons for directions~~ **At the determination of the case management summons** the Court shall in particular consider, if necessary of its own motion, whether any order should be made or direction given in the exercise of the powers conferred by any of the following provisions, that is to say-

(a) any provision of Part IV and Part V of the Evidence Ordinance (Cap. 8) (hearsay evidence of fact or opinion in civil proceedings) or of Part III and Part IV of Order 38;

(b) Order 20, rule 5 and Order 38, rules 2 to 7;
(c) section ~~40~~ **43** of the District Court Ordinance (Cap. 336).

4. Admissions and agreements to be made (O. 25, r. 4)

At the ~~hearing of the summons for directions~~ **determination of the case management summons**, the Court shall endeavour to secure that the parties make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them and may cause the order on the summons to record any admissions or agreements so made, and (with a view to such special order, if any, as to costs as may be just being made at the trial) any refusal to make any admission or agreement.

5. Limitation of right of appeal (O. 25, r. 5)

Nothing in rule 4 shall be construed as requiring the Court to endeavour to secure that the parties shall agree to exclude or limit any right of appeal, but the order made on the ~~summons for directions~~ **case management summons** may record any such agreement.

6. Duty to give all information at ~~hearing~~ determination of case management summons (O. 25, r. 6)

(1) Subject to paragraph (2), no affidavit shall be used ~~on the hearing of the summons for directions~~ **at the determination of the case management summons** except by the leave or directions of the Court, but, subject to paragraph (4), it shall be the duty of the parties to the action and their advisers to give all such information and produce all such documents ~~on any hearing of the summons~~ as the Court may reasonably require for the purposes of enabling it properly to deal with the summons.

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

(2) No leave shall be required by virtue of paragraph (1) for the use of an affidavit by any party ~~on the hearing of the summons for directions~~ **at the determination of the case management summons** in connection with any application thereat for any order if, under any of these rules, an application for such an order is required to be supported by an affidavit.

(3) If the Court ~~on any hearing of the summons for directions~~ **at the determination of the case management summons** requires a party to the action or

his solicitor or counsel to give any information or produce any document and that information or document is not given or produced, then, subject to paragraph (4), the Court may-

(a) cause the facts to be recorded in the order with a view to such special order, if any, as to costs as may be just being made at the trial, or

(b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out, or if the party is plaintiff or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.

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

7. Duty to make all interlocutory applications ~~on summons for directions~~ at case management summons (O. 25, r. 7)

(1) Any party to whom the ~~summons for directions~~ **case management summons** is addressed must so far as practicable apply ~~at the hearing~~ **at the time fixed for determination** of the summons for any order or directions which he may desire as to any matter capable of being dealt with on an interlocutory application in the action and must, not less than 7 days ~~before the hearing~~ **before the time fixed for determination** of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons.

(2) If the ~~hearing of the summons for directions~~ **determination of the case management summons** is adjourned and any party to the proceedings desires to apply ~~at the resumed hearing~~ for any order or directions not asked for by the summons or in any notice given under paragraph (1), he must, not less than 7 days before the ~~resumed hearing~~ **resumption of the determination** of the summons, serve on the other parties a notice specifying those orders and directions in so far as they differ from the orders and directions asked for by the summons or in any such notice as aforesaid.

(3) Any application subsequent to the summons for directions and before judgment as to any matter capable of being dealt with on an interlocutory application in the action must be made under the summons by 2 clear days' notice to the other party stating the grounds of the application.

8. Automatic directions in personal injury actions (O. 25, r. 8)

(1) When the pleadings in any action to which this rule applies are deemed to be closed the following directions shall take effect automatically-

(a) there shall be discovery of documents within 14 days in accordance with Order 24, rule 2, and inspection within 7 days thereafter, save that

where liability is admitted, or where the action arises out of a road accident, discovery shall be limited to disclosure by the plaintiff of any documents relating to special damages;

(b) subject to paragraph (2), where any party intends to place reliance at the trial on expert evidence, he shall, within 6 weeks, disclose the substance of that evidence to the other parties in the form of a written report, which shall be agreed if possible;

(c) unless such reports are agreed, the parties shall be at liberty to call as expert witnesses those witnesses the substance of whose evidence has been disclosed in accordance with the preceding sub-paragraph, except that the number of expert witnesses shall be limited in any case to two medical experts and one expert of any other kind;

(d) photographs, a sketch plan and the contents of any police accident report shall be receivable in evidence at the trial and shall be agreed if possible;

(HK)(dd) the record of any proceedings in any court or tribunal shall be receivable in evidence upon production of a copy thereof certified as a true copy by the clerk or other appropriate officer of the court or tribunal;

(f)-(g) (Repealed L.N. 99 of 1993)

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

(3) Nothing in paragraph (1) shall prevent any party to an action to which this rule applies from applying to the Court for such further or different directions or orders as may, in the circumstances, be appropriate or prevent the making of an order for the transfer of the proceedings to ~~a district court~~ **the District Court**.

(4) For the purpose of this rule-

"a road accident"（道路意外）means an accident on land due to a collision or apprehended collision involving a vehicle; and

"documents relating to special damages"（關於專項損害賠償的文件）include-

(a) documents relating to any industrial injury, industrial disablement or sickness benefit rights, and

(b) where the claim is made under the Fatal Accidents Ordinance (Cap. 22), documents relating to any claim for dependency on the deceased.

(5) This rule applies to any action for personal injuries except-

(a) any Admiralty action; and

(b) any action where the pleadings contain an allegation of a negligent act or omission in the course of medical treatment.

Remarks

~~**9. Standard direction by consent** (O. 25, r. 9)~~

~~(1) (Repealed L.N. 99 of 1993)~~
~~(3) The Court may give such further directions or orders, whether on application by a party or its own motion, as may, in the circumstances, be appropriate.~~
~~(Enacted 1988)~~

10. Application to action in specialist list (O. 25, r. 10)

Rec 52-60, 62

Notwithstanding anything in this Order, a specialist judge may, by a practice direction, determine the extent to which this Order is to apply to an action in a specialist list.

~~**11. Transitional (O. 25, r. 11)**~~

Transitional

~~**Where the pleadings in an action are deemed to have been closed before the commencement of Part 9 of the Amendment Rules 2007, then nothing in that Part is to apply in relation to that action, and this Order as in force immediately before the commencement is to continue to apply in relation to that action as if that Part had not been made.**~~

11. Transitional provision relating to Part 9 of the Amendment Rules 2007 (O. 25, r. 11)

Previous r.11 modified

(1) A summons for directions taken out before the commencement of Division 1 of Part 9 of the Amendment Rules 2007 and pending immediately before the commencement is deemed to be –

(a) if the summons for directions was taken out by the plaintiff, a case management summons taken out under rule 1(1B)(b); or
(b) if the summons for directions was taken out by a defendant, a case management summons taken out under rule 4(1)(a).

(2) Where the pleadings in an action to which this rule applies are deemed to be closed but no summons for directions has been taken out before the commencement of Division 1 of Part 9 of the Amendment Rules 2007, rule 1(1) has effect as if for the words "the pleadings in an action to which this rule applies are deemed to be closed", there were substituted the words "the commencement of Division 1 of Part 9 of the Amendment Rules 2007".

Rules of the High Court (Amendment) Rules 2007

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

Order 38 - EVIDENCE

Remarks

I. GENERAL RULES

1. General rule: witnesses to be examined orally (O. 38, r. 1)

Subject to the provisions of these rules and of the Evidence Ordinance (Cap. 8) and any other written law relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court.

2. Evidence by affidavit (O. 38, r. 2)

(1) The Court may, at or before the trial of an action begun by writ, order that the affidavit of any witness may be read at the trial if in the circumstances of the case it thinks it reasonable so to order.

(2) An order under paragraph (1) may be made on such terms as to the filing and giving of copies of the affidavits and as to the production of the deponents for cross-examination as the Court thinks fit but, subject to any such terms and to any subsequent order of the Court, the deponents shall not be subject to cross-examination and need not attend the trial for the purpose.

(3) In any cause or matter begun by originating summons, originating motion or petition, and on any application made by summons or motion, evidence may be given by affidavit unless in the case of any such cause, matter or application any provision of these rules otherwise provides or the Court otherwise directs, but the Court may, on the application of any party, order the attendance for cross-examination of the person making any such affidavit, and where, after such an order has been made, the person in question does not attend, his affidavit shall not be used as evidence without the leave of the Court.

2A. Exchange of witness statements (O. 38, r. 2A)

(1) The powers of the Court under this rule shall be exercised for the purpose of disposing fairly and expeditiously of the cause or matter before it, and saving costs, having regard to all the circumstances of the case, including (but not limited to)-

(a) the extent to which the facts are in dispute or have been admitted;
(b) the extent to which the issues of fact are defined by the pleadings;
(c) the extent to which information has been or is likely to be provided by further and better particulars, answers to interrogatories or otherwise.

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(2) ~~At the hearing of a summons for directions~~ **At the determination of a case management summons** in an action commenced by writ the Court shall direct every party to serve on the other parties, within such period ~~of the hearing~~ as the Court may specify and on such terms as the Court may specify, written statements of the oral evidence which the party intends to adduce on any issues of fact to be decided at the trial. Rec 52-60, 62

The Court may give a direction to any party under this paragraph at any other stage of such an action and at any stage of any other cause or matter.

Order 3, rule 5(3) shall not apply to any period specified by the Court under this paragraph.

(3) Directions under paragraph (2) or (17) may make different provision with regard to different issues of fact or different witnesses.

(4) Statements served under this rule shall-

(a) be dated and, except for good reason (which should be specified by letter accompanying the statement), be signed by the intended witness and ~~shall include a statement by him that the contents are true to the best of his knowledge and belief~~ **must be verified by a statement of truth in accordance with Order 41A**; Rec 26-32, 35

(b) sufficiently identify any documents referred to therein; and

(c) where they are to be served by more than one party, be exchanged simultaneously.

(5) Where a party is unable to obtain a written statement from an intended witness in accordance with paragraph (4)(a), the Court may direct the party wishing to adduce that witness's evidence to provide the other party with the name of the witness and (unless the Court otherwise orders) a statement of the nature of the evidence intended to be adduced.

(6) Subject to paragraph (9), where the party serving a statement under this rule does not call the witness to whose evidence it relates, no other party may put the statement in evidence at the trial.

(7) Subject to paragraph (9), where the party serving the statement does call such a witness at the trial-

(a) except where the trial is with a jury, the Court may, on such terms as it thinks fit, direct that the statement served, or part of it, shall stand as the evidence in chief of the witness or part of such evidence;

~~(b) the party may not without the consent of the other parties or the leave of the Court adduce evidence from that witness the substance of which is not included in the statement served, except~~ Rec 100

~~(i) the Court's directions under paragraph (2) or (17) specify that statements should be exchanged in relation to only some issues of fact, in relation to any other issues;~~

~~(ii) in relation to new matters which have arisen since the statement was served on the other party;~~

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(b) the witness may with the leave of the Court –
(i) amplify his witness statement; and
(ii) give evidence in relation to new matters which have arisen since the witness statement was served on the other party.

(c) whether or not the statement or any part of it is referred to during the evidence in chief of the witness, any party may put the statement or any part of it in cross-examination of that witness.

(7A) The Court may give leave under paragraph (7)(b) only if it considers that there is good reason not to confine the evidence of the witness to the contents of his witness statement.

(8) Nothing in this rule shall make admissible evidence which is otherwise inadmissible.

(9) Where any statement served is one to which the Evidence Ordinance (Cap. 8) applies, paragraphs (6) and (7) shall take effect subject to the provisions of that Ordinance and Parts III and IV of this Order.

The service of a witness statement under this rule shall not, unless expressly so stated by the party serving the same, be treated as a notice under that Ordinance; and where a statement or any part thereof would be admissible in evidence by virtue only of that Ordinance, the appropriate notice under Part III or IV of this Order shall be served with the statement notwithstanding any provision of those Parts as to the time for serving such a notice. ~~Where such a notice is served, a counter-notice shall be deemed to have been served under rule 26(1).~~

(10) Where a party fails to comply with a direction for the exchange of witness statements he shall not be entitled to adduce evidence to which the direction related without the leave of the Court.

(11) Where a party serves a witness statement under this rule, no other person may make use of that statement for any purpose other than the purpose of the proceedings in which it was served-

(a) unless and to the extent that the party serving it gives his consent in writing or the Court gives leave; or

(b) unless and to the extent that it has been put in evidence (whether pursuant to a direction under paragraph (7)(a) or otherwise).

(12) Subject to paragraph (13), the judge shall, if any person so requests during the course of the trial, direct the Clerk of Court to certify as open to inspection any witness statement which was ordered to stand as evidence in chief under paragraph (7)(a).

A request under this paragraph may be made orally or in writing.

(13) The judge may refuse to give a direction under paragraph (12) in relation to a witness statement, or may exclude from such a direction any words or passages in a statement, if he considers that inspection should not be available-

(a) in the interests of justice or national security;
(b) because of the nature of any expert medical evidence in the statement; or
(c) for any other sufficient reason.

(14) Where the Clerk of Court is directed under paragraph (12) to certify a witness statement as open to inspection he shall-

(a) prepare a certificate which shall be attached to a copy ("the certified copy") of that witness statement; and
(b) make the certified copy available for inspection.

(15) Subject to any conditions which the Court may by special or general direction impose, any person may inspect and (subject to payment of the prescribed fee) take a copy of the certified copy of a witness statement from the time when the certificate is given until the end of 7 days after the conclusion of the trial.

(16) In this rule-

(a) any reference in paragraphs (12) to (15) to a witness statement shall, in relation to a witness statement of which only part has been ordered to stand as evidence in chief under paragraph (7)(a), be construed as a reference to that part;
(b) any reference to inspecting or copying the certified copy of a witness statement shall be construed as including a reference to inspecting or copying a copy of that certified copy.

(17) The Court shall have power to vary or override any of the provisions of this rule (except paragraphs (1), (8) and (12) to (16)) and to give such alternative directions as it thinks fit.

(L.N. 223 of 1995)

3. Evidence of particular facts (O. 38, r. 3)

(1) Without prejudice to rule 2, the Court may, at or before the trial of any action, order that evidence of any particular fact shall be given at the trial in such manner as may be specified by the order.

(2) The power conferred by paragraph (1) extends in particular to ordering that evidence of any particular fact may be given at the trial-

(a) by statement on oath of information or belief, or
(b) by the production of documents or entries in books, or
(c) by copies of documents or entries in books, or
(d) in the case of a fact which is or was a matter of common knowledge either generally or in a particular district, by the production of a specified newspaper which contains a statement of that fact.

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4. Limitation of expert evidence (O. 38, r. 4)

The Court may, at or before the trial of any action, order that the number of medical or other expert witnesses who may be called at the trial shall be limited as specified by the order.

4A. Evidence by a single joint expert (O. 38, r. 4A)

Rec 102-103, 107

(1) In any action in which any question for an expert witness arises, the Court may, at or before the trial of the action, order that ~~two~~ 2 or more parties to the action shall appoint ~~one~~ a single joint expert witness ~~only~~ to give evidence on that question.

~~(2) An appointment pursuant to an order made under paragraph (1) may be subject to such terms and conditions as the Court thinks fit.~~

~~(3) The Court shall not make an order under paragraph (1) unless at least one of those parties applies for such an order.~~

~~(4) Notwithstanding that a party to the action disagrees with the appointment of one expert witness only to give evidence, the Court may make an order under paragraph (1) if, having taken into account such matters as are specified in a practice direction issued for the purpose of this rule, it is satisfied that the disagreement is unreasonable in all the circumstances of the case.~~

(2) Where the parties cannot agree on who should be the joint expert witness, the Court may –

(a) select the expert witness from a list prepared or identified by the parties; or

(b) direct that the expert witness be selected in such manner as the Court may direct.

(3) Where an order is made under paragraph (1), the Court may give such directions as it thinks fit with respect to the terms and conditions of the appointment of the joint expert witness, including but not limited to the scope of instructions to be given to the expert witness and the payment of the expert witness's fees and expenses.

(4) Notwithstanding that a party to the action disagrees with the appointment of a single joint expert witness to give evidence, the Court may make an order under paragraph (1) if it is satisfied that the disagreement is unreasonable after taking into account all the circumstances of the case, including but not limited to –

(a) whether the issues requiring expert evidence can readily be identified in advance;

(b) the nature of those issues and the likely degree of controversy attaching to the expert evidence in question;

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(c) the value and importance to the parties of the claim, as compared with the cost of employing separate expert witnesses to give evidence;

(d) whether any party has already incurred expenses for instructing an expert who may be asked to give evidence as an expert witness in the case; and

(e) whether any significant difficulties are likely to arise in relation to choosing the joint expert witness, drawing up his instructions or providing him with the information and other facilities needed to perform his duties.

(5) Where the Court is satisfied that an order made under paragraph (1) is inappropriate, it may ~~rescind~~ set aside the order and allow the parties concerned to appoint their own expert witnesses to give evidence.

5. Limitation of plans, etc., in evidence (O. 38, r. 5)

Unless, at or before the trial, the Court for special reasons otherwise orders, no plan, photograph or model shall be receivable in evidence at the trial of an action unless at least 10 days before the commencement of the trial the parties, other than the party producing it, have been given an opportunity to inspect it and to agree to the admission thereof without further proof.

6. Revocation or variation of orders under rules 2 to 5 (O. 38, r. 6)

Any order under rules 2 to 5 (including an order made on appeal) may, on sufficient cause being shown, be revoked or varied by a subsequent order of the Court made at or before the trial.

7. Evidence of finding on foreign law (O. 38, r. 7)

(1) A party to any cause or matter who intends to adduce in evidence a finding or decision on a question of foreign law by virtue of section 59 of the Evidence Ordinance (Cap. 8) shall-

(a) in the case of an action to which Order 25, rule 1, applies within **~~14~~ ~~days~~ 28 days** after the pleadings in the action are deemed to be closed, and

Rec 52-60, 62

(b) in the case of any other cause or matter, within 21 days after the date on which an appointment for the first hearing of the cause or matter is obtained,

or in either case, within such other period as the Court may specify, serve notice of his intention on every other party to the proceedings.

(2) The notice shall specify the question on which the finding or decision was given or made and specify the document in which it is reported or recorded in citable form.

(3) In any cause or matter in which evidence may be given by affidavit, an affidavit specifying the matters contained in paragraph (2) shall constitute notice under paragraph (1) if served within the period mentioned in that paragraph.

8. Application to trials of issues, references, etc. (O. 38, r. 8)

The foregoing rules of this Order shall apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of actions.

9. Depositions: when receivable in evidence at trial (O. 38, r. 9)

(1) No deposition taken in any cause or matter shall be received in evidence at the trial of the cause or matter unless-

(a) the deposition was taken in pursuance of an order under Order 39, rule 1, and

(b) either the party against whom the evidence is offered consents or it is proved to the satisfaction of the Court that the deponent is dead, or beyond the jurisdiction of the Court or unable from sickness or other infirmity to attend the trial.

(2) A party intending to use any deposition in evidence at the trial of a cause or matter must, a reasonable time before the trial, give notice of his intention to do so to the other party.

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of the signature being the signature of that person.

10. High Court documents admissible or receivable in evidence (O. 38, r. 10)

(1) Office copies of writs, records, pleadings and documents filed in the High Court shall be admissible in evidence in any cause or matter and between all parties to the same extent as the original would be admissible.

(2) Without prejudice to the provisions of any enactment, every document purporting to be sealed with the seal of any office or department of the High Court shall be received in evidence without further proof, and any document purporting to be so sealed and to be a copy of a document filed in, or issued out of, that office or department shall be deemed to be an office copy of that document without further proof unless the contrary is shown.
(25 of 1998 s. 2)

11. Evidence of consent of new trustee to act (O. 38, r. 11)

A document purporting to contain the written consent of a person to act as trustee and to bear his signature verified by some other person shall be evidence of such consent.

12. Evidence at trial may be used in subsequent proceedings (O. 38, r. 12)

Any evidence taken at the trial of any cause or matter may be used in any subsequent proceedings in that cause or matter.

13. Order to produce document at proceeding other than trial (O. 38, r. 13)

(1) At any stage in a cause or matter the Court may order any person to attend any proceeding in the cause or matter and produce any document, to be specified or described in the order, the production of which appears to the Court to be necessary for the purpose of that proceeding.

(2) No person shall be compelled by an order under paragraph (1) to produce any document at a proceeding in a cause or matter which he could not be compelled to produce at the trial of that cause or matter.

II. WRITS OF SUBPOENA

14. Form and issue of writ of subpoena (O. 38, r. 14)

(1) A writ of subpoena must be in Form No. 28 or 29 in Appendix A, whichever is appropriate.

(2) Issue of a writ of subpoena takes place upon its being sealed by an officer of the Court.

(3) Where a writ of subpoena is to be issued in a cause or matter in the Court, the appropriate office for the issue of the writ is the Registry.

(HK)(5) Before a writ of subpoena is issued a praecipe for the issue of the writ must be filed in the Registry together with a note from a judge or master authorizing the issue of such writ and the sum of $500 shall be deposited in the Registry, in addition to any fee payable in respect of such issue, as a deposit in respect of the witness' reasonable expenses; and the praecipe must contain the name and address of the party issuing the writ, if he is acting in person, or the name or firm and business address of that party's solicitor and also (if the solicitor is the agent of another) the name or firm and business address of his principal.

(HK)(6) In any proceedings, whether in chambers or in court, the Court may order

the reimbursement by one or more of the parties to a witness who has been served with a writ of subpoena in respect of any expenses reasonably and properly incurred by that witness.

(HK)(7) Any expenses so ordered by the Court to be paid shall be assessed by the Court making the order or, if no such assessment is made by the Court, shall be taxed (if not agreed) and paid by the party ordered to make such payment.

(HK)(8) A witness whose expenses have been ordered to be paid may, if the party ordered to make such payment is the party who made the deposit on issue of the writ of subpoena, recover such expenses, after assessment, agreement or taxation, from the said deposit and look to the party liable to make such payment for the balance, if any.

(HK)(9) The deposit (or such part of it as shall remain after payment to the witness under rule 14(8)) shall be refunded to the party that paid the deposit if-

(a) that party was not ordered to pay the costs of the witness; or
(b) that party was ordered to pay the costs of the witness and has effected payment of such costs after assessment, agreement or taxation.

15. More than one name may be included in one writ of subpoena
(O. 38, r. 15)

The names of two or more persons may be included in one writ of subpoena ad testificandum.

16. Amendment of writ of subpoena (O. 38, r. 16)

Where there is a mistake in any person's name or address in a writ of subpoena, then, if the writ has not been served, the party by whom the writ was issued may have the writ re-sealed in correct form by filing a second praecipe under rule 14(5) endorsed with the words "Amended and re-sealed".

17. Service of writ of subpoena (O. 38, r. 17)

A writ of subpoena must be served personally and, subject to rule 19, the service shall not be valid unless effected within 12 weeks after the date of issue of the writ and not less than four days, or such other period as the Court may fix, before the day on which attendance before the Court is required.

18. Duration of writ of subpoena (O. 38, r. 18)

Subject to rule 19, a writ of subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required.

19. Writ of subpoena in aid of inferior court or tribunal (O. 38, r. 19)

(1) The office of the Court out of which a writ of subpoena ad testificandum or a writ of subpoena duces tecum in aid of an inferior court or tribunal may be issued is the Registry, and no order of the Court for the issue of such a writ is necessary.

(2) A writ of subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceedings before that court or tribunal at which the attendance of the witness is required.

(3) A writ of subpoena issued in aid of an inferior court or tribunal must be served personally.

(4) Unless a writ of subpoena issued in aid of an inferior court or tribunal is duly served on the person to whom it is directed not less than 4 days, or such other period as the Court may fix, before the day on which the attendance of that person before the court or tribunal is required by the writ, that person shall not be liable to any penalty or process for failing to obey the writ.

(5) An application to set aside a writ of subpoena issued in aid of an inferior court or tribunal may be heard by a master.

III. HEARSAY EVIDENCE

20. Application and interpretation (O. 38, r. 20)

(1) In this Part of this Order "the Ordinance"（條例）means the Evidence Ordinance (Cap. 8) and any expressions used in this Part and in Part IV of the Ordinance have the same meanings in this Part as they have in the said Part IV.

(2) This Part of this Order shall apply in relation to the trial or hearing of an issue or question arising in a cause or matter, and to a reference, inquiry and assessment of damages, as it applies in relation to the trial or hearing of a cause or matter.

(3) In this Part-
"hearsay evidence"（傳聞證據）means evidence consisting of hearsay within the meaning of section 46 of the Ordinance.

(2 of 1999 s. 6)

21. Power to call witness for cross-examination on hearsay evidence and to call additional evidence to attack or support hearsay evidence (O. 38, r. 21)

(1) Where a party tenders as hearsay evidence a statement made by a person but does not propose to call the person who made the statement to give evidence, the

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Court may, on application-

(a) allow another party to call and cross-examine the person who made the statement on its contents;

(b) allow any party to call-

(i) additional evidence to attack or support the reliability of the statement;

(ii) additional evidence to attack or support that first-mentioned additional evidence.

(2) Where the Court allows another party to call and cross-examine the person who made the statement, it may give such directions as it thinks fit to secure the attendance of that person and as to the procedure to be followed.

(2 of 1999 s. 6)

22. Powers exercisable in chambers (O. 38, r. 22)

The jurisdiction of the Court under rules 20 and 21 may be exercised in chambers.

(2 of 1999 s. 6)

23-34. (Repealed 2 of 1999 s. 6)

IV. EXPERT EVIDENCE

35. Interpretation (O. 38, r. 35)

(1) ~~In this Part of this Order a reference to a summons for directions includes a reference to any summons or application to which, under any of these rules, Order 25, rules 2 to 7, apply, and expressions~~ **Expressions** used in this Part of this Order which are used in the Evidence Ordinance (Cap. 8) have the same meanings in this Part of this Order as in that Ordinance. Rec 52-60, 62

(2) A reference to an expert witness in this Part or Appendix D is a reference to an expert who has been instructed to give or prepare evidence for the purpose of proceedings in the Court. Rec 102-103, 107

35A. Expert witness's overriding duty to Court (O. 38, r. 35A) Rec 102-103, 107

(1) It is the duty of an expert witness to help the Court on the matters within his expertise.

(2) The duty under paragraph (1) overrides any obligation to the person from whom the expert witness has received instructions or by whom he is paid.

Remarks

36. Restrictions on adducing expert evidence (O. 38, r. 36)

(1) Except with the leave of the Court or where all parties agree, no expert evidence may be adduced at the trial or hearing of any cause or matter unless the party seeking to adduce the evidence-

(a) has applied to the Court to determine whether a direction should be given under rule 37 or 41 (whichever is appropriate) and has complied with any direction given on the application, or

(b) has complied with automatic directions taking effect under Order 25, rule 8(1)(b), or

(c) has complied with the automatic directions, or any other directions ordered by the master under Order 37, rule 1(1A). (L.N. 363 of 1990)

(2) Nothing in paragraph (1) shall apply to evidence which is permitted to be given by affidavit or shall affect the enforcement under any other provision of these rules (except of Order 45, rule 5) of a direction given under this Part of this Order. (L.N. 363 of 1990)

37. Direction that expert report be disclosed (O. 38, r. 37)

(1) Subject to paragraph (2), where in any cause or matter an application is made under rule 36(1) in respect of oral expert evidence, then, unless the Court considers that there are special reasons for not doing so, it shall direct that the substance of the evidence be disclosed in the form of a written report or reports to such other parties and within such period as the Court may specify. (L.N. 404 of 1991)

(2) Nothing in paragraph (1) shall require a party to disclose a further medical report if he proposes to rely at the trial only on the report provided pursuant to Order 18, rule 12(1A) or (1B) but, where a party claiming damages for personal injuries discloses a further report, that report shall be accompanied by a statement of the special damages claimed and, in this paragraph, "a statement of the special damages claimed"（關於所申索的專項損害賠償的陳述書）has the same meaning as in Order 18, rule 12(1C). (L.N. 404 of 1991)

37A. Expert report to be verified by statement of truth (O. 38, r. 37A)

~~A~~ An expert report disclosed under these rules ~~37~~ must be verified by a statement of truth in accordance with Order 41A. Rec 26-32, 35

37B. Duty to provide expert witness with a copy of code of conduct (O. 38, r. 37B)

(1) A party who instructs an expert witness shall as soon as practicable provide the expert witness with a copy of the code of conduct set out in Rec 102-103, 107

Remarks

Appendix D.

(2) If the instruction is in writing, it must be accompanied by a copy of the code of conduct set out in Appendix D.

37C. Expert witness's declaration of duty to Court (O. 38, r. 37C)

(1) ~~A~~ An expert report disclosed under these rules ~~37~~ is not admissible in evidence unless the report contains a declaration by the expert witness that –

Rec 102-103, 107

- **(a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;**
- **(b) he understands his duty to the Court; and**
- **(c) he has complied with and will continue to comply with that duty.**

(2) Oral expert evidence is not admissible unless the expert witness has declared, ~~in writing, whether in a report disclosed under rule 37 or otherwise in relation to the proceedings,~~ whether orally or in writing or otherwise, that –

- **(a) he has read the code of conduct set out in Appendix D and agrees to be bound by it;**
- **(b) he understands his duty to the Court; and**
- **(c) he has complied with and will continue to comply with that duty.**

(3) ~~This rule does not apply in relation to an expert witness who was instructed~~ Paragraph (1) does not apply to a report that was disclosed under rule 37 before the commencement of this rule.

38. Meeting of experts (O. 38, r. 38)

In any cause or matter the Court may, if it thinks fit, direct that there be a meeting "without prejudice" of such experts within such periods before or after the disclosure of their reports as the Court may specify, for the purpose of identifying those parts of their evidence which are in issue. Where such a meeting takes place the experts may prepare a joint statement indicating those parts of their evidence on which they are, and those on which they are not, in agreement.

39. Disclosure of part of expert evidence (O. 38, r. 39)

Where the Court considers that any circumstances rendering it undesirable to give a direction under rule 37 relate to part only of the evidence sought to be adduced, the Court may, if it thinks fit, direct disclosure of the remainder.

41. Expert evidence contained in statement (O. 38, r. 41)

Where an application is made under rule 36 in respect of expert evidence contained in a statement and the applicant alleges that the maker of the statement

Remarks

cannot or should not be called as a witness, the Court may direct that the provisions of ~~rules 20 to 23 inclusive and 25 to 33~~ **rules 20 to 22** inclusive shall apply with such modifications as the Court thinks fit. Rec 102-103, 107

42. Putting in evidence expert report disclosed by another party (O. 38, r. 42)

A party to any cause or matter may put in evidence any expert report disclosed to him by any other party in accordance with this Part of this Order.

43. Time for putting expert report in evidence (O. 38, r. 43)

Where a party to any cause or matter calls as a witness the maker of ~~a report which has been disclosed in accordance with a direction given under rule 37~~ **an expert report which has been disclosed under these rules**, the report may be put in evidence at the commencement of the examination in chief of its maker or at such other time as the Court may direct. Rec 102-103, 107

44. Revocation and variation of directions (O. 38, r. 44)

Any direction given under this Part of this Order may on sufficient cause being shown be revoked or varied by a subsequent direction given at or before the trial of the cause or matter.

(Enacted 1988)

Rules of the High Court (Amendment) Rules 2007

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

Order 41A - STATEMENTS OF TRUTH

Remarks

1. Interpretation (O. 41A, r. 1)

Rec 26-32, 35

In this Order, unless the context otherwise requires –

"expert report" ( ) means ~~a~~ an expert report disclosed under ~~Order 38, rule 37~~ these rules;

"pleading" ( ) includes –

(a) particulars of a pleading given by a party to another party, whether voluntarily or pursuant to –

(i) a request of that other party; or

(ii) an order of the Court made under Order 18, rule 12(3) or (4); and

(b) an amendment to a pleading or any of the particulars referred to in paragraph (a);

"witness statement" ( ) means a statement served under Order 38, rule 2A.

2. Documents to be verified by statement of truth (O. 41A, r. 2)

(1) The following documents shall be verified by a statement of truth in accordance with this Order –

(a) a pleading;

(b) a witness statement;

(c) an expert report; and

(d) any other document verification of which in accordance with this Order is required by any other provision of these rules or by a practice direction.

(2) A pleading must be verified by a statement of truth in accordance with this Order notwithstanding that the party has in the pleading made an allegation of fact in accordance with Order 18, rule 12A, which is inconsistent with another allegation of fact in the same pleading.

(3) If the Court considers that it is ~~expedient~~ just to do so in a particular case, it may direct that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth.

(4) All or any of the documents specified in paragraph (1) need not be

verified by a statement of truth if it is so provided by a practice direction.

(5) A practice direction may only provide that all or any of the documents specified in paragraph (1) need not be verified by a statement of truth if the documents or document relate to a matter that is to be heard in a specialist list.

3. Signing of statement of truth (O. 41A, r. 3)

(1) Subject to paragraphs ~~(4), (5), (6) and (7)~~ (6), (7), (8) and (9) , a statement of truth shall be signed by –

- **(a) in the case of a witness statement or expert report, the maker of the statement or report;**
- **(b) in any other case –**
  - **(i) the party or where appropriate, his next friend or guardian ad litem; or**
  - **(ii) the legal representative of the party or next friend or guardian ad litem.**

(2) Subject to paragraphs ~~(5), (6) and (7)~~ (6), (7), (8) and (9) , where a party is a body of persons, corporate or unincorporate, the statement of truth shall be signed by a person holding a senior position in the body. ~~That person shall state the office or position he holds.~~

(3) Subject to paragraph (7), where the party is a public officer, the statement of truth shall be signed by the public officer or a person holding a senior position in the public body or public authority to which the proceedings relate.

~~(3)~~(4) Each of the following persons is a person holding a senior position –

- **(a) in respect of a corporation that is neither a public body nor a public authority, any director, manager, secretary or other similar officer of the corporation; ~~and~~**
- **(b) in respect of an unincorporated association that is neither a public body nor a public authority, any corresponding person appropriate to that unincorporated association~~.~~ ; and**
- **(c) in respect of a public body or public authority, a person duly authorized by the public body or public authority for the purposes of this subparagraph.**

(5) Where a statement of truth is signed by a person holding a senior position, the person shall state the office or position he holds.

~~(4)~~(6) Subject to paragraphs ~~(5), (6) and (7)~~ (7), (8) and (9) , where the party is a partnership, the statement of truth shall be signed by –

- **(a) any of the partners; or**
- **(b) a person having the control or management of the partnership business.**

Remarks

~~(5)~~(7) A statement of truth in or in relation to a pleading may be made by –

(a) a person who is not a party; or

(b) two or more parties jointly,

if this is permitted by a practice direction.

~~(6)~~(8) An insurer or the Motor Insurers' Bureau of Hong Kong may sign a statement of truth in or in relation to a pleading on behalf of a party where the insurer or the Motor Insurers' Bureau of Hong Kong has a financial interest in the result of proceedings brought wholly or partially by or against that party.

~~(7)~~(9) If more than one insurer is conducting proceedings on behalf of a plaintiff or defendant, a statement of truth in or in a relation to a pleading may be signed by an officer responsible for the case as the lead insurer, but –

(a) the person signing shall specify the capacity in which he signs;

(b) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and

(c) the Court may order that the statement of truth also be signed by one or more of the parties.

(10) Where a legal representative signs a statement of truth, he shall sign in his own name, and shall not sign only in the name of the firm to which he belongs.

4. Effect of statement of truth (O. 41A, r. 4)

(1) Subject to paragraph (2), a statement of truth is a statement that –

(a) the party putting forward the document believes the facts stated in the document are true; or

(b) in the case of a witness statement or expert report, the maker of the witness statement or expert report believes that the facts stated in the document are true and (if applicable) the opinion expressed in it is honestly held.

(2) If a party is conducting proceedings with a next friend or guardian ad litem, the statement of truth in or in relation to a pleading is a statement that the next friend or guardian ad litem believes the facts stated in the document being verified are true.

(3) Where a legal representative or insurer has signed a statement of truth on behalf of a party, the Court shall treat his signature as his statement that –

(a) the party on whose behalf he has signed had authorized him to do so;

(b) before signing he had explained to the party that in signing the statement of truth he would be confirming the party's belief that the facts stated in the document were true; and

(c) before signing he had informed the party of the possible

Remarks

consequences to the party if it should subsequently appear that the party did not have an honest belief in the truth of those facts.

5. Form of statement of truth (O. 41A, r. 5)

(1) The form of the statement of truth verifying a document other than a witness statement and expert report shall be as follows –

"[I believe][the (*plaintiff or as may be*) believes] that the facts stated in this [*name document being verified*] are true.".

(2) The form of the statement of truth verifying a witness statement or expert report shall be as follows –

"I believe that the facts stated in this *[name document being verified]* are true and (if applicable) the opinion expressed in it is honestly held.".

(3) Where the statement of truth is not contained in the document which it verifies –

(a) the document containing the statement of truth must be headed with the title of the proceedings and the action number; and

(b) the document being verified must be identified in the statement of truth as follows –

(i) pleading: "the [*statement of claim or as may be*] served on the [*name of party*] on [*date*]";

(ii) particulars of pleading: "the particulars of pleading issued on [*date*]";

(iii) amendment to a pleading or particulars of pleading: "the amendment to [*name document being verified*], made on [*date*]";

(iv) witness statement: "the witness statement filed on [*date*] or served on [*party*] on [*date*]";

(v) expert report: "the expert report disclosed to [*party*] on [*date*]".

6. Failure to verify pleading (O. 41A, r. 6)

~~**(1) If a party fails to verify his pleading by a statement of truth –**~~

~~**(a) the pleading remains effective unless struck out; but**~~

~~**(b) the party may not rely on the pleading as evidence of any of the matters set out in it.**~~

Previous r.6(1) removed

~~**(2)**~~**(1) The Court may order to be struck out a pleading which is not verified by a statement of truth.**

~~**(3)**~~**(2) Any party may apply for an order under paragraph ~~(2)~~ (1).**

Remarks

7. Failure to verify witness statement or expert report (O. 41A, r. 7)

If the maker of a witness statement or expert report fails to verify the witness statement or expert report by a statement of truth, ~~the Court may direct that it shall not be admissible in evidence.~~ the witness statement or expert report is not admissible in evidence unless otherwise ordered by the Court.

8. Power of Court to require document to be verified (O. 41A, r. 8)

(1) The Court may order a person who has failed to verify a document in accordance with this Order to verify the document.

(2) Any party may apply for an order under paragraph (1).

~~**9. Verified statement to be used as evidence in interlocutory proceedings (O. 41A, r. 9)**~~

Previous r.9 removed

~~**A document verified by a statement of truth may be used as evidence in any interlocutory proceedings.**~~

~~10.~~ 9. False statements (O. 41A, ~~r. 10~~ r. 9)

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(2) Proceedings under this rule may be brought only –

(a) by the Secretary for Justice or a person aggrieved by the false statement; and

(b) with the leave of the Court.

(3) The Court shall not grant the ~~permission~~ leave under paragraph (2) unless it is satisfied that the punishment for contempt of court is proportionate and appropriate in relation to the false statement.

(4) Proceedings under this rule are subject to the law relating to contempt of court and this rule is without prejudice to such law.

~~11.~~ 10. Transitional (O. 41A, ~~r. 11~~ r. 10)

This Order does not apply in relation to a document in any action if that document was filed, served or exchanged before the commencement of this Order.

Rules of the High Court (Amendment) Rules 2007

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

Order 53 - APPLICATIONS FOR JUDICIAL REVIEW

Remarks:
Adaptation amendments retroactively made - see 25 of 1998 s. 2

Remarks

1A. Interpretation (O. 53, r. 1A) Rec 144-148

In this Order –

"application for judicial review" ( ) ~~means~~ includes an application in accordance with this Order for a review of the lawfulness of –

(a) an enactment; or

(b) a decision, action or failure to act in relation to the exercise of a public function;

"interested party" ( ), in relation to an application for judicial review, means any person (other than the applicant and respondent) who is directly affected by the application.

~~**1. Cases appropriate for application for judicial review** (O. 53, r. 1)~~ Rec 144-148

~~(1) An application for-~~

~~(a) an order of mandamus, prohibition or certiorari, or~~

~~(b) an injunction under section 21J of the Ordinance restraining a person from acting in any office in which he is not entitled to act,~~

~~shall be made by way of an application for judicial review in accordance with the provisions of this Order.~~

~~(2) An application for a declaration or an injunction (not being an injunction mentioned in paragraph (1)(b)) may be made by way of an application for judicial review, and on such an application a judge may grant the declaration or injunction claimed if he considers that, having regard to-~~

~~(a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,~~

~~(b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and~~

~~(c) all the circumstances of the case,~~

~~it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.~~

Remarks

1. Cases appropriate for application for judicial review (O. 53, r. 1)

(1) An application for judicial review must be made if the applicant is seeking –

(a) an order for mandamus, prohibition or certiorari; or

(b) an injunction under section 21J of the Ordinance restraining a person from acting in any office in which he is not entitled to act.

(2) An application for judicial review may be made if the applicant is seeking –

(a) a declaration; or

(b) an injunction (not being an injunction mentioned in paragraph (1)(b)).

(3) An application for judicial review may include an application for an award of damages, restitution or the recovery of a sum due but may not seek such a remedy alone.

2. Joinder of claims for relief (O. 53, r. 2)

On an application for judicial review any relief mentioned in rule 1(1) or (2) may be claimed as an alternative or in addition to any other relief so mentioned if it arises out of or relates to or is connected with the same matter.

2A. Application for leave to apply for judicial review (O. 53, r. 2A)

Rec 144-148

(1) No application for judicial review may be made unless the leave of the Court has been obtained in accordance with this Order, or where the case is one of urgency, in accordance with the practice direction issued for the purposes of this paragraph.

(2) An application for leave must be made by filing in the Registry –

(a) a notice in Form ~~86A~~ No. 85B in Appendix A containing a statement of –

(i) the name and description of the applicant;

~~**(ii) the relief sought and the grounds upon which it is sought;**~~
~~**(iii) the name and description of all interested parties;**~~
~~**(iv) the name and address of the applicant's solicitors (if any); and**~~
~~**(v) the applicant's address for service; and**~~

Previous r.2A(2)(a)(ii)-(v) modified

(ii) the name and description of the respondent;
(iii) the relief sought and the grounds on which it is sought;
(iv) the name and description of all interested parties (if any);
(v) the name and address of the applicant's solicitors (if any);

and

(vi) if no solicitor acts for the applicant, the applicant's address for service; and

(b) an affidavit verifying the facts relied on.

2B. Service of notice of application for leave (O. 53, r. 2B)

The notice of application for leave together with the affidavit verifying the facts relied on must be served on –

(a) the proposed respondent; and

(b) unless the Court otherwise directs, any person the applicant considers to be an interested party,

within 7 days after the date of the filing of the notice of application.

2C. Acknowledgment of service of notice of application for leave (O. 53, r. 2C)

(1) Any person served with the notice of application for leave who wishes to take part in the judicial review must file an acknowledgment of service in Form No. 86B in Appendix A in accordance with this rule.

(2) An acknowledgment of service must be –

(a) filed not more than 21 days after service of the notice of application for leave; and

(b) served on –

(i) the applicant; and

(ii) subject to any direction under rule 2B(b), any interested party named in the notice of application, as soon as practicable and, in any event, not later than 7 days after it is filed.

(3) The time limits under this rule may not be extended by agreement between the parties.

(4) The acknowledgment of service –

(a) must –

(i) where the person filing it intends to contest the application for leave, set out a summary of his grounds for doing so; and

(ii) where the person filing it intends to support the application for leave, set out a summary of his grounds (other than those stated in the notice of application for leave) for doing so;

(b) must state the name and address of any person whom the person filing it considers to be an interested party; and

(c) may include or be accompanied by an application for directions.

Remarks

(5) The acknowledgment of service must be accompanied by an affidavit verifying the facts stated in the acknowledgment of service.

2D. Failure to file acknowledgment of service (O. 53, r. 2D)

(1) Where a person served with the notice of application for leave has failed to file an acknowledgment of service in accordance with rule 2C, he –

(a) may not take part in a hearing to decide whether leave should be given unless the Court allows him to do so; but

(b) may take part in the hearing of the judicial review if he complies with any direction of the Court regarding the filing and service of –

(i) detailed grounds for contesting the application for judicial review or supporting it on additional grounds; and

(ii) any affidavit evidence.

(2) Where the person takes part in the hearing of the judicial ~~hearing~~ review, the Court may take his failure to file an acknowledgment of service into account when deciding what order to make about costs.

3. Grant of leave to apply for judicial review (O. 53, r. 3)

~~(1) No application for judicial review shall be made unless the leave of the Court has been obtained in accordance with this rule.~~ Rec 144-148

~~(2) An application for leave must be made ex parte by filing in the Registry~~

~~(a) a notice in Form 86A containing a statement of~~

~~(i) the name and description of the applicant,~~

~~(ii) the relief sought and the grounds upon which it is sought,~~

~~(iii) the name and address of the applicant's solicitors (if any), and~~

~~(iv) the applicant's address for service; and~~

~~(b) an affidavit verifying the facts relied on.~~

(3) The judge may determine the application ~~**The judge may determine the application**~~ **for leave** without a hearing, unless a hearing is requested in the notice of application, and need not sit in open court; and in any case the Registrar shall serve a copy of the judge's order on the applicant.

(3A) The Court may refuse an application for leave notwithstanding that –

(a) the notice of application for leave has not yet been served on the proposed respondent under rule 2B; or

(b) the proposed respondent has not yet filed an acknowledgment of service under rule 2C.

(3B) Before the Court refuses the application for leave, it may hear ex parte any oral submissions made by the applicant.

(3C) If, after hearing the applicant under paragraph (3B), the Court

considers that granting the leave may be reasonably justified, it may adjourn the application for leave so as to enable the proposed respondent and any other interested party to make any submissions (orally or in writing) in relation to the application.

(HK)(4) Where an application for leave is refused by a judge or is granted on terms, the applicant may appeal against the judge's order to the Court of Appeal within ~~10 days~~ **14 days** after such order.

(6) Without prejudice to its powers conferred by Order 20, rule 8, the Court hearing an application for leave may allow the applicant's statement to be amended, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as the Court thinks fit.

(7) The Court shall not grant leave unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(8) Where leave is sought to apply for an order of certiorari to remove for the purpose of its being quashed any judgment, order, conviction or other proceeding which is subject to appeal and a time is limited for the bringing of the appeal, the Court may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(9) If the Court grants leave it may impose such terms as to costs and as to giving security as it thinks fit.

(10) Where leave to apply for judicial review is granted, then-

(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;

(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.

3A. Respondent etc. may not apply to set aside order (O. 53, r. 3A) Rec 144-148

Neither the respondent nor any other person served with an application for leave to apply for judicial review may apply to set aside an order giving leave to make the application.

4. Delay in applying for relief (O. 53, r. 4)

(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made. (L.N. 356 of

1988)

(2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.

(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made.

4A. Service of order giving leave (O. 53, r. 4A) Rec 144-148

(1) Where leave to make an application for judicial review is granted, the Court may also give directions as to the management of the case.

(2) The applicant for judicial review shall, within 14 days after the leave was granted, serve the order ~~giving~~ granting leave and any directions given under paragraph (1) on –

(a) the respondent (whether or not he has filed an acknowledgment of service under rule 2C); and

(b) all interested parties who have filed an acknowledgment of service under rule 2C.

5. Mode of applying for judicial review (O. 53, r. 5)

~~(HK)(1) When leave has been granted to make an application for judicial review, the application shall be made by originating motion to a judge sitting in open court or, if the judge granting leave has so ordered, by originating summons, to a judge in chambers.~~ Rec 11-16

(1) When leave has been granted to make an application for judicial review, the application must be made by originating summons in Form No. 86 in Appendix A to a judge sitting in open court or, if the judge granting leave has so ordered, to a judge in chambers.

(3) The ~~notice of motion or summons~~ **originating summons** must be served on all persons directly affected and, where it relates to any proceedings in or before a court and the object of the application is either to compel the court or an officer of the court to do any act in relation to the proceedings or to quash them or any order made therein, the ~~notice or summons~~ **originating summons** must also be served on the clerk or registrar of the court and, where any objection to the conduct of the judge is to be made, on that judge.

(4) Unless the Court granting leave has otherwise directed, there must be at least 10 days between the service of the ~~notice of motion or summons~~ **originating summons** and the day named therein for the hearing.

Remarks

(5) ~~A motion~~ **An originating summons** must be ~~entered~~ **issued** for hearing within 14 days after the grant of leave.

(6) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the ~~notice of motion~~ **originating summons** must be filed ~~before the motion~~ **the summons** ~~is entered for hearing~~ **within 7 days of such service** and, if any person who ought to be served under this rule has not been served, the affidavit must state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of ~~the motion~~ **the originating summons**.

(7) If on the hearing of the ~~motion~~ **originating summons** the Court is of opinion that any person who ought, whether under this rule or otherwise, to have been served has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the ~~notice~~ **originating summons** may be served on that person.

5A. Filing of grounds for contesting or supporting application for judicial review (O. 53, r. 5A)

Rec 144-148

If the respondent or any other person who has filed an acknowledgment of service under rule 2C wishes to contest the application for judicial review or support it on a ground other than one contained in the notice of application for leave, he shall, within 35 days after service of the order giving leave to apply for judicial leave, file in the Registry and serve on the applicant and all other interested parties –

(a) detailed grounds for contesting the application for judicial review or supporting it on additional grounds; and

(b) any affidavit evidence.

5B. ~~Applicant~~ Additional grounds may not ~~rely~~ be relied on ~~additional grounds~~ unless leave given (O. 53, r. 5B)

At the hearing of the application for judicial review~~, the applicant may not seek to rely on grounds other than those for which he has been given leave to apply for it unless the leave of the Court has been given.~~

(a) the applicant may not seek to rely on grounds other than those contained in his notice of application for leave; and

(b) the respondent or any other person who has filed an acknowledgment of service under rule 2C or takes part in the hearing under rule 2D(1)(b) may not seek to rely on grounds for contesting or supporting the application other than those filed and served in accordance with rule 5A or in accordance with the directions given under rule 2D(1)(b),

Remarks

unless the leave of the Court is given.

5C. Evidence (O. 53, r. 5C)

At the hearing of the application for judicial review, no affidavit evidence may be relied on unless –

(a) it has been served in accordance with any –

(i) rule under this Order; or

(ii) direction of the Court; or

(b) the Court gives leave.

5D. Court's powers to hear any person (O. 53, r. 5D)

(1) Any person may apply for leave to –

(a) file evidence; or

(b) make representations at the hearing of the application for judicial review.

(2) An application under paragraph (1) must be made promptly.

(3) The Court shall not grant leave under paragraph (1) unless the applicant appears to the Court to be a proper person to be heard at the hearing of the application for judicial review.

~~**6. Statements and affidavits** (O. 53, r. 6)~~ Rec 144-148

~~(1) Copies of the statement in support of an application for leave under rule 3 must be served with the notice of motion or summons and, subject to paragraph (2), no grounds shall be relied upon or any relief sought at the hearing except the grounds and relief set out in the statement.~~

~~(2) The Court may on the hearing of the motion or summons allow the applicant to amend his statement, whether by specifying different or additional grounds or relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used by him. (L.N. 223 of 1995)~~

~~(3) Where the applicant intends to ask to be allowed to amend his statement or to use further affidavits, he shall give notice of his intention and of any proposed amendment to every other party.~~

~~(4) Any respondent who intends to use an affidavit at the hearing shall file it in the Registry as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon him of the documents required to be served by paragraph (1). (L.N. 404 of 1991)~~

~~(5) Each party to the application must supply to every other party copies of~~

Remarks

~~every affidavit which he proposes to use at the hearing, including, in the case of the applicant, the affidavit in support of the application for leave under rule 3.~~

7. Claim for damages (O. 53, r. 7)

(1) On an application for judicial review the judge may, subject to paragraph (2), award damages to the applicant if-

(a) he has included in the statement in support of his application for leave under ~~rule 3~~ **rule 2A** a claim for damages arising from any matter to which the application relates, and — Rec 144-148

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, it could have been awarded damages.

(2) Order 18, rule 12, shall apply to a statement relating to a claim for damages as it applies to a pleading.

8. Application for discovery, interrogatories, cross-examination, etc. (O. 53, r. 8)

(1) Unless the judge otherwise directs, any interlocutory application in proceedings on an application for judicial review may be made to any judge in chambers or a master.

(2) In this paragraph "interlocutory application"（非正審申請）includes an application for an order under Order 24 or 26 or Order 38, rule 2(3), or for an order dismissing the proceedings by consent of the parties.

(3) This rule is without prejudice to any statutory provision or rule of law restricting the making of an order against the Crown.

9. Hearing of application for judicial review (O. 53, r. 9)

(1) On the hearing of any ~~motion or~~ summons under rule 5, any person who desires to be heard in opposition to in opposition to ~~**in opposition to**~~ **or in support of** the ~~motion or~~ summons, and appears to the Court to be a proper person to be heard, shall be heard, notwithstanding that he has not been served with ~~notice of the motion or~~ the summons. — Rec 11-16 Rec 144-148 Rec 11-16

(2) Where the relief sought is or includes an order of certiorari to remove any proceedings for the purpose of quashing them, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record unless before the hearing of the ~~motion or~~ summons he has lodged with the Registrar a copy thereof verified by affidavit or accounts for his failure to do so to the satisfaction of the Court hearing the ~~motion or~~ summons. — Rec 11-16

(3) Where an order of certiorari is made in any such case as is referred to in paragraph (2), the order shall, subject to paragraph (4), direct that the proceedings shall be quashed forthwith on their removal into the Court of First Instance. (25 of 1998 s. 2)

(4) Where the relief sought is an order of certiorari and the Court is satisfied that there are grounds for quashing the decision to which the application relates, the Court may, in addition to quashing it, remit the matter to the court, tribunal or authority concerned with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(5) Where the relief sought is a declaration, an injunction or damages and the Court considers that it should not be granted on an application for judicial review but might have been granted if it had been sought in an action begun by writ by the applicant at the time of making his application, the Court may, instead of refusing the application, order the proceedings to continue as if they had been begun by writ; and Order 28, rule 8, shall apply as if the application had been made by summons.

10. Saving for person acting in obedience to mandamus (O. 53, r. 10)

No action or proceeding shall be begun or prosecuted against any person in respect of anything done in obedience to an order of mandamus.

12. Consolidation of applications (O. 53, r. 12)

Where there is more than one application pending under section 21K of the Ordinance against several persons in respect of the same office, and on the same grounds, the Court may order the applications to be consolidated.

13. Order made by judge may be set aside, etc. (O. 53, r. 13)

(HK) An appeal shall lie, from an order of a judge granting or refusing an application for judicial review, to the Court of Appeal, which may set aside or confirm any such order or substitute such order as ought to have been made.

14. Meaning of "Court" (O. 53, r. 14)

In relation to the hearing by a judge of an application for leave under rule 3 or of an application for judicial review, any reference in this Order to "the Court" （法庭）shall, unless the context otherwise requires, be construed as a reference to the judge.

(Enacted 1988)

Remarks

~~**15. Transitional provision relating to rule 26 of Amendment Rules 2007 (O. 53, r. 15)**~~

~~**Where, immediately before the commencement of rule 26 ("the amending rule") of the Amendment Rules 2007, an application by originating motion made under rule 5(1) as in force immediately before the commencement is pending, then the application is to be determined as if the amending rule had not been made.**~~

Previous r.15 removed

16. Transitional provision relating to Part 22 of the Amendment Rules 2007 (O. 53, r. 16)

Transitional

Where, immediately before the commencement of Part 22 of the Amendment Rules 2007, an application for judicial review made in accordance with this Order as in force immediately before the commencement is pending, then nothing in that Part is to apply in relation to the application, and this Order in force immediately before the commencement is to continue to apply in relation to the application as if that Part had not been made.

Rules of the High Court (Amendment) Rules 2007

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

Order 59 - APPEALS TO THE COURT OF APPEAL

Remarks

1. Application of Order to appeals (O. 59, r. 1)

Rec 120

(1) This Order applies, subject to the provisions of these rules with respect to particular appeals, to every appeal to the Court of Appeal (including so far as it is applicable thereto, any appeal to that Court from a master or other officer of the High Court or from any tribunal from which an appeal lies to that Court under or by virtue of any enactment) not being an appeal for which other provision is made by these rules and references to "the court below" apply to any Court, tribunal or person from which such appeal lies.
(25 of 1998 s. 2)

(2) For the avoidance of doubt and without prejudice to the generality of paragraph (1), this Order, unless the context otherwise requires, applies in relation to an appeal to the Court of Appeal from the District Court.

2. Application of Order to applications for new trial (O. 59, r. 2)

This Order (except so much of rule 3(1) as provides that an appeal shall be by way of rehearing and except rule 11 (1)) applies to an application to the Court of Appeal for a new trial or to set aside a verdict, finding or judgment after trial with or without a jury, as it applies to an appeal to that Court, and references in this Order to an appeal and to an appellant shall be construed accordingly.

2A. Application to Court of Appeal for leave to appeal (O. 59, r. 2A)

Rec 110 & 112

(1) An application to the Court of Appeal for leave to appeal must be made by a summons supported by a statement setting out –

(a) the reasons why leave should be granted; and

(b) if the time for appealing has expired, the reasons why the application was not made within that time.

(2) An application under paragraph (1) must be made inter partes if the proceedings in the court below are inter partes.

(3) An application under paragraph (1) must include, where necessary, an application to extend the time for appealing.

Remarks

(4) A party who intends to resist an application under paragraph (1) made inter partes shall, within 14 days after the application is served on him, file in the Court of Appeal and serve on the applicant a statement as to why the application should not be granted.

(5) The Court of Appeal may –

(a) determine the application without a hearing on the basis of written submissions only; or

(b) direct that the application be heard at an oral hearing,

and in both cases, the Court of Appeal may give such directions as it thinks fit in relation to the application.

(6) Where the Court of Appeal grants the application, it may impose such terms as it thinks fit.

(7) Subject to paragraph (8), if the application is determined on the basis of written submissions only, a party aggrieved by the determination may, within 7 days after he has been given notice of the determination, request the Court of Appeal to reconsider the determination at an oral hearing inter partes.

(8) Where the Court of Appeal determines the application on the basis of written submissions only, it may, if it considers that the determination cannot seriously be contested, make an order that no party may request the determination to be reconsidered at a hearing inter partes.

2B. Application for leave to appeal against interlocutory and other judgments or orders of Court (O. 59, r. 2B)

(1) Subject to paragraph (4), an application for leave to appeal against –

(a) an interlocutory judgment or order of the Court specified in section 14AA(1) of the Ordinance; or

(b) a judgment or order of the Court specified in section 14(3)(e) or (f) of the Ordinance,

may only be made to the Court in the first instance by a summons within 14 days from the date of the judgment or order.

(2) So far as is practicable, the application must be made to the judge or master against whose judgment or order leave to appeal is sought.

(3) Where the Court refuses the application, a further application for leave to appeal may be made to the Court of Appeal within 14 days from the date of refusal.

(4) If the Court of Appeal may so allow, the application may be made direct to the Court of Appeal within 14 days from the date of the judgment or order.

(5) An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes.

Remarks

2C. Refusal by single judge of application for leave to appeal (O. 59, r. 2C)

Where an application for leave to appeal made under rule 2A or 2B is determined (with or without a hearing) by a single judge of the Court of Appeal, a party aggrieved by the determination may within 7 days of the refusal make a fresh application to the Court of Appeal in accordance with that rule.

3. Notice of appeal (O. 59, r. 3)

(1) An appeal to the Court of Appeal shall be by way of rehearing and must be brought by motion, and the notice of the motion is referred to in this Order as "notice of appeal".

(2) Notice of appeal may be given either in respect of the whole or in respect of any specified part of the judgment or order of the court below; and every such notice must specify the grounds of the appeal and the precise form of the order which the appellant proposes to ask the Court of Appeal to make.

(3) Except with the leave of the Court of Appeal or a single judge, the appellant shall not be entitled on the hearing of an appeal to rely on any grounds of appeal, or to apply for any relief, not specified in the notice of appeal. (L.N. 404 of 1991)

(5) A notice of appeal must be served on all parties to the proceedings in the court below who are directly affected by the appeal; and, subject to rule 8, it shall not be necessary to serve the notice on parties not so affected.

(6) No notice of appeal shall be given by a respondent in a case to which rule 6(1) relates.

4. Time for appealing (O. 59, r. 4)

Rec 120

~~(HK)(1) Except as otherwise provided by these rules, every notice of appeal must be served under rule 3(5) not later than the expiration of the following period beginning on the date immediately following the date on which the judgment or order of the court below was sealed or otherwise perfected, that is to say- (L.N. 165 of 1992)~~

~~(a) in the case of an appeal from an interlocutory order (not being such an order as is mentioned in sub-paragraph (b)) and in the case of an appeal from a judgment or order given or made under Order 14 or Order 86, 14 days;~~

~~(b) in the case of an appeal from an order or decision made or given in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days; (L.N. 129 of 2000)~~

Remarks

~~(c) any other case, 28 days. (L.N. 129 of 2000)~~

(1) Except as otherwise provided by these rules, a notice of appeal must be served under rule 3(5) within –

(a) in the case where leave to appeal to the Court of Appeal is required under section 14AA (not being a case to which sub-paragraph (b) applies) or section 14(3)(e) or (f) of the Ordinance, 7 days from the date on which leave to appeal is granted;

(b) in the case of an appeal from a judgment, order or decision given or made in the matter of the winding up of a company, or in the matter of any bankruptcy, 28 days from the date of the judgment, order or decision; and

(c) in any other case, 28 days from the date of the judgment, order or decision concerned.

(2) In the case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the following period of time shall be disregarded in determining the period referred to in paragraph (1)-

(a) where an application has been made under section 27C of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined; or

(b) where an application has been made under section 27D of that Ordinance, the period from the date on which the judgment is given to the date on which the application is determined. (11 of 2002 s. 7)

~~(3) Where leave to appeal is granted by the Court of Appeal upon an application made within the time limited for serving notice of appeal under paragraph (1), a notice of appeal may, instead of being served within that time, be served within 7 days after the date when leave is granted.~~

(4) In relation to an appeal from the District Court, a notice of appeal must be served under rule 3(5) within –

(a) in the case where leave to appeal to the Court of Appeal is required under section 63(1) or (1B) of the District Court Ordinance (Cap. 336), 7 days after the date on which leave to appeal is granted; and

(b) in the case of an appeal from an order specified in section 63(3) of the District Court Ordinance (Cap. 336) or an order for imprisonment given or made under Order 49B of the Rules of the District Court (Cap. 336, sub. leg. H), 28 days after the date on which the order is made.

5. Setting down appeal (O. 59, r. 5)

Rec 120

(1) Within 7 days after ~~the later of (i)~~ the date on which service of the notice of appeal was effected, ~~or (ii) the date on which the judgment or order of the Court below was sealed or otherwise perfected,~~ the appellant must lodge with the Registrar-

(a) a copy of the ~~said judgment or order,~~ **sealed judgment or order and a copy of the reasoned decision (if any);** and

(b) two copies of the notice of appeal, one of which shall be indorsed with the amount of the fee paid, and the other indorsed with a certificate of the date of service of the notice.

(2) Upon the said documents being left, the Registrar shall file one copy of the notice of appeal and cause the appeal to be set down in the list of appeals; and the appeal shall come on to be heard according to its order in that list unless the Court of Appeal or a judge of that Court otherwise orders.

~~(4)~~ **(3)** Within 4 days after an appeal has been set down, the appellant must give notice to that effect to all parties on whom the notice of appeal was served.

6. Respondent's notice (O. 59, r. 6)

(1) A respondent who, having been served with a notice of appeal, desires-

(a) to contend on the appeal that the decision of the court below should be varied, either in any event or in the event of the appeal being allowed in whole or in part, or

(b) to contend that the decision of the court below should be affirmed on grounds other than those relied upon by that court, or

(c) to contend by way of cross-appeal that the decision of the court below was wrong in whole or in part,

must give notice to that effect, specifying the grounds of his contention and, in a case to which sub-paragraph (a) or (c) relates, the precise form of the order which he proposes to ask the Court to make.

(2) Except with the leave of the Court of Appeal or a single judge, a respondent shall not be entitled on the hearing of the appeal to apply for any relief not specified in a notice under paragraph (1) or to rely, in support of any contention, upon any ground which has not been specified in such a notice or relied upon by the court below. (L.N. 404 of 1991)

(HK)(3) Any notice given by a respondent under this rule (in this Order referred to as a "respondent's notice") must be served on the appellant, and on all parties to the proceedings in the court below who are directly affected by the contentions of the respondent, and must be served-

(a) where the notice of appeal related to an interlocutory order, within 14 days, and

(b) in any other case, within 21 days,

after the service of the notice of appeal on the respondent.

(4) A party by whom a respondent's notice is given must, within 2 days after service of the notice, furnish 2 copies of the notice to the Registrar.

Remarks

7. Amendment of notice of appeal and respondent's notice (O. 59, r. 7)

(1) A notice of appeal or respondent's notice may be amended-

(a) by or with the leave of the Court of Appeal or a single judge at any time; (L.N. 404 of 1991)

(b) without such leave, by supplementary notice served not less than three weeks before the date fixed for the hearing of the appeal.

(2) A party by whom a supplementary notice is served under this rule must, within 2 days after service of the notice, furnish two copies of the notice to the Registrar.

8. Directions of the Court as to service (O. 59, r. 8)

(1) The Court of Appeal or a single judge may in any case direct that a notice of appeal or respondent's notice be served on any party to the proceedings in the court below on whom it has not been served, or on any person not party to those proceedings. (L.N. 404 of 1991)

(2) Where a direction is given under paragraph (1) the hearing of the appeal may be postponed or adjourned for such period and on such terms as may be just and such judgment may be given and such order made on the appeal as might have been given or made if the persons served in pursuance of the direction had originally been parties.

9. Documents to be lodged by appellant (O. 59, r. 9)

Rec 120

(1) ~~Not less than 7 days~~ **Not less than 14 days** ~~before the appeal is likely to be~~ **before the date on which the appeal is** listed for hearing the appellant must cause to be lodged with the Registrar the number of copies for which paragraph (2) provides of each of the following documents, namely-

(a) the notice of appeal;

(b) the respondent's notice;

(c) any supplementary notice served under rule 7;

(d) the judgment or order of the court below;

(e) the originating process by which the proceedings in the court below were begun, any interlocutory or other related process which is the subject of the appeal, the pleadings (including particulars), if any, and, in the case of an appeal in an Admiralty cause or matter, the preliminary acts, if any;

(f) the transcript of the official shorthand note, if any, of the judgment or order of the court below or, in the absence of such a note, the judge's note of his reasons for giving the judgment or making the order;

(g) such parts of the transcript of the official shorthand note, if any, of the evidence given in the court below as are relevant to any question at issue on the appeal or, in the absence of such a note, such parts of the judge's note of the evidence as are relevant to any such question;

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(h) any list of exhibits made under Order 35, rule 11, or the schedule of evidence, as the case may be;

(HK)(i) such documents, affidavits, exhibits, or parts of exhibits, as were in evidence in the court below and as are relevant to any question at issue on the appeal.

(2) Unless otherwise directed the number of copies to be lodged in accordance with paragraph (1) is three copies except-

(a) where the appeal is to be heard by two judges in which case it is two copies; or

(b) in the case of an appeal in an Admiralty cause or matter, in which case it is four copies or, if the Court of Appeal is to hear the appeal with assessors, six copies.

(2A) When the transcripts, if any, referred to in items (f) and (g) of paragraph (1) have been bespoken by the appellant and paid for, the number of such transcripts required in accordance with paragraph (2) shall be sent by the ~~official shorthand writer or transcriber~~ **appellant** direct to the Registrar.

(3) At any time after an appeal has been set down in accordance with rule 5 the Registrar may give such directions in relation to the documents to be produced at the appeal, and the manner in which they are to be presented, and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.

(4) The directions referred to in paragraph (3) may be given without a hearing provided always that the Registrar may at any time issue a summons requiring the parties to an appeal to attend before him and any party to an appeal may apply at any time for an appointment before the Registrar.

10. General powers of the Court (O. 59, r. 10)

(1) In relation to an appeal the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Court of First Instance. (25 of 1998 s. 2)

(2) The Court of Appeal shall have power to receive further evidence on questions of fact, either by oral examination in court, by affidavit, or by deposition taken before an examiner, but, in the case of an appeal from a judgment after trial or hearing of any cause or matter on the merits, no such further evidence (other than evidence as to matters which have occurred after the date of the trial or hearing) shall be admitted except on special grounds.

(3) The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.

(4) The powers of the Court of Appeal under the foregoing provisions of this rule may be exercised notwithstanding that no notice of appeal or respondent's notice has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or that any ground for allowing the appeal or for affirming or varying the decision of that court is not specified in such a notice; and the Court of Appeal may make any order, on such terms as the Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

(5) The Court of Appeal may, in special circumstances, order that such security shall be given for the costs of an appeal as may be just.

(6) The powers of the Court of Appeal in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal.

(7) Documents impounded by order of the Court of Appeal shall not be delivered out of the custody of that Court except in compliance with an order of that Court: Provided that where a Law Officer or the Crown Prosecutor makes a written request in that behalf, documents so impounded shall be delivered into his custody.

(8) Documents impounded by order of the Court of Appeal, while in the custody of that Court, shall not be inspected except by a person authorized to do so by an order of that Court.

(9) In any proceedings incidental to any cause or matter pending before the Court of Appeal, the powers conferred by this rule on the Court may be exercised by a single judge: (L.N. 404 of 1991)
Provided that the said powers of the Court of Appeal shall be exercisable only by that Court or a single judge in relation to-

(a) the grant, variation, discharge or enforcement of an injunction, or an undertaking given in lieu of an injunction; and
(b) the grant or lifting of a stay of execution or proceedings.

11. Powers of the Court as to new trials (O. 59, r. 11)

(1) On the hearing of any appeal the Court of Appeal may, if it thinks fit, make any such order as could be made in pursuance of an application for a new trial or to set aside a verdict, finding or judgment of the court below.

(2) The Court of Appeal shall not be bound to order a new trial on the ground of misdirection, or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the Court of Appeal some substantial wrong or miscarriage has been thereby occasioned.

(3) A new trial may be ordered on any question without interfering with the finding or decision on any other question; and if it appears to the Court of Appeal that any such wrong or miscarriage as is mentioned in paragraph (2) affects part

only of the matter in controversy, or one or some only of the parties, the Court may order a new trial as to that part only, or as to that party or those parties only, and give final judgment as to the remainder.

(4) In any case where the Court of Appeal has power to order a new trial on the ground that damages awarded by a jury are excessive or inadequate, the Court may, in lieu of ordering a new trial-

(a) with the consent of all parties concerned, substitute for the sum awarded by the jury such sum as appears to the Court to be proper;

(b) with the consent of the party entitled to receive or liable to pay the damages, as the case may be, reduce or increase the sum awarded by the jury by such amount as appears to the Court to be proper in respect of any distinct head of damages erroneously included in or excluded from the sum so awarded;

but except as aforesaid the Court of Appeal shall not have power to reduce or increase the damages awarded by a jury.

(5) A new trial shall not be ordered by reason of the ruling of any judge that a document is sufficiently stamped or does not require to be stamped.

12. Evidence on appeal (O. 59, r. 12)

Where any question of fact is involved in an appeal, the evidence taken in the court below bearing on the question shall, subject to any direction of the Court of Appeal or a single judge, be brought before that Court as follows-

(a) in the case of evidence taken by affidavit, by the production of a true copy of such affidavit;

(b) in the case of evidence given orally, by a copy of so much of the transcript of the official shorthand note as is relevant or by a copy of the judge's note, where he has intimated that in the event of an appeal his note will be sufficient, or by such other means as the Court of Appeal or a single judge, may direct.

(L.N. 404 of 1991)

12A. Non-disclosure of payment into court (O. 59, r. 12A)

(1) Where-

(a) any question on an appeal in an action for a debt, damages or salvage relates to liability for the debt, damages or salvage or to the amount thereof, and

(b) money was paid into court under ~~Order 22, rule 1~~ **Order 22**, in the proceedings in the court below before judgment,

Rec 38-43

neither the fact of the payment nor the amount thereof **nor the terms of any relevant offer made in accordance with Order 22** shall be stated in the notice of appeal or the respondent's notice or in any supplementary notice or be communicated to the Court of Appeal until all such questions have been decided. This rule shall not apply in the case of an appeal as to costs only or an appeal in an

Remarks

action to which a defence of tender before action was pleaded.

(2) For the purpose of complying with this rule the appellant must cause to be omitted from the copies of the documents lodged by him under rule 9(d) and (f) every part thereof which states that money was paid into court in the proceedings in that court before judgment.

13. Stay of execution, etc. (O. 59, r. 13)

(1) Except so far as the court below or the Court of Appeal or a single judge may otherwise direct-

(a) an appeal shall not operate as a stay of execution or of proceedings under the decision of the court below;

(b) no intermediate act or proceeding shall be invalidated by an appeal.

(2) On an appeal from the ~~Court of First Instance~~ **court below**, interest for such time as execution has been delayed by the appeal shall be allowed unless ~~the Court~~ **the court below** otherwise orders. Rec 120

(25 of 1998 s. 2)

14. Applications to the Court of Appeal (O. 59, r. 14)

(1) Unless otherwise directed, every application to the Court of Appeal or a single judge which is not made ex parte must be made by summons and such summons must be served on the party or parties affected at least 2 clear days before the day on which it is heard or, in the case of an application which is made after the expiration of the time for appealing, at least 7 days before the day on which the summons is heard. (L.N. 404 of 1991)

(1A) In support of any application (whether made ex parte or inter partes) the applicant shall lodge with the Registrar such documents as the Court of Appeal or a single judge may direct, and rule 9(3) and (4) shall apply, with any necessary modifications, to applications as they apply to appeals. (L.N. 404 of 1991)

~~(2) An application to the Court of Appeal for leave to appeal shall~~ Rec 110 & 112

~~(a) include, where necessary, any application to extend time for appealing; and~~

~~(b) be made ex parte in writing setting out the reasons why leave should be granted and, if the time for appealing has expired, the reasons why the application was not made within that time,~~

~~and the Court may grant or refuse the application or direct that the application be renewed in open court either ex parte or inter partes. (L.N. 363 of 1990)~~

~~(2A) If an application under paragraph (2) is refused otherwise than after a hearing in open court, the applicant shall be entitled, within 7 days after he has been given notice of the refusal, to renew his application; such renewal application shall be made ex parte in open court. (L.N. 363 of 1990)~~

Remarks

~~(2B) If an application under paragraph (2) is granted otherwise than after a hearing inter partes, notice of the order shall be served on the party or parties affected by the appeal and any such party shall be entitled, within 7 days after service of the notice, to apply to have the grant of leave reconsidered inter partes in open court. (L.N. 363 of 1990)~~

(3) Where an ex parte application has been refused by the court below, an application for a similar purpose may be made to the Court of Appeal ex parte within 7 days after the date of the refusal.

(3A) Where an application made to the Court of Appeal ex parte under paragraph (3) is granted, notice of the order granting the application must be served on the party or parties affected and any such party is entitled, within 7 days after service of the notice, to apply to the Court of Appeal to have the order granting the application reconsidered inter partes in open court. Rec 120

(4) Wherever under these rules an application may be made either to the court below or to the Court of Appeal, it shall not be made in the first instance to the Court of Appeal, except where there are special circumstances which make it impossible or impracticable to apply to the court below.

(5) Where an application is made to the Court of Appeal with regard to arbitration proceedings before a judge-arbitrator or judge-umpire which would, in the case of an ordinary arbitrator or umpire, be made to the Court of First Instance, the provisions of Order 73, rule 5, shall apply as if, for the words "the Court", wherever they appear in that rule, there were substituted the words "the Court of Appeal" and as if, for the words "arbitrator" and "umpire", there were substituted the words "judge-arbitrator" and "Judge-umpire" respectively. (25 of 1998 s. 2)

(6) Where an application is made to the Court of Appeal under section 23(5) of the Arbitration Ordinance (Cap 341) (including any application for leave), notice thereof must be served on the judge-arbitrator or judge-umpire and on any other party to the reference.

(HK)(6A) In this rule "judge-arbitrator"（法官仲裁員）and "Judge-umpire"（法官公斷人）mean a judge appointed as sole arbitrator or, as the case may be, as umpire by or by virtue of an arbitration agreement.

(7) An application~~, not being an application for leave to appeal,~~ which may be heard by a single judge, shall, unless otherwise directed, be heard in chambers. Rec 110 & 112

(8)-(9) (Repealed L.N. 404 of 1991)

(10) A single judge may refer to the Court of Appeal any matter which he thinks should properly be decided by that Court, and, following such reference, that Court may either dispose of the matter or refer it back to a single judge or the Registrar, with such directions as that Court thinks fit.

Remarks

(11) (Repealed L.N. 404 of 1991)

(12) An appeal shall lie to the Court of Appeal from any determination by a single judge~~, not being the determination of an application for leave to appeal,~~ and shall be brought by way of fresh application made within 10 days of the determination appealed against~~:~~ **.**

Rec 120

~~Provided that an appeal shall not lie to the Court of Appeal without the leave of that Court in respect of a determination of the Registrar which has been reviewed by a single judge.~~

(13) This rule does not apply in relation to an application for leave to appeal. Rec 110 & 112

14A. Determination of interlocutory application (O. 59, r. 14A) Rec 120

(1) The Court of Appeal (including a single judge thereof) may, in relation to a cause or matter pending before the Court of Appeal, determine an interlocutory application without a~~n oral~~ hearing on the basis of written submissions only.

(2) Where it considers it necessary or expedient, the Court of Appeal ~~consisting of 2 Justices of Appeal~~ (including a single judge thereof) may direct that the interlocutory application shall be heard before ~~them or before~~ the Court of Appeal consisting of 2 or 3 Justices of Appeal.

(3) For the avoidance of doubt, nothing in this rule precludes a judge of the Court of First Instance from sitting as an additional judge of the Court of Appeal in accordance with section 5(2) of the Ordinance.

15. Extension of time (O. 59, r. 15)

Without prejudice to the power of the Court of Appeal or a single judge under Order 3, rule 5, to extend or abridge the time prescribed by any provision of this Order, the period for serving notice of appeal under rule 4 or making application ex parte under rule 14(3) may be extended or abridged by the court below on application made before the expiration of that period.
(L.N. 404 of 1991)

SPECIAL PROVISIONS AS TO PARTICULAR APPEALS

16. Appeal against decree nisi (O. 59, r. 16)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal in a matrimonial cause against a decree nisi of divorce or nullity of

marriage.

(2) The period of 6 weeks specified in rule 4 shall be calculated from the date on which the decree was pronounced and rule 15 shall not apply in relation to that period.

(3) The appellant must, within the period mentioned in paragraph (2) produce to the Registrar a sealed copy of the decree appealed against and leave with him a copy of that decree and two copies of the notice of appeal (one of which shall be indorsed with the amount of the fee paid and the other indorsed with a certificate of the date of service of the notice); and the appeal shall not be competent unless this paragraph has been complied with. (L.N. 404 of 1991)

(4) For the purposes of rule 5 the leaving of the said copies shall be sufficient for the setting down of the appeal and rule 5(1) shall not apply.

(5) A party who intends to apply ex parte to the Court of Appeal to extend the period referred to in paragraphs (2) and (3) must give notice of his intention to the appropriate Registrar before the application is made; and where any order is made by the Court of Appeal extending the said period, it shall be the duty of the Registrar forthwith to give notice of the making of the order and of the terms thereof to the appropriate Registrar.

(6) In this rule "the appropriate Registrar"（適當的司法常務官） means- (28 of 2000 s. 47)

(a) in relation to a cause pending in a district court, the registrar of that court.

19. Appeal from District Court (O. 59, r. 19)

(1) The following provisions of this rule shall apply to any appeal to the Court of Appeal from a District Court other than an appeal against a decree nisi of divorce or nullity of marriage.

(2) The notice of appeal must be served on the registrar of the District Court as well as on the party or parties required to be served under rule 3.

~~(3) In the relation to the appeal~~ Rec 120

~~(a) rule 4(1) shall have effect as if for the words "the date on which the judgment or order of the court below was sealed or otherwise perfected" there were substituted the words "the date on which leave to appeal has been granted under section 63 of the District Court Ordinance (Cap. 336)". (L.N. 39 of 1999)~~

~~(4) It shall be the duty of the appellant to apply to the judge of the District Court for a signed copy of any note made by him of the proceedings and of his decision, and to furnish that copy for the use of the Court of Appeal; and in default of production of such a note, or, if such note is incomplete, in addition to such note,~~

Remarks

~~the Court of Appeal may hear and determine the appeal on any other evidence or statement of what occurred before the judge of the District Court which appears to the Court of Appeal to be sufficient.~~

(4) Except where the Court of Appeal or a single judge otherwise directs, an affidavit or note by a person present in the District Court shall not be used in evidence ~~under this paragraph~~ **before the Court of Appeal** unless it was previously submitted to the judge for his comments. (L.N. 404 of 1991)

(4A) Rule 12A shall apply in any case where money was paid into court by the defendant before judgment in district court proceedings in satisfaction of the plaintiff's cause of action or of one or more causes joined in one action or on account of a sum admitted by the defendant to be due to the plaintiff.

(4B) Rule 12A(1) applies as if a reference to Order 22 were a reference to Order 22 of the Rules of the District Court (Cap. 336 sub. leg. H). Rec 120

(5) Rule 13(1)(a) shall apply subject to the provisions of section 66 of the District Court Ordinance (Cap. 336).

20. Appeals in cases of contempt of court (O. 59, r. 20)

(1) In the case of an appeal to the Court of Appeal against an order of committal or other punishment for contempt of Court made by a judge of the Court of First Instance, the notice of appeal must be served on the Registrar as well as on the party or parties required to be served under rule 3. (See App. A, Form 99)
This paragraph shall not apply in relation to an appeal to which rule 19 applies. (25 of 1998 s. 2)

(2) Where, in the case of such an appeal as is mentioned in paragraph (1), the appellant is in custody, the Court of Appeal may order his release on his giving security (whether by recognizance, with or without sureties, or otherwise and for such reasonable sum as that Court may fix) for his appearance within 10 days after the judgment of the Court of Appeal on the appeal shall have been given, before the court from whose order or decision the appeal is brought unless the order or decision is reversed by that judgment.

(3) An application for the release of a person under paragraph (2) pending an appeal to the Court of Appeal must be made by motion, and the notice of the motion must, at least 24 hours before the day named therein for the hearing, be served on the Registrar and on all parties to the proceedings who are directly affected by the appeal.

(Enacted 1988)

Remarks

Rec 110 & 112

Cases where Leave to Appeal is not Required for Interlocutory Appeals

21. Judgments and orders to which section 14AA(1) of the Ordinance not apply (O. 59, r. 21)

(1) Judgments and orders to which section 14AA(1) of the Ordinance (leave to appeal required for interlocutory appeals) does not apply and accordingly an appeal lies as of right from them are the following –

(a) a judgment or order determining in a summary way the substantive rights of a party to an action;

(b) an order made under section 52A(4) of the Ordinance;

(~~b~~c) an order prohibiting a debtor from leaving Hong Kong under Order 44A, rule 3(1);

(~~c~~d) an order for the imprisonment of a judgment debtor under Order 49B~~, rule 1B~~;

(~~d~~e) an order of committal for contempt of court under Order 52, rule 1;

(~~e~~f) an order granting any relief made at the hearing of an application for judicial review;

(~~f~~g) an order under Order 53, rule 3 refusing to grant leave to apply for judicial review;

(~~g~~h) an order granting an application for a writ of habeas corpus ad subjiciendum;

(~~h~~i) an order under Order 73 (other than an order against which leave to appeal is required under the Arbitration Ordinance (Cap. 341));

(~~i~~j) a judgment given inter partes under Order 83A, rule 4, or Order 84A, rule 3 or in a mortgage action within the meaning of Order 88, rule 1;

~~(j) a restraint order under section 10 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);~~

~~(k) a charging order under section 11 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);~~

~~(l) an order for the appointment of a receiver in pursuance of a charging order specified in sub-paragraph (m) or under section 10 or 12 of the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405);~~

~~(m) an order under Order 115;~~

~~(n) an order under Order 116;~~

~~(o) an order under Order 117;~~

~~(p) an order under Order 118;~~

~~(q) an order under Order 119;~~

(~~r~~k) an order under Order 121.

Remarks

(2) Without affecting the generality of paragraph (1)(a), the following are judgments and orders determining in a summary way the substantive rights of a party –

(a) a summary judgment under Order 14 or Order 86;

(b) an order striking out an action or other proceedings or a pleading or any part of a pleading under Order 18, rule 19 or under the inherent jurisdiction of the Court;

(c) a judgment or order determining any question of law or construction of any document under Order 14A, rule 1(1);

(d) an order or judgment under Order 14A, rule 1(2) dismissing any cause or matter upon determination of a question of law or construction of any document;

(e) a judgment on any question or issue tried pursuant to an order under Order 33, rule 3;

(f) an order dismissing or striking out an action or other proceedings for want of prosecution;

(g) a judgment obtained pursuant to an "unless" order;

(h) an order refusing to set aside a judgment in default;

(i) an order refusing to allow an amendment of a pleading to introduce a new claim or defence or any other new issue; and

(j) a judgment or order on admissions under Order 27, rule 3.

(3) A direction as to whether a judgment or order is one that is referred to in paragraph (1)(a) must be sought from the judge who made or will make the judgment or order.

(4) A reference to an order specified in paragraph (1)(b), (c), (d), (e), (f) ~~(g)~~, (h)~~, and (j) to (r)~~ (i) and (k) includes an order refusing, varying or discharging the order.

~~**22. Application for leave to appeal (O. 59, r. 22)**~~

Previous addition of r.22 removed

~~**(1) Subject to paragraph (2), an application for leave to appeal against an interlocutory judgment, order or decision of the Court may only be made to the Court in the first instance.**~~

~~**(2) Where the Court refuses an application for leave to appeal made under paragraph (1), a further application for leave to appeal may be made to the Court of Appeal.**~~

~~**(3) The Court of Appeal may determine the application without an oral hearing on the basis of written submissions only.**~~

Rules of the High Court (Amendment) Rules 2007

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" ~~(地方法院)~~ **(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;

"legal representative" ( ), in relation to a party to proceedings, means a counsel or solicitor conducting litigation on behalf of the party; 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" ( ) means – Rec 134

(a) a person entitled to payment of costs; ~~or~~

(b) a ~~person~~ 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 an order for costs made against him; ~~or~~

Remarks

(c) a person who has given the ~~person~~ 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 ~~27~~ 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" (　　) means an order made under section 52A(4) of the Ordinance. 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))~~ **rule 8D(1) and (2), rule 9(D) (except paragraphs (2), (3) and (6), rules 13 and 13A, rule 14 to 16, rule 17(1), rule 17A, rule 17B, rule 18, rules 21 (except paragraph ~~(3)~~ (4)), 21A, 21B, 21C and 21D**, ~~rules 22 to 26~~ **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. Rec 134

(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.

(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) 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)

ENTITLEMENT TO COSTS

Rec 122

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

(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

Remarks

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.~~

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 ~~41, 41A~~, 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.

~~3A. Making of other orders or directions under rule 3 (O. 62, r. 3A)~~

Previous r.3A removed

~~In considering whether to make any other order or direction under rule 3(3), (4), (5), (6) or (7), the Court shall have regard to rule 7.~~

Remarks

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, the costs of the whole proceedings, both before and after the transfer or removal, may (subject to any order of the court ordering the transfer or removal) be dealt with by the Court to which the proceedings are transferred or removed. (25 of 1998 s. 2)

(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-

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

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

(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, 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- Rec 7-9, 84

(aa) the underlying objectives set out in Order 1A, rule 1; 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~~ Rec 7-9, 84

~~(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.~~ Consequential Amendments

Remarks

(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 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.

Rec 7-9, 84

(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; ~~and~~
(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 and in particular, the extent to which the parties followed any relevant pre-action protocol.

~~**but does not include any conduct before the commencement of the action unless the conduct is regulated by a pre-action protocol.**~~

(3) In considering whether a party has complied with any relevant pre-action protocol, the Court shall, in the case where the party is not legally represented, take into account whether he was unaware of the relevant pre-action protocol, or if he was aware of it, whether he was able to comply with it without legal assistance.

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

(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 –

(a) where the Court is considering whether to make a wasted costs order; or

(b) in relation to proceedings to which section 41 or 42 of the Ordinance applies.

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; Rec 122

(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 Rec 135-136

Remarks

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)~~ Rec 94-97

~~(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~~

~~(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~~

Remarks

~~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) 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 defined in section 52A~~(5)~~ (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 –

(i) the legal representative to repay to his client costs which the client has been ordered to pay to other parties to the proceedings; or

(ii) the legal representative to indemnify such other parties against costs incurred by them.

~~(2)~~(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.

~~(3)~~(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.

Remarks

~~(4)~~(5) The Court ~~shall~~ 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 as simple and summary as the circumstances permit.

~~(5)~~(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 it against his legal representative.

~~(6)~~(7) Before making a wasted costs order, the Court may direct a master to inquire into the matter and report to the Court.

~~(7)~~(8) The Court may refer the question of wasted costs to a master, instead of making a wasted costs order.

~~(8)~~(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.

8A. Court may make wasted costs order on its own motion or on application (O. 62, r. 8A) Rec 94-97

(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.

Remarks

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

(i) that 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 paragraph (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 a means of intimidation (O. 62, r. 8C) 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 waste costs concerned are alleged to result; and

(b) identify the evidence or other materials on which he relies in support of the allegation.

Remarks

8D. Personal liability of legal representative for costs – supplementary provisions (O. 62, r. 8D) 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 to pay costs personally to any of the parties to those proceedings.

(2) Where any legal representative fails to ~~leave his~~ 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 proceeding 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.

9. ~~Fractional or gross sums in place of taxed costs~~ Taxed costs, fractional taxed costs or costs summarily assessed for non-interlocutory applications Rec 88-89, 92
(O. 62, r. 9)

(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.

Remarks

(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.~~ Rec 88-89, 92

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

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

~~**9A. Interim payment of costs**~~ Rec 88-89, 92

~~(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)

Rec 88-89, 92

(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 who is aggrieved by the order 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 taxed costs in respect of the interlocutory application equal 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 taxed costs in respect of the interlocutory application exceed 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 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 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 Court may make such order as to the costs of the taxation or such other order as it considers appropriate.

(5) In determining whether the taxed costs materially exceed the amount paid pursuant to an order made under paragraph (1)(b), the Court shall, in addition to any other matter that it 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.

~~**(6) Where the party entitled to a payment of a sum of money under paragraph (1)(a) or (b) is a litigant in person, rule 28A applies with the necessary modifications to the assessment of the sum as it applies to the taxation of the costs of a litigation in person.**~~

9B. Time for complying with an order for summary assessment (O. 62, r. 9B) Rec 88-89, 92

(1) A party shall comply with ~~an~~ a direction or order under rule 9(4)(b) or rule 9A(1)(a) or (b) for payment of a sum of money ~~within 14 days of~~ –

(a) within 14 days of the date of the direction or order; or

(b) by such ~~later~~ date as the Court may specify.

(2) Paragraph (1) does not apply if the party is an aided person ~~within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)~~.

9C. When summary assessment not allowed (O. 62, r. 9C) Rec 88-89, 92

(1) No direction or order may be made under rule 9(4)(b) or rule 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 ~~paying~~ receiving party is an aided person ~~within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)~~, and the legal representative acting for the ~~aided person~~ 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 ad 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" ( ) means the party against whom an order under rule 9A(1)(a) or (b) is made;

"receiving party" ( ) means the party in whose favour an order under rule 9A(1)(a) or (b) is made.

9D. When to tax and pay costs (O. 62, r. 9D) Rec 88-89, 92

(1) Subject to paragraph (2), the costs of any proceedings shall not be taxed until the conclusion of the cause or matter in which the proceedings arise.

(2) If it appears to the Court when making an order for costs 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 order for costs is made is an aided person ~~within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)~~.

(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 ~~tax forthwith~~ the costs of any interlocutory proceedings which have taken place to commence taxation proceedings in accordance with rule 21.

(5) Costs taxed under paragraph (2) or (4) ~~Taxed costs~~ shall be paid forthwith, whether or not the action has concluded.

(6) Paragraph (5) does not apply if the person against whom the order for costs is made is an aided person ~~within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)~~.

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)

Remarks

~~(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)~~

Consequential Amendments

~~(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 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.

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

Rec 7-9, 84

(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 contain or be accompanied by the agreement referred to in section 52B(1) of the Ordinance.~~

(2) The originating summons must be accompanied by –

Previous r.11A(2) modified

(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.

Remarks

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

~~(3)~~(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) Order 28, rule 1A does 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) Rec 7-9,84

(ab) 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.

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. Rec 134

(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~~ **appointment ~~to tax under rule 21B(3) or 21C 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)

Remarks

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

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 ~~before taxation under rule 21B or 21C commences~~.

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.

Remarks

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)

(1) A taxing master shall, at the conclusion of taxation proceedings before him, issue a final certificate specifying –

(a) the amount of taxed costs and the amount of money payable under rule 32B;

(b) subject to paragraph (2), the time for payment.

(2) If no time for payment is specified in a final certificate, payment shall be made forthwith.

Remarks

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

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

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

Rec 134

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

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

(1) A party entitled to payment of the costs of any action to be taxed may ~~begin~~ 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 with 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.

~~(3)~~(4) It is not necessary for a copy of the notice of commencement of taxation and 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

Remarks

(b) the Court otherwise orders.

~~(4)~~(5) A party shall, when he files a notice of commencement of taxation ~~his bill of costs~~, pay to the Court a prescribed taxing fee.

(6) A party 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 Registrar 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 party who fails to comply with paragraph (6) is not entitled to –

(a) receive from the Registrar and 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 ~~appointment to tax~~ (O. 62, r. 21A) 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 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 ~~an appointment to tax~~.

(2) The party shall serve a copy of the application on every other party entitled to be heard on taxation.

~~(2)~~(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.

~~(3) 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.~~

21B. Provisional taxation (O. 62, r. 21B) Rec 134

(1) Unless the taxation is set down for hearing under rule 21C(1), ~~a party entitled to be heard on taxation applies for a hearing,~~ 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.

Remarks

(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.

~~(2)~~(3) The order nisi is to become 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.

~~(3) The taxing master shall fix an appointment for a hearing upon application made by a party under paragraph (2) and that party shall serve a notice of the appointment on every other person entitled to be heard on taxation within 7 days after the appointment is fixed.~~

(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.

Previous r.21B(3) modified and re-numbered r.21B(4)

~~(4)~~(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).

~~(5)~~(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)

Rec 134

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

~~(2) Where an appointment to tax is given, the party to whom the appointment is given shall serve a notice of the appointment to tax on every person entitled to be heard on taxation within 7 days after the appointment is given.~~

(2) Where the taxation is set down for 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.

Previous r.21C(2) modified

Remarks

21D. Withdrawal of bill of costs (O. 62, r. 21D) Rec 134

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

(2) The Court shall deduct the fee payable under paragraph (1) from the amount paid under rule 21~~(4)~~ (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.

~~**22. Delay in filing of bill of costs** (O. 62, r. 22)~~ Rec 134

~~(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 ~~filing of bill of costs~~ (O. 62, r. 22)

(1) If, within ~~three~~ 3 months after the relevant date, ~~an order of the Court requiring the payment of any costs to be taxed,~~ the person entitled to payment of ~~those~~ 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 thereof, may make an order under paragraph ~~(2)~~ (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 thereof, may make an order under paragraph (3).

~~(2)~~(3) The taxing master –

(a) may order that the person entitled to payment of the costs must ~~proceed to~~ 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 costs order in favour of~~ the person shall not be entitled to commence those taxation proceedings or proceed with the taxation unless ~~be wholly discharged unless~~ –

(i) the person does commence taxation proceedings or proceed with the taxation within the specified period or such extended period as may be allowed by the taxing master; or

(ii) the amount due is agreed between the parties within the specified period or extended period.

~~(3)~~(4) The taxing master may make an order under paragraph ~~(2)~~ (3) subject to such conditions as he thinks fit, including a condition that the person liable to pay the costs to be taxed ~~in whose favour the order is made~~ shall pay a sum of money into court.

~~(4)~~(5) On ~~any order in accordance with paragraph (2) and on~~ the taxation of a bill of costs, whether or not an order has been made under paragraph ~~(2)~~ (3), the taxing master, if he is satisfied that there has been undue delay in commencing taxation proceedings or in proceeding with the taxation ~~the filing or service of the bill of costs or the notice of commencement of taxation~~ -

(a) may make such order as he thinks fit as to the costs of any application ~~or of any order~~ or as to the costs of the taxation; and

~~(b) may disallow any part of the costs awarded under the costs order; and~~

~~(c)~~(b) 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.

Remarks

Previous r. 22(5) removed

~~(5) A costs order shall be discharged –~~

~~(a) after the expiry of [2 years] from -~~

~~(i) unless sub-subparagraph (ii) or (iii) applies, the completion of the action;~~

~~(ii) where the court has ordered costs to be taxed forthwith, the date of the costs order;~~

~~(iii) where the court has ordered costs to be taxed by a particular date, that date; or~~

~~(b) where the court has extended the period specified in paragraph (a), after the expiry of the period as extended,~~

~~whichever is the later.~~

(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 relevant date; or

(b) where the Court has extended the period specified in paragraph (a), after the expiry of the period as extended,

whichever is the later.

(8) In this rule, "relevant date" ( ) means –

(a) in relation to an action in 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 order for costs, 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) that 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 an appeal to the 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 order for costs, 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)

Remarks

that 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)~~ Rec 134

~~(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** **Taxation** (O. 62, r. 24)~~ Rec 134

~~(1) If, at the date and time of an appointment to tax~~ **~~under 21B(3) or 21C~~**~~, 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~~ **~~under 21B(3) or 21C~~** ~~and a copy of the bill of costs were duly served on such person in accordance with rule 21~~ **~~rule 21B(3) or 21C(2) and in accordance with rule 21(2)~~**~~, may proceed to taxation of the bill of costs in the absence of such person or of his representative.~~

~~(1A) 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 taxation under that rule, 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 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.~~

~~(2) If the notice of appointment to tax under rule 21B(3) or 21C or the bill of costs has not been served upon the person referred to in paragraph (1), the taxing master –~~

~~(a) must adjourn the taxation for such period as he may consider necessary to enable service of the adjourned appointment to tax or~~

~~**of the bill of costs or both to be effected on that person; and**~~

~~**(b) may make such order as he may consider appropriate in relation to costs thrown away by the 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)~~ Rec 135-136

~~(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)

Rec 135-136

~~(2)~~ **(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.

(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 to costs thrown away by such adjournment**~~ **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~~

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 began 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)~~.

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.

Remarks

(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**. Rec 88-89, 92

(7) This rule applies with the necessary modifications to a summary assessment under rules 9(4)(b), 9A(1)(a) and (b) and 11A(3), 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.

Remarks

(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) Rec 135-136

(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) Rec 135-136

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) Rec 135-136

(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 unless the conduct is regulated by a pre-action protocol.

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

(a) 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" ( ) 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 ~~appeal against~~ the decision ~~in respect of that item~~ 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.

(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.

(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

Transitional

36. Transitional provision relating to Part 14 of the Amendment Rules 2007 (O. 62, r. 36)

Rules 8, 8A, 8B, 8C and 8D do not apply in relation to any costs incurred before the commencement of Part 14 of the Amendment Rules 2007, and rule 8 as in force immediately before the commencement is to continue to apply in relation to those costs as if that Part had not been made.

37. Transitional provisions relating to Part 21 of the Amendment Rules 2007 (O. 62, r. 37)

~~**(1) Where a party entitled to require any costs to be taxed has obtained an appointment to tax before the commencement of Division 2 of Part 21 of the Amendment Rules 2007, nothing in that Division is to apply in relation to the taxation, and the following provisions of these rules in force immediately before the commencement are to continue to apply in relation to the taxation**~~

Remarks

~~as if they had not been amended by that Division –~~

~~(a) rules 2(2), 13, 21, 22, 23, 24 and 26; and~~

~~(b) items 19 and 19a in the First Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D).~~

(1) Where a party entitled to require any costs to be taxed has filed his bill of costs before the commencement of Part 21 of the Amendment Rules 2007, nothing in that Part is to apply in relation to the taxation, and Order 62 as in force immediately before the commencement is to apply in relation to the taxation as if it had not been amended by that Part.

Previous r. 37 (1) modified

(2) Where a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 21 of the Amendment Rules 2007 but 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 is to apply in relation to that item of work as if it had not been amended by Part 21 of the Amendment Rules 2007.

(3) Where a party entitled to require any costs to be taxed files his bill of costs after the commencement of Part 21 of the Amendment Rules 2007 but 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 are to apply in relation to the writ of summons as if they had not been amended by Part 21 of the Amendment Rules 2007.

~~(2)~~(4) No costs for work undertaken before the commencement of Part 21 of the Amendment Rules 2007 are to be disallowed if those costs would have been allowed under this Order 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~~

		Remarks
1.	**Preparation of a bundle of copy 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; (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~~

Remarks

~~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.~~

(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, unless the master or judge~~ **master in open court or a judge or the Court of Appeal, unless the master or judge or the Court of Appeal**, as the case may be, has certified the attendance as being proper in the circumstances of the case.

(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~~ Rec 131

~~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).~~

(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~~

~~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 $2000~~
~~Scale IV~~	~~Exceeding $2000 but not exceeding $5000~~
~~Scale V~~	~~Exceeding $5000~~

~~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.~~

Remarks

PART I

COSTS ON JUDGMENT WITHOUT TRIAL FOR ~~A LIQUIDATED SUM~~ **LIQUIDATED OR UNLIQUIDATED SUM**

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~~, and **the commencement of the Amendment Rules 2007** 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.

PART II

SCALE OF COSTS

Item	Scale
Basic Costs	$
To be allowed in cases under-	

	Remarks
~~sub-paragraph (a) of paragraph 1~~	~~400.00~~
~~sub-paragraph (b) of paragraph 1~~	~~505.00~~
~~sub-paragraph (c) of paragraph 1~~	~~650.00~~
sub-paragraph (a) of paragraph 1	**9,000 if plaintiff is legally represented and 500 if the plaintiff is not legally represented**
sub-paragraph (b) of paragraph 1	**10,000 if plaintiff is legally represented and 600 if the plaintiff is not legally represented**
paragraph 1A	**10,000 if plaintiff is legally represented and 600 if plaintiff is not legally represented**
Additional Costs	
1. For each additional defendant after the first	~~65.00~~ **500**
2. Where substituted service is ordered and effected, for each defendant served	~~500.00~~ **1,000**
~~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~~
~~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~~

Remarks

~~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~~ **300**
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**
~~(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~~	~~50.00~~
~~additional costs where the garnishee fails to attend the hearing of the application and an affidavit of service is required~~	

	Remarks
~~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~~ **600**
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.**

Rules of the High Court (Amendment) Rules 2007

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

Order 62A - COSTS OFFER AND PAYMENTS INTO COURT

Remarks

I. PRELIMINARY

Rec 132

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

(1) In this Order –

~~"costs offer" ( ) means an offer to settle a party's entitlement to costs that are the subject of a taxation;~~

"costs offer" ( ) 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;

Previous r.1(1) modified

"offeree" ( ) means the party to whom a costs offer is made;

"offeror" ( ) means the party who makes a costs offer;

"paying party" ( ) means the party liable to pay costs;

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

"relevant date" ( ), 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" ( ) means a costs offer made (otherwise than by way of a payment into court) in accordance with this Order;

"sanctioned payment" ( ) means a costs offer made by way of a payment into court in accordance with this Order;

"sanctioned payment notice" ( ) means the notice referred to in ~~rule 5(2)~~ rule 6(2).

(2) This Order does not apply to or in relation to a party who is or has been an aided person ~~within the meaning of section 2 of the Legal Aid Ordinance (Cap. 91)~~.

Remarks

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

(1) Any party to a taxation may make an offer to settle in accordance with this Order the entitlement to costs that are the subject of the taxation.

(2) An offer made under paragraph (1) will have the consequences specified in rules ~~13,~~ 14 ~~and,~~ 15 and 16 (as may be applicable).

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

II. MANNER OF MAKING SANCTIONED OFFER OR SANCTIONED PAYMENT

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

(1) A costs offer by a paying party will not have the consequences set out 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 ~~appointed for taxation~~.

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

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

~~4.~~ 5. Form and content of a sanctioned offer (O. 62A, ~~r. 4~~ 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 ~~or withdrawn~~ at any time before the relevant date ~~appointed for taxation~~.

(5) A sanctioned offer made not less than 14 days before the relevant date –

(a) may not be withdrawn or reduced before the expiry of 14 days from the date the sanctioned offer is made unless the Court gives

Remarks

leave to withdraw or reduce it; and

(b) must provide that after the expiry of the 14-day period, the offeree may only accept it if –

(i) the parties agree on the liability for costs; or

(ii) the Court gives leave to accept it.

(6) A sanctioned offer made less than 14 days before the relevant date must provide that the offeree may only accept it if –

(a) the parties agree on the liability for costs; or

(b) the Court gives leave to accept it.

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

(8) If the Court dismisses an application to withdraw or reduce a sanctioned offer, it may by order specify the period within which the sanctioned offer may be accepted.

(9) If a sanctioned offer is withdrawn it will not have the consequences set out in this Order.

~~5.~~ 6. Notice of a sanctioned payment (O. 62A, ~~r. 5~~ r. 6)

(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 does it relate;

(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 ~~paying party has taken into account that sum of money~~ sanctioned payment has taken into account that sum of money.

(3) The paying party shall –

(a) serve the sanctioned payment notice on the receiving party; and

(b) file a certificate of service of the notice.

(4) A sanctioned payment may be withdrawn or reduced at any time before

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the ~~date appointed for taxation~~ expiry of 14 days from the date the sanctioned payment is made unless the Court gives leave to withdraw or reduce it.

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

(6) If the Court dismisses an application to withdraw or reduce a sanctioned payment, it may by order specify the period within which the sanctioned payment may be accepted.

(7) If a sanctioned payment is withdrawn, it will not have the consequences set out in this Order.

~~6.~~ 7. Time when a sanctioned offer or a sanctioned payment is made and accepted (O. 62A, ~~r. 6~~ r. 7)

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

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

~~(3) An improvement to a sanctioned offer will be effective when its details are received by the offeree.~~

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

Previous r.7(3) modified

~~(4) An increase in a sanctioned payment will be effective when notice of the increase is served on the offeree.~~

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

Previous r.7(4) modified

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

~~7.~~ 8. Clarification of a sanctioned offer or a sanctioned payment notice (O. 62A, ~~r. 7~~ r. 8)

(1) The offeree may, within 7 days of a sanctioned offer or 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 receiving the request, the offeree may, ~~unless the taxation has commenced~~ before the relevant date, apply for an order that he does so.

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(3) If the Court makes an order 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

~~8.~~ 9. Time for acceptance of a paying party's sanctioned payment (O. 62A, ~~r. 8~~ r. 9)

~~**A receiving party may accept a sanctioned payment at any time before the date appointed for taxation.**~~

(1) Subject to rules 5(7) and 6(5), a receiving party may accept a sanctioned payment made not less than 14 days before the relevant date without requiring the leave of the Court if he gives the paying party written notice of acceptance not later than 14 days after the payment was made.

Previous r.9 modified

(2) If –

(a) a paying party's sanctioned payment is made less than 14 days before the relevant date; or

(b) the receiving party does not accept it within the period specified in paragraph (1),

then the receiving party may –

(i) if the parties agree on the liability for costs, accept the payment without leave of the Court; or

(ii) if the parties do not agree on the liability for costs, only accept the payment with leave of the Court.

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

~~9.~~ 10. Time for acceptance of a receiving party's sanctioned offer (O. 62A, ~~r. 9~~ r. 10)

~~**A paying party may accept a sanctioned offer at any time before the date appointed for taxation.**~~

(1) Subject to rule 5(7), a paying party may accept a sanctioned offer made not less than 14 days before the relevant date without requiring the leave of the Court if he gives the receiving party written notice of acceptance not later than 14 days after the offer was made.

Previous r.10 modified

(2) If –

(a) a receiving party's sanctioned offer is made less than 14 days before the relevant date; or

(b) the paying party does not accept it within the period specified in

paragraph (1),
then the paying party may –

(i) if the parties agree on the liability for costs, accept the offer without leave of the Court; and

(ii) if the parties do not agree on the liability for costs, only accept the offer with leave of the Court.

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

~~10.~~ 11. Payment out of a sum in court on the acceptance of a sanctioned payment (O. 62A, ~~r. 10~~ r. 11)

Subject to rule 12(4), ~~Where~~ 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. 93A in Appendix A.

~~11.~~ 12. Acceptance of a sanctioned payment made by one or more, but not all, paying parties (O. ~~22~~ 62A, ~~r. 11~~ r. 12)

(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 8~~ rule 9 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 or the Court is of the opinion that such consent is not necessary.

(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 8~~ rule 9; 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.

~~12.~~ 13. Cases where a court order is required to enable acceptance of a sanctioned offer or a sanctioned payment (O. 62A, ~~r. 12~~ r. 13)

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 shall be made without a court order.

IV. CONSEQUENCES OF SANCTIONED OFFER OR SANCTIONED PAYMENT

~~13.~~ 14. Consequences of acceptance of a sanctioned offer or a sanctioned payment (O. 62A, ~~r. 13~~ r. 14)

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

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

(a) the stay will be upon the terms of the offer; and

(b) either party may apply to enforce those terms without the need for a new ~~taxation~~ claim.

(3) If a sanctioned offer or a sanctioned payment which relates to part only of the costs is accepted the taxation will be 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 will take effect only when that approval has been given.

(5) Any stay arising under this rule will 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; ~~or~~ 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 start a new claim unless the Court orders otherwise.

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~~14.~~ 15. Costs consequences where receiving party fails to do better than a sanctioned payment (O. 62A, ~~r. 14~~ r. 15)

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

(2) Unless he considers it unjust to do so, the taxing master shall order the receiving party to pay the costs of the taxation on the indemnity basis starting with the date on which the payment was made.

(3) In considering whether it would be unjust to make the order referred to in paragraph (2), 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 when 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.**

~~15.~~ 16. Costs and other consequences where receiving party does better than he proposed in his sanctioned offer (O. 62A, ~~r. 15~~ r.16)

(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 ~~prime~~ judgment rate for some or all of the period starting with the date on which the sanctioned offer was ~~received by~~ 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 from the date on which the sanctioned offer was ~~received by~~ served on the paying party; and**
- **(b) interest on those costs at a rate not exceeding 10% above ~~prime~~ judgment rate.**

(4) Where this rule applies, the taxing master shall make the orders referred to in paragraphs (2) and (3) unless ~~it~~ 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 ~~any~~ the sanctioned offer;**
- **(b) the stage in the proceedings when ~~any~~ 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

~~16.~~ 17. Restriction on disclosure of a sanctioned offer or a sanctioned payment (O. 62A, ~~r. 16~~ r. 17)

(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 10~~ rule 14 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.